

LEGAL ETHICS OPINION 1683

CONFLICT OF INTEREST; CONSENT
REQUIRED WHEN CITY ATTORNEY
REPRESENTS DEPARTMENT/AGENCY
IN GRIEVANCE HEARINGS AND IN
ADOPTING AND AMENDING
PERSONNEL RULES.

You have presented a hypothetical situation involving a Board created by the City Charter to hear grievance appeals and to adopt and amend the City's personnel rules. In the grievance hearings, the Board is represented by independent counsel whereas the City Attorney represents all administrative departments and agencies of the City ("City Administration") in those hearings. The City Attorney then represents the City Administration in any court challenges to the decisions in these hearings. The City Attorney also represents the Board in adopting and amending personnel rules. The City Attorney has made it clear to the Board that he represents the Board only in this capacity and not in grievance matters. In the past, the Board and the City Administration have consented to both representations. However, two new members of the Board have indicated they believe this arrangement constitutes a conflict of interest. The Board has not voted on this issue since acquiring these new members. Additionally, the City Administration has strongly disagreed with some grievance decisions made by the Board.

Under the facts you have presented, you have asked the Committee to opine as to whether the City Attorney's involvement in representing the City Administration and the Board constitutes a conflict of interest and, if so, does the past consent of the Board and the City Administration remain effective in curing that conflict.

The appropriate and controlling disciplinary rule relative to your inquiry is DR:5-105(C), which states that an attorney may represent multiple clients where the exercise of his professional judgment may be adversely affected only if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each.

The question presented, of course, is whether the City Attorney's representation of the City Administration before the Personnel Board in defending employee disciplinary grievances will or is likely to affect adversely his independent professional judgment on behalf of, or dilute his loyalty to, the Board as its counsel in personnel rulemaking decisions. DR:5-105(A).

In the facts you present, the Committee believes that a threshold question is whether the City Administration and the Board are actually separate clients. Resolution of such a question is a legal matter outside the scope of this Committee's responsibilities. Assuming for purposes of DR:5-105 that the City Administration and the Board are separate clients, in the context of the initial employee grievance hearing, the Committee

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has no basis to believe that the City Attorney's representation of the City Administration will be or is likely to be adversely affected by his representation of the Board. The Committee is of the view that the interests of the City Administration and Board are not, in fact, adverse. The adverse parties in this scenario are the City Administration and the grievants. The Board is merely the dispute resolution system available for those parties; the Board itself does not have an interest in the various grievances.

Thus, in the situation of defending an employee grievance before the Board, the City Attorney does not need to obtain the consent contemplated in DR:5-105(C).

Similarly, if an employee appeals the Board's decision in circuit court, /1 it would not be improper for the City Attorney to represent the City Administration's interests. In such an instance, the City Attorney would be seeking to uphold the Board's decision, and the interests of the City Administration and the Board would not be adverse. Thus, under these circumstances, the City Attorney does not need the consent of the parties.

The situation is different, however, when the City Administration, represented by the City Attorney, challenges in Circuit Court a rule adopted by the Board, or asserts that the Board acted without authority in the promulgation of a personnel rule at issue. Then, the City Attorney having represented the Board in its consideration and adoption of the rule cannot represent the City Administration in contesting the rule. In that limited situation, the substance of his representation of the Board conflicts with his representation of the City Administration, regardless of whether the Board is a party in the Circuit Court proceeding. Moreover, it is not obvious that the City Attorney can adequately represent both clients with independent judgment and undiluted loyalty. Therefore, even if the Board and the City Administration were to consent, the consent would be ineffective to cure the actual conflict of interest in this multiple representation scenario. See LE Op. 1408.

However, the Committee opines that there is no conflict under DR:5-105 if the City Attorney, on behalf of the City Administration, merely challenges the Personnel Board's application of rules to the facts of the particular grievance, or challenges the Board's decision in a particular case, since those matters are not substantially related to any advice given by the City Attorney to the Board.

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