

VBA OPINION 2010-2

SYNOPSIS

An attorney in a firm that represents a municipality may not represent criminal defendants in cases where police officers employed by municipal clients of the firm are witnesses against the criminal defendant/client of the attorney.

FACTS

A law firm represents several municipalities. One attorney in the firm does not generally handle municipal issues, but regularly represents defendants in criminal cases. In the course of the attorney's criminal defense work, there are occasions when police officers from municipalities represented by the firm are witnesses and subject to cross-examination by counsel. At times, the defense may include allegations of improper conduct by a police officer. While the firm would not directly represent any police officer in connection with criminal cases, there may be times when the officer's conduct is challenged in a collateral matter by a defendant who was represented by the firm. The officer's conduct may be condoned and defended by the municipality.

ANALYSIS

The relevant rules of Professional Conduct are 1.7 and 1.10.

Rule 1.7. CONFLICT OF INTEREST: CURRENT CLIENTS

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Rule 1.10. IMPUTATION OF CONFLICTS OF INTEREST: GENERAL RULE

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9, unless the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm.

Under Rule 1.10, two lawyers associated in a firm may not represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7 or 1.9. So, if an individual lawyer would have a conflict in a given situation, a firm would also have a conflict.

A lawyer practicing alone could not represent a municipality and criminal defendants where police officers of the represented municipality were witnesses against the criminal defendant. Doing so would be considered a concurrent conflict of interest under Rule 1.7(a)(1) and (2), because the lawyer's representation of the municipality would be adverse to the criminal defendant and the lawyer's loyalty would be divided by the dual representation.

An analogous situation was the subject of Advisory Ethics Opinion 82-03, where the Professional Responsibility Committee opined that representation of private litigants by any partner or associate of a firm against members of the City's Police Department would constitute a conflict of interest because an associate was City Grand Juror.

The Section concludes that the representation of the municipality by a lawyer in the firm is incompatible with another lawyer representing criminal defendants whose cases may involve the credibility of members of the municipality's Police Department.