



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 81-5

Outside Employment of Chief Public Defender

Some psychiatrists, psychologists, and social workers are forming a partnership to provide forensic consulting services to members of the private bar. Attorneys needing the expertise of the partnership would retain its services for consultation, psychiatric analyses, psychological testing, court testimony, etc. in both civil and criminal cases.

The partners have asked the Chief Public Defender to act as a consultant to their partnership, to enhance communication between the partners and the lawyers who are their clients and to help identify the legal issues in a particular case and their relationship to the partners' expertise. In this private practice the Chief Public Defender expects to confer with the lawyers and their clients and with members of the partnership, and do legal research. Because of his experience in criminal matters, his advice in criminal cases is particularly desired. The partnership would like to list him, by name and official title, as a legal consultant in a promotional brochure it plans to distribute to the private bar. He would be paid on a case-by-case basis.

Because the partnership's services are offered only to the private bar, they would not be given to a public defender. Should the partnership provide assistance to a private attorney representing an accused who is a companion accused to a client of a public defender, the Chief Public Defender would disqualify himself from the case. He would also disqualify himself from any case, civil or criminal, in which there was a conflict of interest between the client of an attorney engaging the partnership's services and a public defender client.

Related to this prospective employment is the fact that the Chief Public Defender presently negotiates, for the Division of Public Defender Services, a contract with a State agency. The State employee with whom he negotiates the contract is a member of the partnership which seeks the Chief Public Defender's services as a consultant. While their superiors approve the contract, the details of the contract are first worked out by the Chief Public Defender and the State employee.

The Chief Public Defender has asked the advice of the Ethics Commission concerning the propriety of his proposed relationship with the partnership.

Insofar as the Code of Ethics for Public Officials is concerned, the Chief Public Defender appears to be able to provide the consulting

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services described without violating the Code. He will not furnish consulting services in any criminal case in which a companion accused is represented by a public defender, or any case in which there is a conflict of interest between a client of an attorney utilizing the partnership's services and a public defender client. Hence, there should be no danger of the Chief Public Defender using or disclosing in his private employment confidential information gained as a State employee. His consulting services should not impair his independence of judgment as Chief Public Defender, with the possible exception of his role as contract negotiator with the State employee who is a member of the partnership. The contract is for services provided by the agency to the Division of Public Defender Services. The rate of payment for the services is agreed upon by the Chief Public Defender and the State employee. Even though the entire contract is approved by the negotiators' superiors, and payment presumably is by an interdepartmental transfer of funds, it is not impossible to develop a scenario in which the Chief Public Defender could profit in his private employment through his actions as a contract negotiator, or be perceived as having his judgment as a negotiator impaired by his private consulting arrangement. Therefore, if he accepts employment as a consultant to the partnership he should request the Public Defender Services Commission to replace him as its representative in developing the contract, so that he does not negotiate as a public employee with someone who is, in a sense, his private employer.

The only other problem under the Code would seem to be the promotional brochure. It presumably identifies him as a consultant, as should any letterhead to make clear that he is not a partner and the partnership, therefore, is not a "business with which he is associated" as defined in section 1-79(a), General Statutes. Cf. Ethics Commission Advisory Opinion No. 79-25, 41 Conn. L.J. No. 13 p. 7. The use of his official title, however, would be use of office for personal financial gain, forbidden by section 1-84(c), General Statutes. There appears to be no problem under the Code if his name alone and identification as a consultant appears on the promotional brochure or in the partnership's letterhead.

By order of the Commission,



Rev. Thomas J. Lynch
Chairman

Dated April 14, 1981