
E-83-5 Corporate counsel giving advice to clients outside the corporation

Question

Would it be ethical for a lawyer employed as a full-time, in-house counsel for a community economic development corporation to provide legal services to the general business public, where the corporation offers the lawyer's services to the public as part of its business and collects and retains as its revenues the fees for the lawyer's services?

Answer

No.

Opinion

The rendition by a full-time, in-house legal counsel for a community economic development corporation of legal services to the general business public, under the circumstances described above, would create serious ethical concerns under certain provisions of the Code of Professional Responsibility as adopted by the Wisconsin Supreme Court. SCR 20.09(4)(a) provides, among other things, that a lawyer may not knowingly assist an organization that furnishes legal services "to promote the use of his or her services," except a lawyer may cooperate with the legal service activities of certain enumerated organizations. Since a community economic development corporation is not among the enumerated organizations, it would be improper for its in-house counsel to knowingly assist such corporation in the proposed legal service activities because such corporation, as part of its business, would be promoting the use by the general business public of his or her services.

The proposed legal service activities may constitute the unauthorized practice of law by the community economic development corporation. A lawyer may not aid a nonlawyer in the unauthorized practice of law. SCR 20.18(1). In addition, a lawyer should not practice law in association with a layman. SCR 20.17(8).

Further, a lawyer may not share legal fees with a nonlawyer, except in certain circumstances which would not include the proposed activities. SCR 20.19. The participation of the in-house counsel in the proposed legal service activities would be subject to such ethical proscriptions.

The professional judgment of a lawyer should be exercised within the bounds of the law, solely for the benefit of the client and free of compromising influences and loyalties. SCR 20.23(1). On the one hand, a lawyer employed by a corporation owes his or her allegiance to the corporation and not to a stockholder, director, officer, employee, representative, or other person connected with the corporation. SCR 20.23(3)(e).

On the other hand, “. . . a lawyer shall not permit a person who recommends, employs, or pays him or her to render legal services for another to direct or regulate the lawyer’s professional judgment in rendering such legal services.” SCR 20.30(2); *see also* SCR 20.23(4)(d).

The Professional Ethics Committee believes that the proposed legal service activities could place the in-house corporate counsel in situations in which his or her professional judgment would not be free of compromising influences and loyalties. In that regard, the committee notes that SCR 20.23(4)(d) expresses several strong caveats concerning a lawyer either practicing law in a professional legal corporation if any director, officer, or stockholder is a nonlawyer or being employed by a business corporation where his or her professional judgment could be subject to direction by a layman.

In view of the foregoing, the committee believes that it would not be proper for a lawyer employed as a full-time, in-house counsel for a community economic development corporation to provide legal services to the general business public where the corporation offers the lawyer’s services as part of the business and collects and retains as its revenues the fees for the lawyer’s services.