
E-76-12 Propriety of City Attorney taking private defense work

The Committee on Professional Ethics has received an inquiry as to the propriety of a city attorney representing private clients as defense counsel in state criminal charges on Motor Vehicle Code violations brought by the district attorney of the same county.

After reviewing the committee's preliminary opinion and the various American Bar Association opinions and the two cases, *Karlin v. State* [47 Wis. 2d 452 (1970)] and *Hebel v. State* [60 Wis. 2d 325 (1973)], decided by the Wisconsin Supreme Court, the Ethics Committee has concluded that it would not be improper for a part-time city or village attorney, who ordinarily is responsible for handling traffic and other ordinance violation cases in behalf of the municipality, to accept private clients who are charged with criminal offenses or state motor vehicle violation in the county courts, with certain noted exceptions.

In ABA Informal Opinion 1045, the committee concluded that ordinance violations in which a municipal attorney acts as prosecutor are of an entirely different character from the criminal charges, in which he would act as defense counsel; that criminal charges in which he acts as defense counsel do not involve the city, its ordinances or officials; that ordinarily the investigating officers involved in the prosecution and defense would be entirely different; that the municipal attorney does not represent city residents as defense counsel in criminal matters, and the city attorney's conduct in such capacity has no impact outside of the city's limited jurisdiction.

The Professional Ethics Committee of the State Bar takes the position that if the municipal attorney has no responsibility for prosecuting or investigating the case in his official capacity, that the incident did not arise in such municipality and that the investigating or enforcement officers from that municipality are not involved in the investigation of the criminal conduct, the part-time municipal attorney may accept the defense of the private client on such charges. It is implied that the municipal attorney would have the approval of the municipal authority for handling private legal matters.

Finally, the committee states that in its opinion there is no representation of conflicting interests within the meaning of the Disciplinary Rules under Canon 5, of the Code of Professional Responsibility for the part-time municipal attorney to represent private clients in the defense of criminal or State Motor Vehicle charges, with the exceptions as noted, because he or she is not in a position in which it would be necessary on behalf of the city or one of the private clients to contend for something which his duty to the other interest would require him to oppose.