

**ADVISORY OPINION  
CASE NO. 97061.A  
REPRESENTATION**

To: [Mary Doe]

Date: February 11, 1998

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You are the [Title A ] in the City's Department of [L]

. You wrote this office in December 1997, and amended your letter on January 8, 1998. You requested a Board opinion on whether the City's Governmental Ethics Ordinance would allow you to practice law in an "of counsel" capacity with a private law firm, [K & H], under a set of terms you proposed. Rather than approve or disapprove the particular set of terms that you may make a part of your "of counsel" agreement, however, the Board believes that it is more appropriate to advise you on how the provisions of the Ethics Ordinance bear on your private practice of law while you are a City employee, under the facts you have presented.

Before you entered City employment October 1, 1997, you sought Board advice concerning receipt of payment for work you had performed as an attorney on a case still ongoing before a City agency, a case you were referring to another attorney. Case No. 97026.A.<sup>1</sup> Staff advised you at that time that the Governmental Ethics Ordinance does not prohibit a City employee from having outside employment, including as an attorney. However, it does impose important restrictions on your activities in any outside position.

**FACTS:** Before you entered city employment, you practiced law in your own law firm. Now you wish to enter a written "of counsel" agreement to practice law with the firm [K & H]. You state that [K & H] represents clients on matters

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<sup>1</sup> Ultimately, at the request of the client, you said, it was referred to [K & H]. You said you have followed the advice in Case No. 97026.A; you have been screened from the matter and have had no knowledge about it since it was referred.

that come before the City Council or City agencies, and also represents clients whose interests are adverse to the City's in court or

administrative proceedings. In your letter and in conversations with staff, you said you will not work on these cases, and will be screened completely from them -- thus you will not be informed about them, and will not have access to those files. Also, your name is not on firm stationery; thus your name will not appear in association with those cases.

With respect to the firm's other cases, you said you are paid by the hour for the time you put in, but, depending on your role in any particular case for which the firm is paid a contingency fee, you might be paid a percentage of the amount the firm earns. You will not share in firm profits. You are covered by the firm's malpractice insurance, and your only practice of law will be in your relationship with the firm.

Before you entered City employment, you met with the Commissioner of the Department of [L] , and Deputy Commissioner , and explained your desire to continue practicing law part time. You sought and obtained permission to work as an attorney from 8 to 12 hours a week. (You said that from the beginning of October, when you became a City employee, you have in fact worked for [K & H] about four hours a month.) You have not yet entered a written agreement with [K & H], which you said you intend to do after receiving a Board opinion; however, the firm did send out notices that you had joined it in an "of counsel" capacity.

In your City position, you are currently responsible for working with the District . You do not act as an attorney in your City job. You said the decisions in which you expect to participate involve primarily issues, not an area of law that [K & H] practices, so you are highly unlikely to be put in a position to make City decisions in which the firm represents a party or is otherwise affected.

**APPLICABLE LAW:** As stated above, the Ethics Ordinance imposes important restrictions on a City employee's outside activities and employment. Some of these restrictions are critical to an employee engaged in the outside practice of law.

First, as a City employee, you owe your primary loyalty to the City, under § 2-156-020, "Fiduciary Duty." This section of the Ordinance obliges you to use your City position responsibly and in the best interests of the public, and to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities or clients. See Case No. 90035.A (discussing fiduciary duties of elected and appointed City officials). It also prohibits you from using your City position to obtain private benefits, such as to benefit your outside practice or promote the interests of your or the law firm's clients. Case No. 92014.A. For example, it would prohibit you from soliciting business for the firm or its clients. However, as an attorney, you also have a fiduciary duty to your clients. If conflicting obligations to your City work and your work with [K & H] were to arise, this section of the Ordinance would oblige you to put your duties to the City ahead of duties to this law firm or its or your own clients.

Second, § 2-156-090, "Representation of Other Persons," is of particular salience to City employees and officials who practice law outside their City positions. It states, in the subsections that apply to City employees:

**(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a non-ministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.**

**(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.**

Representation encompasses "any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests of one party to another." Case No.

Case No. 97061.A  
February 11, 1998  
Page 4

90035.A (discussing representation by an elected official who practices law outside his City position). An economic interest, as defined in § 2-156-010 (i), is any interest valued or capable of valuation in monetary terms. "An economic interest in the representation" thus includes, for example, compensation by a client for that representation (Case No. 90035) or compensation via partnership in a law firm that undertakes representation (See Case No. 94041.A (discussing an appointed official's economic interest in legal representation by his firm).)

Subsection (a) of § 2-156-090, then, prohibits you, as a City employee, from representing or having an economic interest in representing any person other than the City in a transaction before a City agency where the agency's action involves discretion, except in the performance of your City employment duties. It prohibits you from representing or being compensated for the firm's representation of clients before any City agency. (With respect to payment for work performed before you entered City employment on the case described in Case No. 97026.A, the advice in that case applies.)

In addition, subsection (b) of this provision prohibits you from having an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and the person's interest is adverse to the City's. Under this section, therefore, you may not be compensated for or from [K & H's] representation of persons in these circumstances.

You said that you will be screened from and thus will not work on cases in which [K & H] represents a client before a City agency or in any proceeding in which the City is an adverse party, and that you will be paid only for work that you do for other clients. As long as these circumstances remain true, you will not represent or have an economic interest in representing clients in violation of § 2-156-09(a) or (b).

We note also that there may be situations in which the City is not a party to a suit, but has adverse interests to a client of [K & H]. While the Ordinance does not prohibit you from representing or having an economic interest in representing a client in such situations, we advise you to consider the possible appearance of impropriety before undertaking any such conduct, and to keep the Commissioner of your department

informed, so that the Commissioner will be in a position to consider the proposed conduct from the point of view of the department.

Third, §§ 2-156-030, "Improper Influence," and -080, "Conflict of Interest," prohibit you, as a City employee, from participating in or in any way attempting to use your City position to influence a City governmental decision or action in any matter in which you have an economic interest different from the general public's. A City employee who is employed or compensated by another person or entity, such as a client or outside law firm, thereby has an economic interest in that person or entity. See Case No. 89103.A, p. 2 (stating that an elected City official had an economic interest in the company that employed her part-time as an attorney). Thus, under these provisions, you may not participate in or attempt to influence any City decisions affecting [K & H] or any clients for whom you are doing work and must either recuse yourself from such decisions, or, if unable to do so, must divest yourself of the economic interests. (You noted that it is unlikely that you will be in a position to participate in City decisions affecting [K & H].)

While these provisions of the Ordinance are the most critical for your proposed practice of law, there are other sections of the Ordinance of which you should be aware. Section § 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you, as a City employee, from accepting payment or anything of value in exchange for giving advice or assistance on the operation or business of the City, but does not prohibit you from receiving compensation for rendering services that are wholly unrelated to your City duties and rendered as part of your non-City occupation. Section 2-156-110. "Interest in City Business," prohibits you, as a City employee, from having a financial interest, in your own name or the name of another, in any contract or business transaction with the City. A "financial interest," in relevant part, is any interest that entitles you to receive more than \$2,500 a year; any interest with a cost or present value of \$5,000 or more; and any interest representing 10% of any entity organized for profit. Section 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, without authorization. Finally, § 2-156-070, "Use or Disclosure of Confidential Information," prohibits you from using or revealing, other than in the performance of your City duties,

confidential information you have acquired through your City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

**CONCLUSION:** From the facts you presented, the Board concludes that the City's Governmental Ethics Ordinance does not prohibit you from working part time as an attorney in a relationship with the law firm [K & H]. However, there are a number of provisions of the Ethics Ordinance that impose restrictions on your activities, and we have advised you of those restrictions in this opinion. In addition, we advise you to be cognizant of situations that may create the appearance of impropriety. We also suggest that you keep your department head fully informed about your part-time law practice. In cases of doubt about how the Ethics Ordinance applies to a new situation, please call to seek further Board advice.

Our advice is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. If the facts presented are incorrect or incomplete, or if the nature of your outside law practice changes so that the statements made about it in this letter are no longer applicable, please notify the Board, as such changes may alter our advice.

Other rules or laws may apply to your situation, including the Illinois Rules of Professional Conduct, about which you may seek advice from the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois. With respect to other City rules and laws, you should be aware, in particular, of Executive Order 97-1, which may impose additional restrictions, and we advise you to seek guidance from the Law Department to be sure you are in compliance with that order. You have previously been advised of Personnel Rules XVIII, Section 1, no. 43, and XX, Section 3, under which you must obtain your department head's approval for employment outside your City job. Finally, we note that any City department may impose restrictions that are more stringent than those imposed by the Ethics Ordinance.

**RELIANCE:** This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity that is

Case No. 97061.A  
February 11, 1998  
Page 7

indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

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Darryl L. DePriest