

ADVISORY ETHICS OPINION 94-02

SYNOPSIS:

An attorney may represent alleged violators of zoning ordinances in other municipalities even though he or she counsels and represents a different town in litigation against zoning violators.

FACTS:

Attorney represents Town A and advises zoning administrator and, when necessary, brings legal proceedings against violators on its behalf. Attorney now plans to represent defendants charged with alleged zoning violations in municipalities other than Town A.

QUESTIONS:

Does Attorney's representation against zoning violators for Town A preclude him or her from representing persons who have allegedly violated zoning ordinances in other municipalities?

DISCUSSION:

No Disciplinary Rule would prevent Attorney's representation of defendants charged with zoning violations in other municipalities since this representation would not involve a substantially related matter.¹ The Committee recognizes that, on occasion, ethical conduct may appear to laymen to be unethical, the principle embodied in Ethical Consideration 9-2 reads as follows:

“While a lawyer should guard against otherwise proper conduct that has a tendency to diminish public enforcement in the legal system or in the legal profession, his duty to clients or to the public should never be subordinated because the full discharge of his duties may be misunderstood or may tend to subject him or the legal profession to criticism,” is also relevant. Based on the assumption that no “positional” or “issue” conflicts exist, the facts recited do not represent a sufficient appearance of impropriety.

CONCLUSION:

Based on the assumption regarding positional or issue conflicts, described elsewhere, Attorney may properly represent parties alleged to have violated zoning regulations in municipalities, other than the town where he or she counsels and represents the zoning authority in litigation against alleged violators.

¹ We assume for purposes of this opinion that in the course of representing Town A and violators in another town, the Attorney is not taking conflicting positions on identical legal issues. Such “positional conflicts” raise separate ethical concerns. See ABA Formal Opinion 93-377, which ruled that “When a lawyer is asked to advocate a position with respect to a substantive legal issue that is directly contrary to the position being urged by the lawyer (or the lawyer's firm) on behalf of another client in a different and unrelated pending matter which is being litigated in the same jurisdiction, the lawyer, in the absence of consent by both clients after full disclosure, should refuse to accept the second representation if there is a substantial risk that the lawyer's advocacy on behalf of one client will create a legal precedent which is likely to materially undercut the legal position being urged on behalf of the other client. If the two matters are not being litigated in the same jurisdiction and there is no substantial risk that either representation will be adversely affected by the other, the lawyer may proceed with both representations.”