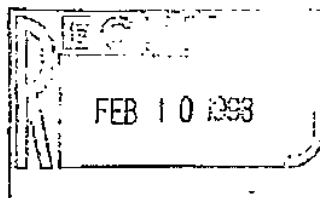


February 9, 1998

Alice R. Senechal, Chair
State Bar Ethics Commission
P.O. Box 5576
Grand Forks, ND 58206-5576



RE: ETHICS OPINION

Dear Ms. Senechal,

I am contemplating running for county commission this year and am concerned about a possible conflict of interest situation.

*County
all cases
3 district
court and
county state's
attorney
handles
criminal
work for
the communities.
M*

I am currently an associate in private practice that represents several smaller rural communities that contract with the County and State for judicial services. I am considered the City Attorney for one of those municipalities. And I am also the Municipal Judge for the City of [REDACTED].

Other than the joint city/county commission that meets occasionally, which to my knowledge, has never addressed any issues involved with Municipal Court, and the conflict regarding court services, I see no other red flags that would obviously disqualify me.

However, I would appreciate the opinion of the State Bar Ethics Commission.

Your cooperation regarding this matter is greatly appreciated.

Sincerely,

[REDACTED]

**STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE**

Opinion No. 98-03

March 23, 1998

APR 1 1998

The Committee has received a request for an opinion asking if the North Dakota Rules of Professional Conduct would prohibit an attorney from serving as a county commissioner in a county where the attorney also serves as a municipal judge and where the attorney's firm represents other municipalities.

FACTS

The attorney has requested guidance as to whether serving as a county commissioner would pose a conflict of interest if the attorney also (1) serves as a part-time municipal judge for the largest city in that county and (2) the attorney's firm represents several small cities that contract with the county and state for judicial services. The attorney is the city attorney for one of those municipalities.

The facts raise several separate issues. If elected to the county commission, may the attorney:

- continue to represent the cities;
- when acting as a county commissioner, act on matters affecting the cities; and
- be a municipal judge and county commissioner at the same time.

Each issue will be separately addressed.

DISCUSSION

Rule 1.7(a), North Dakota Rules of Professional Conduct, states: "A lawyer shall not represent a client if the lawyer's ability to consider, recommend, or carry out a course of action on behalf of the client will be adversely affected by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests." Rule 1.10(a) also extends this prohibition to other attorneys in the same law firm: "Lawyers associated in a firm may not knowingly represent a client when any one of them practicing alone would be prohibited from doing so by these rules..."

In this situation, Rule 1.10(a) is complemented by a state conflict of interest law. N.D.C.C. § 44-04-22, provides:

44-04-22. Conflict of interest law. A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal

or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

See also N.D.C.C. §§ 11-09-47, 12.1-13-03, and 48-02-12.

Based on Rule 1.7 and the attorney's responsibility to the county if the attorney is elected to the county commission, the attorney or attorneys in the same firm may not represent cities or other clients on issues that affect the county. For example, the attorney could not represent a city to negotiate an agreement with the county for judicial services.

In general, the attorney and members of the attorney's firm, if the attorney is elected to the county commission, may continue to represent cities on issues that will not directly or indirectly affect the county. However, even in those circumstances, the attorney must be careful to comply with Rules 1.6 and 1.8 of the Rules of Professional Conduct. In the attorney's role as a county commissioner, the attorney may neither use information received in the role as an attorney for a city to the city's disadvantage nor breach client confidences. These rules, and the statutes cited above, would limit the attorney's ability to act as a county commissioner on matters involving the cities that the attorney or the attorney's firm represents.

The committee is unaware of any rule in the Rules of Professional Conduct suggesting that the attorney may not be a member of the county commission and a municipal judge within the county at the same time. However, this opinion does not address the applicability of the North Dakota Code of Judicial Conduct to this question.

This opinion is provided pursuant to Rule 1.2(B) of the North Dakota Rules for Lawyer Discipline. This rule states: "A lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the ethics committee of the association is not subject to sanction for violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter."

This opinion was drafted by Murray G. Sagsveen, a member of the committee, and was unanimously approved by the committee at its meeting on March 23, 1998.


Alice Senechal, Chairperson