Council Opinion
February 22, 1992

Legal Ethics Committee Notes. – Rule 1.11 allows a law firm to avoid disqualification in certain circumstances if it screens the former government lawyer. Also, Rule 1.11(d) would prohibit negotiation the government lawyer's employment with the private firm while they were both involved with the subject litigation.

LEGAL ETHICS OPINION 1430

APPEARANCE OF IMPROPRIETY: FORMER LOCAL GOVERNMENT ATTORNEY HIRED BY FIRM EMPLOYED AS OUTSIDE COUNSEL FOR SAME LOCAL GOVERNMENT ENTITY.

A law firm is considering offering employment to an individual who is presently an attorney for a local government entity. In that capacity, the attorney has been substantially involved in ongoing litigation in which the law firm in question is acting as special outside counsel for the local government. The individual local government attorney and the law firm have worked closely together as advocates for the local government entity and the matter in question may continue for as long as two more years.

The Committee has been asked to opine whether, under the facts of the inquiry, it would be improper for the law firm to employ the attorney provided that the attorney is screened from any involvement in the ongoing matter with his prior employer, including any direct financial benefit accruing to the firm from its involvement in such matter. More specifically, it has been inquired whether such screening will have eliminated any risk of imputed disqualification of other members of the firm.

The Committee opined that, since the government attorney/potential new hire has been substantially involved in ongoing litigation, the plain language of DR:9-101(B) prohibits the attorney from personally participating in the same matter in his new capacity as a private attorney, although adverse representation is not involved. Any continued personal involvement by the former government attorney in the matter would be per se violative of DR:9-101(B).

The Committee is of the opinion that since DR:9-101 and its component subparts contain no corollary to the imputed disqualification required by DR:5-105(E), it would not be per se improper for lawyers in the firm to continue to serve as special outside counsel to the governmental entity by which the new lawyer has previously been employed. The Committee believes that the imputation of an appearance of impropriety to all the lawyers in the firm would be too elusive and unfocused to warrant disqualification of the entire firm based purely on that appearance. Finally, since no adverse interests are involved and, thus, no imputed disqualification is mandated by DR:9-101(B), the committee opines that although the attorney may not personally participate, professionally or financially, in the representation, no formal screening will be necessary. [DR:9-101(B); LE Op. 702, LE Op. 942; General Motors Corp. v. City of New York, 501 F.2d 639 (2d Cir. 1974); Kesselhaut v. U.S., 555 F.2d 792 (Ct. Cl. 1977); Armstrong v. McAlpin, 625 F.2d 433, 445 (2d Cir. 1980), vacated on other grounds, 449 U.S. 1106 (1981) (quoting Board of Education v. Nyquist, 590 F.2d 1241 (2d Cir. 1979); Kadish v. Commodity Futures Trading Commission, 548 F. Supp. 1030, 1034 (N.D. Ill. E.D. 1982).]