



ISBA Advisory Opinion on Professional Conduct

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This Opinion was **AFFIRMED** by the Board of Governors in January 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.5(e). This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.

**Opinion No. 784
July 6, 1982**

**Topic: Public Defender's
Referrals of Cases**

Digest: It is not improper for a part-time public defender to refer cases involving misconduct of police officers to other counsel and receive a referral fee.

Ref: Rule 2 - 107

QUESTION

An attorney who is the Public Defender for an Illinois county maintains a private practice as well. He asks whether, where evidence of police misconduct comes to his attention as a result of his work as Public Defender, he may refer the case to another lawyer and receive a referral fee if a recovery is had.

OPINION

The Committee does not perceive any ethical problem in this inquiry. The inquiring lawyer points out that as Public Defender he is an employee of the county. Although this is true in a technical sense, in that the county pays him a salary, it is not true in the sense that the county directs his activities or in the sense that he owes a duty of loyalty to the county rather than to the accused persons whom he is appointed to represent. The accused persons, not the county, are his

clients. Were it otherwise, no lawyer could ever ethically discharge the duties required of a Public Defender. There is thus no conflict of interest or loyalty.

Since there is no conflict, the attorney could represent the indigent defendants in asserting civil claims against police officers and other public officials. May he, instead, refer the matters to other counsel and receive a referral fee if liability is established? Under the former Code, a fee could not be paid to a lawyer who took no part in the actual handling of the case. The new Code, in Rule 2-107, changes this and allows a referral fee so long as there is full disclosure to the client, responsibility is retained by the referring lawyer, and the other requirements of the rule (which will not be detailed here) are observed.

A different rule might apply where the office of Public Defender is a full-time position and the Public Defender and his assistants are by contract or by the terms of the appointment prohibited from engaging in the private practice of law. In that case, however, the disability flows from the agreement of the individual with the county and not from an ethical rule.

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