



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NO. 84-3

### Probation Officer Practicing in Connecticut Courts

A senior probation officer in the Office of Adult Probation has asked whether he may represent a defendant in a civil matter pending in a Connecticut court. The probation officer is an attorney. His client is being sued by a State agency, the Department of Income Maintenance, with which the probation officer has no contact as a State employee.

The Office of Adult Probation is part of the Judicial Branch of State government. Section 54-103a, General Statutes. Senior probation officers conduct presentence investigations of adults who have been convicted of crimes, usually the more serious ones, and provide judges reports which are used as an aid in sentencing. Section 54-91a, General Statutes. The reports contain criminal and social information concerning the defendant, and an evaluation of the attitude of the victim. Id. Probation officers keep informed of the condition and conduct of probationers placed in their charge, providing guidance and necessary services to probationers to bring about improvement in their attitude and behavior. Section 54-108, id.

The adult probation service is carried out under the supervision of judges of the Superior Court, who prescribe qualifications for eligibility to be admitted to the qualifying examination for probation officers, establish rules for the eligibility of candidates for employment, develop lists of persons eligible for appointment as adult probation officers, fix their salaries, and may remove any probation officer for cause. Sections 54-104, 54-105, General Statutes.

A number of attorneys in the Judicial Department have been prohibited from practicing law privately or have been restricted in their private practice. Judges of the Supreme or Superior Courts, the Executive Secretary to the Chief Court Administrator, full-time prosecutorial officials, the Chief Public Defender and his full-time subordinates, and chief clerks and their full-time assistants may not engage in the

Phone: (203) 566-4472

30 Trinity Street • Hartford, Connecticut 06115

*An Equal Opportunity Employer*

private practice of law. Subsections 51-8(b), 51-47(b), 51-278a(b),(c), 51-290(c), 51-293(d), General Statutes; section 47, Connecticut Practice Book. Assistant and deputy assistant State's attorneys who serve part time may not engage in the private practice of criminal law. Section 51-287a(c), General Statutes; section 47, Connecticut Practice Book. No statutory or court rules forbid a probation officer to carry on either a civil or a criminal practice, if a member of the bar.

The Ethics Commission has held that a State legislator might represent an estate in a civil suit in which the plaintiff was a State agency, the Bureau of Collection Services, Department of Administrative Services. Ethics Commission Advisory Opinion Number 79-7, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979). If the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) prevents a probation officer from representing the defendant in a similar case, it would have to be because of the nature of a probation officer's duties or the fact that he serves in the same branch of State government as the judge and other court officials before whom he will appear.

A probation officer encounters a number of criminal defendants, and member of their families also, whose future depends to some considerable extent on the good will of the probationer officer. His presentence investigation reports influence the terms and severity of a defendant's sentence, including whether a defendant is imprisoned, or awarded a sentence of probation or conditional discharge under various conditions. If probation is granted, the conditions of probation are monitored by a probation officer and may be modified by the Adult Probation Office on its own or through the court. Section 53a-30, id. During the period of probation or conditional discharge a probation officer may, without a warrant, arrest a defendant if the conditions of probation or conditional discharge have been violated, in the officer's judgment. Section 53a-32(a), id.; see also Ethics Commission Advisory Opinion No. 83-5, 44 Conn. L.J. No. 39, p. 12B (March 29, 1983).

Because of his assistance to the court during the sentencing and post-sentencing process, a probation officer may develop a special relation with judges and other court officials with whom he works. This could give the impression that he is capable of gaining treatment for his clients which is more favorable than is warranted.

In this situation caution and discretion must be exercised if a probation officer acts as a private attorney and violations of the Code of Ethics for Public Officials, to which the officer is subject (subsection 1-79(k), General Statutes), are to be avoided. The circumstances permit the probation officer to take official action benefitting directly his private practice. This is forbidden by subsection 1-84(a) and section 1-85, id.

Criminal defendants and members of their families should not be accepted as clients. There would be the appearance, at least, of using one's State position, and perhaps confidential information gained in it, for private financial gain, in violation of subsection 1-84(c), id. The duties of a probation officer with regard to criminal defendants before and after sentencing, and the interests of an attorney trying to acquire clients for his practice, are divergent and conflicting. Taking criminal defendants as clients in criminal or civil matters could mean accepting employment impairing the probation officer's independence of judgment. Subsection 1-84(b), id. For the same reasons the probation officer should confine his private practice to civil matters only. He should still not appear before judges with whom he has worked closely in criminal cases, to avoid even the appearance of a violation of subsection 1-84(c), above, and ethical rules such as Disciplinary Rule 8-101(A)(2), Code of Professional Responsibility, Connecticut Practice Book, Vol. 1, p. 50.

Applying the foregoing to the question which has been asked the Commission, insofar as the Code of Ethics is concerned the probation officer involved may represent a defendant in a civil case brought by a State agency with which he conducts no official business provided his client is in no way connected with the probation officer's official duties. The representation must not require or induce the officer to disclose or use confidential information gained in his State position. He should not appear before a judge with whom he has had significant work as a probation officer. Finally, this apparently infrequent appearance as an attorney in a civil matter does not raise the questions under the Code that an extensive private practice, although restricted to civil cases, might.

By order of the Commission,

Lucille E. Brown  
Lucille E. Brown

Date 5 January, 1984

