



STATE OF CONNECTICUT

STATE ETHICS COMMISSION

DECLARATORY RULING 92-B

Legislator/Attorney Appearing Before A §1-84(d) Agency

The Commission has been asked how Conn. Gen. Stat. §1-84(d) would apply if an associate of a law firm becomes a legislator. In particular, the questions are how the subsection will affect the law firm's ability to: (1) review and research the public files of the listed agencies; (2) discuss topics of concern or interest with members of the agencies; (3) appear before any of the Departments in a contested or regulatory matter, or (4) represent a client who is sued by the Office of the Attorney General on behalf of one of the listed agencies.

Conn. Gen. Stat. §1-84(d) prohibits a public official from agreeing to accept, or being a member or employee of a partnership, association, professional corporation or sole proprietorship which partnership, association, professional corporation or sole proprietorship agrees to accept any employment, fee or other thing of value, or portion thereof, for appearing, agreeing to appear, or taking any other action on behalf of another person before certain state agencies. The prohibition is intended to prevent improper influence which a public official might be able to exert because of his office on a state agency; and, thereby, preserve public confidence in the integrity of the operations of the listed agencies.

Taking Mr. Smith's questions in turn:

1. In a prior advisory opinion, the Commission ruled, based on the legislative history of §1-84(d), that it would not be a violation for an attorney to provide preparatory work for a client which would then be submitted to one of the listed agencies. See Advisory Opinion No. 79-6, 40 Conn. L.J. No. 38, p. 27 (March 20, 1979). In another advisory opinion, the Commission also held that anonymous preparation of an application for one of the listed agencies does not amount to appearing or taking any other action on behalf of another for compensation, so long as the state employee does not reveal his private interest in any way. See Advisory Opinion No. 81-15, 43 Conn. L.J. No. 14, p. 14 (October 6, 1981). Similarly,

employees or members of the law firm may review and research the public files of the various listed agencies, as long as they do not reveal to the officials or employees of the agency the specific purpose of the research or the identity of their client.

2. Advisory Opinion No. 79-6, discussed supra, also indicated that, based on the legislative history, anything beyond anonymous preparation of a document to be submitted to the agency would be a violation of §1-84(d). In that Opinion, the term "appearing" or "taking any other action on behalf of another person" was defined to include signing or submitting a document. It follows that any identification of the issues or interests of a client is also prohibited by the subsection because the identity of the client may become evident to agency personnel once something is actually submitted to the agency for action. Therefore, neither the attorney/legislator nor any other member or employee of the law firm should discuss any matter of controversy or advocate a specific client's position with any agency personnel, even if the client's identity remains anonymous.

3. In answer to the third question, based on the plain language of the statute, it is well settled that appearing before any of the listed agencies in a contested or regulatory matter for a client on a compensated basis is prohibited by the subsection. Clearly, this is when the appearance of undue influence would be the greatest; and prevention of such representation was the statute's primary purpose.

4. If a client is sued by the Office of the Attorney General on behalf of a §1-84(d) agency, the Attorney General is merely representing that state agency. Therefore, any dealings with his Office, including an attempt to negotiate or settle a case, would be tantamount to impermissible direct contact with the client agency, since the Attorney General is obligated to discuss with and obtain the approval of that agency whenever an offer of settlement is made. On the other hand, if litigation has progressed to a point which necessitates appearing in court, both parties are now before a neutral party, the Judicial Department, where the possibility of undue influence has not been deemed to be problematic by the General Assembly. On a practical level, however, a problem still exists for the attorney/legislator because, at any time during the court proceedings, either party may wish to negotiate a settlement. As discussed supra, such negotiation would be equivalent to direct dealings with the listed agency; and would, consequently, cause the attorney/legislator to be in violation of §1-84(d).

It has been suggested that the firm simply charge no fee for that portion of a case which necessitates appearing before the §1-84(d) agency. However, in prior rulings the Commission has severely limited this practice. See Advisory Opinion Nos. 80-1, 41 Conn. L.J. No. 29, p. 5 (January 15, 1980), and 84-17, 46 Conn. L.J. No. 26, p. 3D (December 25, 1984). In Advisory Opinion No. 84-17, a professor was compensated for a study and, without his knowledge, it was later used in a proceeding before a §1-84(d) agency. In that limited circumstance, the Commission ruled that he would not be deemed to have been compensated for "the appearance" before the agency. However, it was further stated that he may not anticipate use of his report in a §1-84(d) agency proceeding, build compensation for State-level action into his study fee, and then claim that he was accepting no additional compensation for use of the study or for his appearing before the state agency to defend or explain it. See also Advisory Opinion No. 84-8, 45 Conn. L.J. No. 45, p. 23C (May 8, 1984).

Similarly, it would not be permissible for the attorney/legislator or his firm to handle a matter for a client which involves both preparatory work and an appearance before the §1-84(d) agency by artificially charging a fee for only that part of the case which can be done on an anonymous basis. It would be impossible, given such an arrangement, to prevent or detect the fee enhancement discussed in Advisory Opinion No. 84-17; thereby, unavoidably decreasing public confidence in the efficacy of §1-84(d). If, however, the law firm is handling a matter in which it does not foresee any potential for action before any of the listed agencies, then the firm would not be prohibited from later representing the client in that matter before a §1-84(d) agency, as long as no additional compensation was received for the unexpected but required representation.

Finally, it should be emphasized that the statutory prohibition of §1-84(d) is against the public official being associated with the law firm which, in turn, appears or takes action before the listed agencies. The Commission does not have the authority to dictate which clients the law firm may accept or have authority to take action against the firm for a §1-84(d) violation.

By order of the Commission,



Astrid T. Hanzalek
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Chairperson

Dated 2-5-92