

ADVISORY ETHICS OPINION 82-03

SYNOPSIS:

Partners of a firm in which an associate is City Grand Juror and whose functions as such include prosecution of misdemeanors and traffic violations within municipal limits, may not represent clients in actions against members of the same municipality's Police Department.

OPINION:

The Committee has been asked if members of the law firm, an associate of which has been appointed City Grand Juror, may represent clients having potential causes of action against personnel of that City's Police Department. The inquiry states that the clients were interviewed by the associate before his appointment. It is understood that the Grand Juror's position involved prosecution of misdemeanors and traffic violations within municipal limits and that its functions necessitate close communication with members of the Department.

The question submitted is similar to that considered in Opinion No. 76-8. It was stated there that,

“. . . it would be unethical for the commissioner to handle a civil matter wherein a member of the commissioner's police department is directly involved or involved as a witness."

The opinion was based on DR 5-101(A), wherein a lawyer is cautioned against accepting employment when his interests, financial or otherwise, might affect the exercise of his independent professional judgment, and Canon 9 which provides that "a lawyer should avoid even the appearance of professional impropriety."

The situation presented is no less susceptible to the practices sought to be enjoined by the aforementioned provisions of the Code of Professional Responsibility. Counsel's working relationship with the City Police Department must inevitably bring him in contact with those members facing litigation. Certain of his prosecutions may indeed be built upon their expected testimony. In these circumstances, even assuming that no direct conflict of interest exists, the private litigants may well question the zeal with which their own cases are being pursued. An attorney should not place himself in a situation in which his loyalties are divided or one wherein a perception of such division may arise.¹

Beyond the concerns of the parties immediately involved lies the community's interest in the integrity of its elected and appointed officials. The prospect of an attorney suing members of a Department that his public duties call upon him to support, can only add to the public's often cynical view of the criminal justice system. As this Committee has stated previously, "It becomes, therefore, even more vital that lawyers – particularly lawyers in public office – 'avoid even the appearance of impropriety'."

For the reasons outlined above, we believe that representation of private litigants by any partner or associate of a firm in which the associate is City Grand Juror against members of that City's Police Department, would constitute a conflict of interest and thus a violation of the Code of Professional Responsibility.²

¹ EC 5-1.

² See ABA Formal Opinion No. 306 (May 26, 1962).