



# Committee on Professional Ethics

Opinion #534 - 6/9/81 (2-81)

Topic: Legal aid; staff attorney; private clients.

Digest: Former Legal Aid staff attorney may represent persons previously served by him under certain circumstances.

Code: Canon 9;  
EC 1-4, 2-24, 2-25, 2-29;  
DR 9-101(B).

## QUESTION

May a former staff attorney of a Legal Aid Society continue to represent in private practice indigent persons whom he had served while employed by the Society?

## OPINION

If legal services corporations, including the various Legal Aid Societies, were to be viewed as public agencies, the proscription contained in DR 9-101(B) against accepting "private employment" in a matter for which the lawyer had "substantial responsibility while he was a public employee" would be dispositive of the question posed. Strictly speaking, however, legal services corporations are not public agencies. Although many are heavily funded by public sources, they are nonetheless private, non-profit corporations. Hence, the proscription of DR 9-101(B) cannot be deemed dispositive.

Rather, in the present context, DR 9-101(B) should be seen as providing an illustration of a general policy underlying much of Canon 9. It is a policy which may be seen to develop from the Code's expressed purpose to promote public confidence in our system of justice and the various mechanisms, or agencies, which have been created to serve that system. Where the public might reasonably perceive that such agencies are being used for the personal advantage of staff attorneys, consistent with the broad purposes of Canon 9, the attorneys have been prohibited from undertaking various kinds of private employment. Thus, for example, part-time public defenders have been prohibited from representing in private practice persons whom they have found to be ineligible for public assistance. N.Y. State 165 (1970); see also, N.Y. State 506 (1979), N.Y. State 426 (1976) and N.Y. State 260 (1972). As we explained in N.Y. State 165:

"[F]or a lawyer to accept compensation from a client who has previously sought uncompensated public assistance from the same lawyer would clearly undermine confidence in the integrity of the profession."

In that case, the matter about which the accused sought to retain the lawyer's services privately was identical to the matter about which he had consulted the public defender's office and the lawyer continued to be employed, albeit part-time, by that office.

While a staff attorney of a Legal Aid Society is not a public employee, we believe that his position vis-a-vis the indigents whom he serves is more closely analogous to that of a public defender than that of an attorney in private practice.

The Code itself expressly encourages all lawyers to support organizations which render legal services to the indigent and, by necessary implication, to avoid conduct which would unreasonably hinder their efforts in that regard. See, e.g., EC 1-4, EC 2-24, EC 2-25 and EC 2-29; cf., N.Y. State 531 (1981), N.Y. State 485 (1978) and N.Y. State 456 (1976). It would seem somewhat anomalous to permit former staff attorneys of a Legal Aid Society to undermine the very same institutions which the Code urges all lawyers to support.

Since the absolute prohibition of DR 9-101(B) is not literally applicable to the question posed, we are free to decide the matter in light of the Code's evident purposes and with a view toward fulfilling its design to provide legal services to all persons in need.

We believe that all legitimate interests can be accommodated by a rule which prohibits former staff attorneys of a Legal Aid Society from undertaking to represent for a fee persons whom they have previously served in connection with matters for which they had substantial responsibility while employed by the Society, as long as those persons remain eligible to receive such representation without charge. With respect to new matters, former staff attorneys may furnish legal services for a fee to persons whom they previously served through the Society, provided such persons are fully informed of their eligibility to receive those services without charge from another source. Whether new matter or old, and regardless of eligibility for free assistance, consistent with the Code's stated purpose to provide all persons in need with legal counsel, former staff attorneys may continue to represent those they have previously served through the Society without charge, pro bono publico.

For the reasons stated, subject to the qualifications hereinabove set forth, the question posed is answered in the affirmative.

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