

Committee Opinion  
January 4, 1989

LEGAL ETHICS OPINION 1197

COMMONWEALTH'S ATTORNEY –  
DUAL ROLE: ASSISTANT  
COMMONWEALTH'S ATTORNEY  
REPRESENTING CLIENTS IN ZONING  
MATTERS AND REQUESTS FOR  
SPECIAL USE PERMITS AND  
VARIANCES.

You wish to know whether a part-time assistant Commonwealth's attorney of a city that has a city attorney may appear before the city's Council, Planning Commission, Board of Zoning Appeals, or any other board on behalf of a client when that client is requesting relief from that entity such as zoning changes, specialty use permits, variance, etc., and such representation does not involve any matters that are a part of the part-time assistant Commonwealth's attorney's official duties.

Disciplinary Rules 9-101(B) and (C) [ DR:9-101 ] are the appropriate and controlling rules in this situation, and provide:

A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee [, nor shall he] state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

The Committee would also direct your attention to DR:8-101(A)(1) and (2), which provides that a public official shall not use his public position for his own or a client's advantage where he knows or it is obvious that such action is not in the public's interest, nor shall he use his public position to influence or attempt to influence a tribunal to act in his or his client's favor.

Based on the facts you have outlined and in the absence of any effort on the part of the part-time assistant Commonwealth's attorney to use his public office for the private party's gain or implication that the public office will or may influence the local tribunal's decision, the Committee opines it would not be improper for the part-time assistant Commonwealth's attorney to represent a client seeking zoning changes, special use permits or variances from the City Council, Planning Commission or Board of Zoning Appeals. The Committee notes that the city in question has a separate city attorney, and that the matters outlined in your letter which the assistant Commonwealth attorney proposed to handle in front of the various local boards were not matters in which he would have "substantial responsibility" while acting as a public employee, nor does it involve any matters that are part of the assistant Commonwealth's attorney's official duties. The Committee would also admonish that should any litigation arise as a result of the representation in question, the part-time assistant Commonwealth's attorney may be assuming an adversarial role which would conflict with his position as the city's assistant Commonwealth's attorney.

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