

Representation

CONFIDENTIAL

June 21, 2006

[John Smith]

Chicago, IL 606

Re: Case No. 06034.Q

Dear Mr. [Smith] :

You are a [title] in the [U] Department [U] , and an attorney licensed to practice in Illinois. In a letter to our office dated June 10, 2006, you requested an opinion addressing how the City's Governmental Ethics Ordinance applies to your representation of plaintiffs in two legal proceedings in which the City is a named defendant. Based on the facts you presented, staff concludes that the Ordinance does not prohibit you from representing the individuals in these proceedings, although, as you are aware, it does prohibit you from having an economic interest in (i.e. deriving any compensation or other interest capable of being valued in monetary terms from) that representation or those matters. You explained to staff that you are deriving or accepting no compensation from either matter, and that you have a fee screening arrangement in place for one of the matters; as long as these conditions remain true, your representation in both proceedings, as you have described it, is in compliance with the requirements of the relevant provision of the Ordinance.

You explained that none of your duties as [in U] involve legal representation of the City or [U] In your capacity as an attorney (you maintain a law practice: the Law Office of [John Smith]), you currently represent [U] employees in two distinct legal proceedings. In the first, your client is a petitioner in a formal grievance (captioned [K v. City of Chicago], IDHR/EEOC no. 2006 CF xxxxx) filed against the City, specifically [U] , for gender discrimination. This proceeding is pending before the Illinois Department of Human Rights and the Equal Employment Opportunity Commission. In the second case, pending in the Circuit Court of Cook County, (captioned [N v. H]), there are two counts. The first count, in which you have filed an appearance on behalf of and represent the plaintiff, is a civil suit for libel against another [U] employee in her personal capacity; the City is not a party. The second count involves allegations by this same plaintiff against the same [U] employee, in her official capacity, and the City. You said that another attorney, [Mr. F] (who is listed as "Of Counsel" to the Law Office of [John Smith]) represents the plaintiff in this second count—you do not represent the plaintiff in that count. You explained to staff that two separate lawsuits could have been filed in this matter, but that one was filed for administrative reasons. You also said that, in both the [K and N v. H] matters, you are accepting no compensation—they are entirely pro bono. Further, you explained, there is a fee screening arrangement in place between you and Mr. [F] in the [N v. H] matter—you will accept no direct or indirect compensation (such as substituted payments) from [Mr. F] or [Mr. N] with respect to any recovery made or fees charged.

Section 2-156-090 of the Governmental Ethics Ordinance provides, in relevant part:

(b) No elected official or employee may have an economic interest in the representation of, any person, in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City.

"Economic interest" is defined at 2-156-010(i) of the Ordinance as "... any interest valued or capable of valuation in monetary terms." Under § 090(b), you, as a City employee, are prohibited from having an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the City is a party and that person's interest is adverse to that of the City. Clearly, both the [K and N v. H] matters meet the criterion of § 090(b). Therefore, Board staff concludes that, although § 2-156-090(b) does not prohibit you from representing the plaintiffs/claimants in these cases, it does prohibit you from having an economic interest in that representation—meaning that you are prohibited from accepting, either directly or indirectly, anything of value for your legal representation in either lawsuit, including any replacement payments or other compensation stemming from [Mr. F's] representation of the plaintiff in the [N v. H] matter. See Case No. 95004.A. You explained to staff that you have taken on both representations completely pro bono; moreover, you said, you have a fee screening arrangement with [Mr. F] under which you have fully disclaimed any recovery or fees he collects in the [N v. H] matter. Provided that these conditions remain true, staff also concludes that your representation in both proceedings complies with the requirement of the relevant provision of the Ordinance. See Case Nos. 93007.A; 01028.A; 01005.A.

Our conclusions do not necessarily dispose of all issues relevant to your situation, but are based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this letter. Board staff has not addressed whether any provisions of Illinois law, including the Illinois Rules of Professional Conduct (Article VIII of the Rules of the Supreme Court of Illinois), may also apply, and we advise you to seek legal counsel as to their applicability.

Please note that, if the facts presented in this letter are incomplete or incorrect, you are advised to notify us immediately, as any change may alter our conclusions. Be further advised that, because your letter to this agency requesting this opinion copied [Mr. C] [U's] Counsel (in addition to your clients), we will be consulting with him in this matter. We sincerely appreciate your request for this opinion. Please contact our office with any questions.

Yours very truly,

Steven I. Berlin
Deputy Director

Approved:

Dorothy J. Eng,
Executive Director