



Committee on Professional Ethics

Opinion #387 - 5/1/75 (26-75)

Topic: Representation of civil service employees association while serving as a member of a county charter revision committee.

Digest: Not improper for a lawyer to represent a civil service employees association in contract negotiations while at the same time serving as a member of a volunteer citizens charter revision committee.

Code: EC 7-17;
DR 5-101(A)

QUESTION

May an attorney who is a member of a county "charter revision committee", made up of volunteer non-paid citizens whose purpose is to monitor and recommend changes in a newly instituted charter form of county government at the same time represent a regional civil service employees association in negotiations and litigation with the county?

OPINION

The proposed representation would not be improper. Lawyers have always been in the forefront of citizens groups advocating improvement of government. By virtue of their education, training and knowledge of the law and the machinery of government, they are invaluable members and leaders of groups which espouse positions on public issues. It is a rare public body which does not have lawyers on its roster and which does not look to them for leadership.

When a lawyer elects to serve in such a cause, he does not represent any client to whom he owes a duty of loyalty, but is guided by his own conscience and beliefs. When he is retained by a client, he does not give up his independence of thought or freedom of expression as a private citizen. ABA Inf. 760 (1964). Thus, so long as the lawyer feels he can fulfill his duty of undivided loyalty to his client, there is no conflict of interest in his personal views on changes in the law and his representation of a client who seeks to take advantage of rights under that law. EC 7-17 provides:

"The obligation of loyalty to his client applies only to a lawyer in the discharge of his professional duties and implies no obligation to adopt a personal viewpoint favorable to the interests or desires of his client. While a lawyer must act always with circumspection in order that his conduct will not adversely affect the rights of a client in a matter he is then handling, he may take positions on public issues and espouse legal reforms he favors without regard to the individual views of any client."

As stated in Professional Responsibility: Report of the Joint Conference, 44 A.B.A. J 1159, 1217 (1958):

"Law should be so practiced that the lawyer remains free to make up his own mind how he will vote, what causes he will support, what economic and political philosophy he will espouse. It is one of the glories of the profession that it admits of this freedom. Distinguished examples can be cited of lawyers whose views were at variance from those of their client, lawyers whose skill and wisdom make them valued advisers to those who had little sympathy with their views as citizens."

It is possible that in a particular case inconsistent positions may be detrimental to the interest of a client. In such case, the usual principles of conflict of interest may apply. The attorney should make complete disclosure to the client for the client's decision as to the retainer, or he may elect to abstain from such activity, but as a matter of principal the client is buying the lawyer's expert services, not his private opinion or his silence on public issues. Similarly the charter revision committee should be advised of the lawyer's representation of clients in litigation with the county so that members may properly weigh the attorney's views. See EC 5-19.
