



Committee on Professional Ethics

Opinion #453 - 12/14/76 (82-76)

Topic: Deputy town attorney; tax certiorari; practice by former deputy town attorney.

Digest: Former deputy town attorney may represent clients in tax certiorari proceedings under certain circumstances.

Code: EC 4-5, 4-6, 9-3
DR 4-101(B), 9-101(B)

QUESTION

May a former deputy town attorney, whose responsibilities included defending tax certiorari proceedings instituted against the town, undertake representation of private clients involved in such proceedings after he leaves town employment?

OPINION

DR 9-101(B) provides that an attorney leaving government service may not accept private employment involving any matter "in which he had substantial responsibility while he was a public employee". A former deputy town attorney could not, therefore, handle any matter in which he had actively participated while in public service, or for which he had any supervisory responsibility.

Further, the Code also prohibits an attorney from revealing confidences or secrets of a client, or using them to the client's disadvantage. DR 4-101(B). EC 4-5 and EC 4-6 make clear that this prohibition extends to confidences of former clients as well. Since the former client in this case would be a municipality, the exception to the general rule which would permit use of such information with the consent of the client after full disclosure is unavailable. See, N.Y. State 322 (1973) and opinions therein cited.

The obvious purpose of these Code provisions is to promote public confidence in the integrity of the legal system. EC 9-3. But neither the Code, nor its goal of promoting public confidence require so limiting the practice of former government lawyers that they may not, following their return to private practice, undertake work involving the types of matters in which they have gained particular expertise while in public service.

Applying these countervailing considerations, we hold that a former deputy town attorney may represent private clients in tax certiorari proceedings against the town where while in office he had no substantial responsibility for proceedings affecting the subject property and obtained no confidential information relating thereto. See, N.Y. State 429 (1976), N.Y. State 313 (1973), N.Y. State 303 (1973), ABA 134 (1935), ABA Inf. 647 (1963). Although technically, each tax year may give rise to a new proceeding, disqualification must extend to all certiorari proceedings involving the subject property because of the similarity of the factual issues. See, N.Y. State 132 (1970), N.Y. State 176 (1971) and N.Y. State 435 (1976).