

ADVISORY ETHICS OPINION 82-05

SYNOPSIS:

Members of the law firm of a lawyer-legislator may not represent private clients before the legislature or a legislative committee.

OPINION:

A lawyer who is considering running for the Legislature asks whether members of his firm will be able to “engage in lobbying efforts and the presentation of evidence before legislative committees” if the lawyer is elected.

In Opinion No. 76-12, this Committee explored the restrictions imposed by the Code of Professional Responsibility on the practice by a lawyer who is also a legislator. Based on the relevant opinions of the ABA Ethics Committee, the committee found no per se disqualification rules except where the legislator represents a private client to challenge the constitutionality of a law enacted while the lawyer is in the legislature. Thus, there is no per se disqualification of a lawyer-legislator from representing criminal defendants, representing private clients before state administrative agencies or representing private clients before state administrative agencies or representing private clients in eminent domain proceedings in which the state is an opposing party. However, the opinion emphasizes that the conflict between his public duties and the responsibilities to his client is such that he cannot discharge both.¹ Nor can he provide representation where he would use his position as a legislator to influence, or attempt to influence, a tribunal to act in favor of himself or a client.² Any disqualification imposed on the lawyer applies to members of his firm.³

The situation in this request is distinguishable from that in the earlier opinion of the Committee. Here, the role conflict is more direct and the appearance of misuse of a public position would be greater.

Much of the earlier opinion involved interpretations of DR 8-101(A). That rule prohibits use of public office for gain for himself or a client where such use is not in the public interest, use of the public position to influence a tribunal for a client, and acceptance of anything of value to influence his conduct as a public official. It seems clear that this rule would prohibit the lawyer from representing clients before a legislative committee while serving as a member of the legislature. It would be difficult, if not impossible, for the lawyer to separate his public position from his action on behalf of the client.

ABA Informal Opinion 1182 (1971) finds that DR 5-105(D) prohibits a law partner of the lawyer-legislator from doing anything the lawyer-legislator could not do. Since the legislator is disqualified from representing clients before the legislature, members of his firm are disqualified. The answer to the question asked is no.

¹ See DR 5-101(A).

² See DR 8-101(A)(2).

³ See DR 5-105(D).