



Committee on Professional Ethics

Opinion #447 - 12/3/76 (92-76)

Topic: Conflict of interests;
County Department of Social
Services; representation of
private client against county
by lawyer retained by one
county department.

Digest: Lawyer retained by County
Department of Social Ser-
vices for specific matter dis-
qualified from representing
private clients in matters
involving that department, but
not in other matters involving
County.

Code: EC 8-8
DR 5-105(A)&(B), 8-101(A)(2)(3),
9-101(C).

QUESTION

A County Department of Social Services seeks to employ members of the local Bar on a case by case basis to represent the Department for specific matters which the Department's full-time counsel is unable to handle. Would the acceptance of such individual retainers require the disqualification of the retained lawyer from representing private clients in claims against the County or in criminal matters prosecuted by the County Attorney?

OPINION

The principles applicable to disqualification of lawyers serving a public agency on a part-time basis have been comprehensively summarized by this Committee in a number of opinions. See especially N.Y. State 435 (1976), N.Y. State 431 (1976), N.Y. State 392 (1975), and opinions therein cited. Disqualification is mandated under the Code by such provisions as EC 8-8, DR 5-105(A) and (B), DR 8-101(A)(2) and (3), and DR 9-101(C) where a lawyer's "personal or professional interests are or foreseeably may be in conflict with his official duties" or where there is either a possibility or suspicion that the private client may gain or be seeking some improper advantage. Where, however, there is no actual or potential conflict of interests, no appearance of improper influence and no basis for public suspicion that the private client is seeking some improper advantage, there should be no disqualification. Applying these principles, we hold:

1. A lawyer who accepts one or more individual retainers from one county department, such as the Department of Social Services, could not, during the pendency of such retainers, represent private clients in matters in which the same department is an opposing party, or may have an interest. No lawyer may properly accept "any kind of retainer for one client which

would make it his duty to assert a claim against the interests of a second client whom the lawyer concurrently represents in other matters". N.Y. State 392 (1975); and cf. N.Y. State 322 (1973). Nor would it be conducive to public confidence in the integrity of public administration to permit such private representation in matters in which a private client may be seeking some benefit or advantage from the same department which the lawyer concurrently represents in some other matter.

2. When a governmental body is organized into a number of separate departments or agencies, such department or agency, and not the parent governmental unit, should be treated as the client for purposes of the rule which forbids the concurrent representation of one client against another. Disqualification might still be required where the specially retained lawyer's relationship with the parent unit or with its legal representatives are sufficiently close to give rise to any public suspicion of improper influence. But where, as here, a County Department of Social Services has its own full-time counsel and is not represented by the County Attorney, there would be no basis for automatic disqualification of the lawyer retained by the County Department on a case by case basis from handling other matters involving the county, either civil or criminal. A more restrictive rule would not only be totally unnecessary, but would needlessly inhibit governmental agencies from getting needed representation on an individual case by case basis.
