

Nebraska Ethics Advisory Opinion for Lawyers
No. 73-10

ATTORNEYS FORMERLY EMPLOYED BY A LEGAL AID OFFICE AS DIRECTOR AND COUNSEL WHO HAVE RESIGNED TO ENTER PRIVATE LAW PRACTICE MAY BE HIRED ON A PART-TIME BASIS FOR A TEMPORARY PERIOD TO ASSIST THE LEGAL AID OFFICE UNTIL SUCH TIME AS REPLACEMENTS ARE SECURED.

CODE PROVISIONS INVOLVED

Disciplinary Rule 2-101 and 2-103 contain detailed provisions prohibiting attorneys from utilizing any agency to promote the use of their service in private practice. The latter rule recognizes that a private attorney may properly cooperate with the Legal Aid Office as long as there is no interference with the exercise by the attorney of his independent professional judgment.

In discussing the ethical considerations involved in Legal Aid activities EC 2-25 states:

"The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus it has been necessary for the profession to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral

services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services."

THE FACTUAL SITUATION

The Director of a Legal Aid Office has resigned to enter private practice and such office has also simultaneously lost the services of one of its attorneys. The Board of Directors and the Legal Aid Society have not yet been able to find successors for the resigned attorneys and desire to obtain such attorneys on a part-time basis for a temporary period until replacements are found. The Board has stipulated that such part-time counsel shall accept no clients in private practice who have sought the services of the Legal Aid Society or sought a lawyer through the Lawyer Referral Service. The Board has also stipulated that such counsel shall not join the lawyer referral group until they have completely severed their-employment with Legal Aid. It is contemplated by the Board that the temporary part-time service shall not exceed 60 days.

DISCUSSION

The matter of attorneys maintaining a private law practice and at the same time being engaged in Governmental or public work has been considered under the previous Canons of Ethics. Such an arrangement has been held to not be objectionable per se. In Formal Opinion No. 192 the opinion states:

"The principle applied in those opinions is that an attorney holding public office should avoid all conduct which might lead the layman to conclude that the attorney is utilizing his public position to further his professional success or personal interests."

". . . there is no objection to his retaining his membership in a law firm or in sharing the earnings of the law firm. provided such

firm does not represent interests adverse to the employer, and the public is not misled."

Some of the restrictions relevant to the operation of Legal Aid clinics were reviewed by the American Bar Association Committee in Informal Opinion No. 1208. That opinion involved a clinic conducted by a law school in which certain attorneys were utilized on a part-time basis. In this connection the opinion states:

"Canon 2, CPR, stresses that every lawyer should aid in making legal services fully available. EC2-26 tells us that each lawyer should accept his share of the burden of rendering legal services in those matters which are unattractive to the bar generally."

Formal Opinion No. 324 adopted August 9, 1970, in connection with the operation with the Legal Aid Society points out that there has been a great increase in legal activity of this character and that Canon 5 of the Code of Professional Responsibility stresses that nothing should interfere with the duty of a lawyer to exercise independent professional judgment on behalf of any client.

It is well-known that the systems for providing legal services for the poor have taken on various arrangements. One of these in the State of Wisconsin has been termed a Judicare Program in which all lawyers participate on a part-time basis.

We see nothing objectionable in the Code of Responsibility to the utilization by a Legal Aid Society of part-time lawyers so long as all of the restrictions and safe guards above mentioned are not violated. There are, of course, inherent in such arrangements the dangers referred to in the Code of Professional Responsibility. We think the Board of Directors recognized these problems fully in providing that continued employment by the Legal Aid Office was to be on a temporary basis and the most satisfactory arrangement is to have full-time personnel wherever

possible in order to avoid exposure to these problems.

We find nothing in the existing statutes as to legal services inconsistent with the foregoing views. See 42 U.S.C.A. sec. 2809 (3). We are further informed that no regulation of the federal administrative agency prohibits part-time employment although regulations adopted some years ago encouraged the utilization of fulltime personnel wherever possible. It is our understanding also that pending legislation in Congress would require full-time personnel under the suggested reorganization of this program but this legislation has not yet been enacted.

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