



Committee on Professional Ethics

Opinion #429 - 4/21/76 (18-76)

Topic: Former public employee;
Conflict.

Digest: Not improper for former
City councilman to represent
false arrest plaintiff if he
did not have a substantial
responsibility regarding the
arrest during his term as
councilman.

Code: EC 9-3
DR 9-101(B)
Former Canon 36

QUESTION

May a former City councilman represent a plaintiff in a false arrest action against the City where the arrest was made while the attorney was still serving as a City councilman.

OPINION

EC 9-3 provides that:

"After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists."
(Underscoring added.)

Assuming that a City councilman is a public employee as that term is used in EC 9-3, the issue is whether the attorney, while he was still a councilman, "had substantial responsibility" regarding the plaintiff's arrest. See also, DR 9-101(B).

Determining whether an attorney, as a councilman, had substantial responsibility in a given matter is a question which can be answered only after considering the particular facts involved. However, a City councilman would generally not have substantial responsibility regarding a particular arrest. The City councilman is an elected official, serving in a legislative capacity. The arresting officer, on the other hand, is probably a civil servant, and is enforcing a penal statute enacted by the State Legislature.

Former Canon 36 prohibited a retired public officer from "accepting employment in connection with any matter which he has investigated or passed upon while in such office or employ." In the question at hand it must be determined whether an appearance of impropriety would arise as a result of the councilman's having exercised substantial responsibility over his present client's arrest. On the facts as given, substantial responsibility, and therefore the appearance of impropriety, would seem to be lacking.
