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**E-89-7      Lawyer/city council member  
disqualification of lawyer and law firm  
in matters relating to the municipality**

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**Questions**

May a lawyer who is a member of a city council represent clients before the city council or before any of the city's boards, commissions or other subunits? May the lawyer's partners or associates provide such representation?

**Opinion**

Representation by the Lawyer/Councilperson. "Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated personally and substantially as a public officer or employee, unless the appropriate government agency consents after consultation." SCR 20:1.11(a).

Regarding matters in which the lawyer has not and will not participate "personally and substantially as a public office or employee," the Rules of Professional Conduct (SCR chapter 20) do not expressly permit or prohibit the lawyer's acceptance of related representation. However,

[a] lawyer representing a government agency, whether employed or specially retained by the government, is subject to the Rules of Professional Conduct, including the prohibition against representing adverse interests stated in rule 1.7 and the protections afforded former clients in Rule 1.9. In addition, such a lawyer is subject to Rule 1.11 and to statutes and government regulations regarding conflict of interest. Such statutes and regulations may circumscribe the extent to which the government agency may give consent under this Rule.

SCR 20:1.11, "Comment."

Where the lawyer's past and potential future official contact with a matter was and is likely to be nonexistent or insubstantial and where the city council grants informed consent, upon full disclosure we believe that the lawyer may personally provide the representation, provided further that the lawyer complies with SCR 20:1.7(b) and SCR 20:8.4(d). In so concluding, we do not intend to

necessarily encourage or discourage acceptance of such representation. Whether or not it may be consistent with a lawyer/public official's public trust and legal and ethical obligations must be evaluated on a case by case basis by the lawyers and governmental units involved in the first instance, not by this committee.

**Representation by Partners and Associates.** When the lawyer/ councilperson's involvement in a matter as a public officer has been "personal substantial" or when he possesses "confidential government information" which could be used adversely to someone in representing a client, SCR 20:1.11 clearly sets forth the circumstances under which partners or associates may provide the representation. These circumstances include screening the lawyer from participation in the representation and apportionment of no part of the fee for the representation.

However, the Rules of Professional Conduct do not provide such specific guidance regarding circumstances in which: (1) the lawyer/councilperson would have an opportunity to debate and vote upon a matter in which his law firm provided representation to a private client; or (2) the lawyer/councilperson would be in a position to influence the outcome of a client matter directly or indirectly because of his status or office. *See, e.g.*, Committee on Professional Ethics. Formal Opinions E-75-25, E-76-2, E-86-14, E-86-12; and ABA Committee on Ethics and Professional Responsibility Information Opinion 1182 (12/5/71).

In these circumstances, we believe that guidance may be drawn from SCR 20:1.7(b), SCR 20:1.10(a) and (d) and SCR 20:8.4(d). Collectively, we believe that it would be prudent, although perhaps not clearly required, for the lawyer's law firm to observe the disclosure and written consent requirements of SCR 20:1.7(b). This would involve obtaining the informed consents of both the private client and of the appropriate governmental entity (that is, presumably the city council). In the case of frequent and routine appearances by the firm before a municipal agency or the city council, an appropriate general disclosure and consent might suffice, subject of course, to circumstances arising constituting an actual conflict of interest. Whereas, law firm representation in matters involving substantial public interests may more clearly require case by case disclosure and consent.

Ultimately, these issues and the procedures for resolving them are probably best left to the government agencies involved, to the extent such procedures are not in conflict with the standards of conduct for lawyers promulgated by the

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WISCONSIN ETHICS OPINIONS

Wisconsin Supreme Court. *See generally* SCR 20:8.4 regarding the definition of professional misconduct by lawyers.