



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in July 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.7 and 8.4(k) with its Comment [5]. 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. 87-4
January 29, 1988**

Topic: Conflict of Interest; Public Defender

Digest: Part-time public defender may represent private client against county with consent of private client after full disclosure of employment relationship with county.

Ref.: Rules 5-101, 8-101
Illinois Revised Statutes, Ch. 34, ¶5601 et. seq.
People ex rel. Cook Co. v. Majewski, 28 Ill.App.3d 269 (1st Dist. 1975)

FACTS

The public defender and two assistant public defenders of a county have filed a civil action on behalf of a private client against the county for alleged wrongful acts of county animal control personnel. All public defender positions in the county are part-time positions.

QUESTIONS

May part-time public defenders represent private clients in litigation adverse to the county?

OPINION

The office of public defender was created by the Public Defender Act, Illinois Revised Statutes, Chapter 34, paragraph 5601 et. seq. The statute provides that the public defender shall be appointed by the judges of the circuit court (§5602) and "shall act as attorney" for those charged with criminal offenses who are unable to employ counsel (§5604). A public defender's compensation is fixed by the county board (§5605). A public defender may appoint assistants, whose compensation is also fixed by the county board (§5606). The statute provides that public defenders may engage in the private practice of law (§5605). It has been held that an assistant public defender is a public officer entitled to a salary during his or her tenure in office. People ex rel. Cook Co. v. Majewski, 28 Ill.App.3d 269 (1st Dist. 1975).

The public defenders have no attorney-client relationship with the county, and therefore Rule 5-105 would not be applicable. However, as public officers of the county whose compensation is fixed by the county board, the public defenders could well have an interest maintaining the good will of the county government. Rule 5-101 provides:

- (a) Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

In view of this rule, the public defenders may not represent a private client in litigation against the county unless the private client consents after full disclosure of all the facts and circumstances of the relationship between the public defenders and the county.

If the private client consents after full disclosure, the public defenders would be subject to Rule 8-101, which provides in relevant part:

- (a) A lawyer who holds public office shall not...(2) use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client...

The Committee does not have sufficient information to express an opinion on whether the situation presented might constitute a violation of Rule 8-101(a)(2).

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