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| OPINION | : | No. 80-1204 |
| of | : | APRIL 9, 1981 |
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The Honorable Charles R. Imbrecht, Assemblyman, Thirty-Sixth District, has requested an opinion on the following question:

When one member of a law firm (a shareholder in a professional corporation) becomes a city councilman, is it ethical for other members of the firm to continue to represent clients in their routine, periodic dealings with the city?

## CONCLUSION

When one member of a law firm (a shareholder in a professional corporation) becomes a city councilman, legal ethics requires that other members of the firm discontinue the representation of clients in their dealings with the city during the councilman's term of office.

## ANALYSIS

This request for our opinion has arisen from the factual setting where a professional legal corporation has been representing a client in certain city annexation proceedings which were commenced at the instance of such client. The law firm has been required to negotiate certain matters with various city departments. Before the completion of these annexation proceedings, one member of the firm (a shareholder in the corporation) was elected to the city council of the city. We have thus been presented with the general question as to the ethical considerations of the law firm's representation of clients in their routine, periodic dealings with the city during the councilman's term of office.

We conclude that legal ethics requires not only that the councilman not represent clients in their dealings with the city, but that other members or associates of the law firm should also refrain from representing such clients in those matters.

In a relatively recent opinion of this office we had the occasion to consider whether an ex-district attorney should associate with a law firm as "of counsel" where that law firm was also the contract public defender in the county. (62 Ops. Cal. Atty. Gen. 546 (1979).) In rendering that opinion we discussed at great length various Rules of Professional Conduct of the California State Bar, the Canons, Ethical Considerations (ECs) and Disciplinary Rules (DRs) of the American Bar Association (ABA), and case law and ethics opinions issued which may be relevant to the situation where an attorney attempts to combine the holding of a public office, past or present, with an association with a law firm which has dealings with the attorney's public agency. We will not attempt to repeat all the matters discussed therein, but make reference thereto. An examination of that opinion will disclose the following rules which are relevant to our consideration herein.

1. California State Bar Rules:

Rule 4–101, which provides:

> "A member of the State Bar shall not accept employment adverse to a client or former client, without the informed and written consent of the client or former client, relating to a matter in reference to which he has obtained confidential information by reason of or in the course of his employment by such client or former client."

Rule 5–102(b), which provides:

> "A member of the State Bar shall not represent conflicting interests, except with the written consent of all parties concerned."

2. ABA Canons, Ethical Considerations and Disciplinary Rules:

Canon 9, which provides:

> "A Lawyer Should Avoid Even The Appearance of Professional Impropriety"

EC 9–1, which provides in part:

> " . . . A lawyer should promote public confidence in our system and in the legal profession."

EC 9–2, which provides in part:

> " . . . When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner which provides: public confidence in the integrity of the legal system and the legal profession."

Canon 5, which provides:

> "A Lawyer Should Exercise Independent Professional Judgment On Behalf Of A Client."

DR 5–105(D), as amended February 1974, which provides:

> "If a lawyer is required to decline employment or to withdraw from employment under a Disciplinary Rule, no partner, or associate, or any lawyer affiliated with him or his firm, may accept or continue such employment."[1]

In addition to the foregoing canons and rules, we note the following: additional ones which appear to be germane to the factual situation where a member of a law firm attempts to represent clients before city agencies where another member of the firm is a city councilman:

ABA Cation 8, which provides:

> "A Lawyer Should Assist In Improving The Legal System"

[1] The Definitions for the Disciplinary Rules of the Code of Professional Responsibility of the ABA define "law firm to include a professional corporation.

DR 8–101(A), which provides:

> "(A) A lawyer who holds public office shall not:
>
> (1) Use his public position to obtain, or attempt to obtain, a special advantage in legislative matters for himself or for a client under circumstances where he knows or it is obvious that such action is not in the public interest.
>
> (2) use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client.
>
> (3) Accept any thing of value from any person when the lawyer knows or it is obvious that the offer is for the purpose of influencing his action as a public official."

EC 8–8, which states:

> "Lawyers often serve as legislators or as holders of other public offices. This is highly desirable, as lawyers are uniquely qualified to make significant contributions to the improvement of the legal system. A lawyer who is a public officer, whether full or part-time, should not engage in activities in which his personal or professional interests are or foreseeably may be in conflict with his official duties."[2]

From the foregoing "laundry list" of rules of professional ethics for attorneys, it should be abundantly clear that a city councilman himself should neither represent clients before his council, nor even represent clients in their routine dealings with other agencies or personnel of his city. Under Disciplinary Rule DR 5–105(D) *supra*, the same disqualification is imputed to the councilman attorney's partners or associates in his law firm.

This conclusion is confirmed by an Ethic's Opinion of the California State Bar, also discussed by us in 62 Ops. Cal. Atty. Gen. 546, 553, *supra*. That is Formal Opinion No. 1977–46 (54 State Bar J. 60 (1979).) In that opinion it was concluded inter alia that a city councilman could not represent a client in contract negotiations with his city and *additionally* that a law partner or associate of the councilman was subject to the same

[2] Compare, however, Government Code section 8920 *et. seq.* with respect to state legislators, which sections permit a legislator to engage in various activities, including legislative matters, under certain conditions where it might appear that there is a potential conflict of interests.

limitations. In reaching these conclusions, the Committee on Professional Ethics of the State Bar relied heavily upon ABA Canons, Ethical Considerations and Opinions as well as Rule 5–102(b) *supra*. The committee relied *inter alia* upon ABA Canon 8, *supra*, ABA Canon 9, *supra*, DR8–101(A), *supra*, and DR5–105(D), *supra*. We believe the following: portion of the committee's reasoning is germane to the general question before us, that is, the propriety of the councilman's firm representing clients in routine matters with the city.

> "In view of such considerations, and being of the belief that an attorney-public official must exercise the highest degree of care to avoid giving the public the impression that he or she has improperly used the influence of his or her public office, it is our conclusion that representation by an attorney of a defendant in a criminal action being prosecuted by the city in which the attorney serves as a council member, would be unethical and should be declined at all stages.
>
> "Ethical considerations are essentially the same in analyzing the ethical propriety of an attorney representing a client in a contract negotiation with the city in which the attorney serves as a council member. The potential conflict of interest and appearance of impropriety are not eliminated by the making of a full disclosure and declining to vote when the contract comes before the council for approval. It is apparent that in this situation also, the attorney may be tempted to use his or her influence of public office to gain advantages and concessions in contract terms for the benefit of his or her client. The city employees representing the city in a contract negotiation who are subject to the council's jurisdiction, may be reluctant to oppose the attorney in his or her contract demands; or they may be tempted to slant their evaluations and analyses of the matter to favor him or her. In such contract negotiations, the client is motivated to maximize his or her profits while a prime concern of the city is to minimize its expense. And, there is always the possibility that the attorney would seek to influence the vote of other council members not strictly on the merits but by reason of his or her client's interest."

[The Committee then quoted in full DR 8–101(A), *supra*, and continued]

> "Although there may be no actual conflict of interest in the representation of a client in negotiating a contract with the city, the potential of such conflict and the danger of an appearance of impropriety are of such magnitude and public concern as to require that such representation be declined. In the eyes of the public, it is highly possible that representation in such cases would be viewed with a suspicion that the attorney was using his

> or her position and influence with the city for the purpose of extracting favorable or, special treatment for his or her clients in furtherance of their interest and his or her own. Even the appearance of such impropriety could operate to weaken the public's confidence in the integrity and fidelity of its public officials. *L.A. Opinion No. 27*, *supra* states:
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> 'A lawyer's duty to the public when holding public office is stated by Brand, quoted in *Persig, "Cases on the Legal Profession"* page 44:
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> "When a lawyer is elected to the legislature his duty as the holder of such office requires him to represent the public with undivided fidelity. His obligation as a lawyer continues. It is improper for him, as for any other lawyer, to represent conflicting interests."'
>
> See also, *Government Code* § 87100 (prohibiting public officials from using official positions to influence governmental decisions in which they have financial interest)."[3]

The committee then went on to apply the foregoing reasoning to law partners and associates of the councilman, as follows, relying upon ABA Canons and rules:

> "Finally, it is the Committee's view that a partner or office associate stands in the same position as the attorney-councilman insofar as the propriety of representing clients in the situations described above. *ABA DR Code 5–105(D)* states:
>
> 'If a lawyer is required to decline employment or to withdraw from employment under DR 5–105, no partner or associate of his or her firm may accept or continue such employment.'
>
> See also *ABA Opinions* No. 33 (1931), 49 (1931), 104 (1934), *L.A. Opinion* No. 242 (1957)."

Accordingly, we conclude that legal ethics requires that when a member of a law firm, whether it be a professional corporation or not, is elected to a city council, then

[3] We do not consider herein statutory conflict of interest provisions, or similar statutory proscriptions, but merely the question of professional ethics. With respect to a particular transaction, these statutes could well apply to the councilman. See generally Government Code sections 1090 *et seq.,* 1125 *et seq.* and 87100 *et seq*. and the discussion in our comprehensive opinion, 62 Ops. Cal. Atty. Gen. 546, *supra*, at pages 548–550.

not only the councilman himself but other members and associates of the firm should refrain from representing clients in their routine, periodic dealings with the city.

In so concluding, we are aware of the argument that, as to pending matters such as the annexation proposal which precipitated this request, the client may lose the benefit of the knowledge and expertise the law farm has developed with regard to the matter before the city. In response, we quote the following: statement of our Supreme Court where a similar position was urged in *Comden v. Superior Court* (1978) 20 Cal. 3d, 906, 915:

> "In a case involving disqualification of an attorney who earlier represented an adverse interest, the court stated: 'We realize . . . that Rabin's disqualification may inconvenience plaintiffs, who undoubtedly chose Rabin in the belief that he was the best attorney to prosecute their claims, . . . [D]espite his considerable talents, Rabin is not the only member of the patent bar qualified to capably represent these plaintiffs.' (*Emle Industries, Inc. v. Patentex, Inc.* (2d Cir. 1973) 478 F.2d 562, 574–575.) Obviously, Loeb and Loeb is not the only firm qualified to capably represent these petitioners, nor have petitioners demonstrated the distinctive value of their attorneys' services over those to be rendered by another firm of good quality.
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> It would be naive not to recognize that the motion to disqualify opposing counsel is frequently a tactical device to delay litigation. (See *U.S. ex rel. Sheldon El. Co. v. Blackhawk Hing. & P1mb*., *supra*, 423 F. Supp. 486.) '[J]udicial scrutiny [is required] to prevent literalism from possibly overcoming substantial justice to the parties.' *J.P. Foley & Co., Inc. v. Vanderbilt*, *supra*, 523 F.2d 1360, conc. opn. Gurfein, C.J.)
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> *(6) However, ultimately the issue involves a conflict between a client '~r right to counsel of his choice and the need to maintain ethical standards of professional responsibility. 'The preservation of public trust both in the scrupulous administration of justice and in the integrity of the bar is paramount. . . . (7)* (See fn. 3.) [The client's recognizably important right to counsel of his choice] must yield, however, to considerations of ethics which run to the very integrity of our judicial process.' (*Hull v. Celanese Corporation* (2d Cir. 1975) 513 F.2d 568, 572.)"[4] (Emphasis added.)

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[4] See also, generally, Aba Opinion No. 192 (1939) and ABA Inf. Opinions Nos. 700 and 1003 with respect to adverse interests between an attorney and his partners and the city which employs him.