

ADVISORY OPINION
CASE NO. 99009.A
Outside Employment

To: [John]
[Position], Chicago Police Department

Date: March 24, 1999

In a letter of February 5, 1999, you asked the Board of Ethics for written advice on whether the Governmental Ethics Ordinance prohibits or limits your possible outside employment with [Alpha], a Chicago law firm that represents clients in criminal defense cases and [other situations].

The Board has concluded that, while the Ethics Ordinance does not prohibit you from working part-time for [Alpha], it does impose serious restrictions on you. Further, it is the Board's opinion that your employment with [Alpha] could significantly impair your ability to perform your City duties. For this reason, the Board does not recommend that you accept this position.

We also advise you that there may be rules and regulations enforced by other administrative bodies, such as the Illinois Rules of Professional Conduct, about which you may seek advice from the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, that could apply to this situation.

This advisory opinion summarizes the facts you presented, as well as facts gathered from other sources, and sets forth our analysis and conclusions about how the Ethics Ordinance applies to your possible outside employment with [Alpha].

FACTS: You have been a City of Chicago Police officer since []. You are currently assigned to [Bureau X], in which you []. []

You are also an attorney, licensed to practice law in Illinois since []. You are considering taking a part-time job with [Alpha], a Chicago law firm []. You said [Alpha] is a general practice firm that handles [various cases, including criminal defense]. In

addition, you said, [Alpha] represents [persons before City administrative agencies].¹
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You learned of the possibility of part-time employment with [Alpha] through your [relative], who is currently an attorney with the firm. You said that [Alpha's principal partner], on learning that you [were] licensed to practice law in Illinois, suggested to your [relative] that [he] approach you with the possibility of working part-time for the firm, and [he] did so. You are not currently seeking employment with any other law firms. At present, you have received oral advice from Board staff about your possible outside employment with this firm, and you are waiting for a written advisory opinion from the Board of Ethics before signing any employment agreement with [Alpha]. However, you have done several hours of office work for the firm (e.g., photocopying, filing). You said that in the course of doing this office work you have had limited contact with [Alpha]'s casework, and no contact with the firm's criminal cases or cases [before City administrative agencies].

You said you have discussed with [Alpha's principal partner] the restrictions the Ethics Ordinance imposes on you, and you have explained to him that your work for the firm would be restricted with respect to cases involving the City and [any City Departments]. In your letter you stated that you would assist the firm in real estate, contract, and personal injury cases where the City is not an adverse party. You said your duties at the firm would be "restricted to aiding in the representation of clients that were not involved in controversies with [City Departments] or the City of Chicago" and that you would be "isolated from any criminal defense cases to avoid any conflicts of interest," conflicts such as being forced to cross-examine coworkers in the Police Department. In conversation with Board staff, you explained that, while you and the firm have not established formal, written guidelines to isolate you from these kinds of cases, the attorneys at [Alpha], who would determine your day-to-day workload at the firm, are aware of the restrictions the Ethics Ordinance imposes on you and have agreed not to ask you to work on criminal defense cases or cases in which the City or [any City Department or any City employee] was a client or an adverse party. You anticipate that your specific duties in cases you worked on would be limited due to your part-time status and would often be primarily clerical in nature, for example, maintaining files. You would likely write briefs and may appear in court on behalf of clients in certain cases. You said you would be paid solely by the hour for your work on cases, and you would not receive contingency fees, referral fees, or share in the firm's profits. You would work 10 to 15 hours per week, primarily on

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your days off from the Police Department, but also on vacations from the department. You would not be an equity partner, and your name would not appear on firm stationery.

You have not yet informed your supervisors within the Police Department that you are considering working for [Alpha], but you have informed the Police Department's Personnel office, and you assured Board staff that you would inform your supervisors in the department of your possible outside employment with this firm.

LAW, ANALYSIS, AND CONCLUSIONS: While the Ethics Ordinance does not prohibit City employees and officials from having outside employment, it does impose restrictions on their conduct in non-City jobs. Some of these restrictions are critical to an employee engaged in the outside practice of law. We describe these restrictions below and set forth the Board's conclusions on how they apply to your proposed work for [Alpha].

Fiduciary Duty. Under Section 2-156-020, "Fiduciary Duty," you owe your primary loyalty to the City. This provision obliges you to use your City position responsibly and in the best interests of the public, and to exercise your professional judgment and City responsibilities free from conflicting duties to outside entities or clients. The fiduciary duty provision of the Ordinance also prohibits you from using your City position to obtain private benefits, such as to benefit your outside practice or promote the interests of your or your law firm's clients. (See Case No. 97061.A.) For example, your fiduciary duty under the Ordinance would prohibit you from using your City position to solicit business for the firm or its clients. In addition, if your obligations in your City work and your work with [Alpha] were to conflict, this section of the Ordinance would oblige you to put your duties to the City ahead of your duties to this law firm or its or your own clients.

It is the Board's opinion that, were you employed with [Alpha], certain situations that could seriously impair your work as a City employee are likely to arise. For example, in your work as a Police [officer] you might [be involved in] investigations of criminal defendants who subsequently retain [Alpha] to represent them. If called to testify in such a matter, your loyalties would be subject to challenge. Moreover, since, as you said, you would be isolated from [Alpha]'s criminal defense cases, it is possible that you could inadvertently [be involved in] a Police investigation of a defendant who had already retained the firm. In such circumstances, because of your employment with the defendant's legal counsel, your ability to [do] unbiased [work] could be questioned. In our opinion, the appearance of bias in situations like this would be a serious detriment not only to your work as a Chicago Police [officer] but also to the City's interests. In the circumstances described, your employment with [Alpha] would, in effect, impair your performance of your City duties. For this reason, although the fiduciary duty provision of the Ordinance does not specifically prohibit you from working part-time for [Alpha] while you also serve the City, the Board does not recommend that you accept this position.

Representation of Other Persons. The Ordinance imposes other important restrictions on the work you would be able to do for [Alpha]. Section 2-156-090, "Representation of Other Persons," is particularly relevant to City employees who practice law outside their City positions. It states, in the subsections that apply to City employees:

(a) No elected official or employee may represent, or have an economic interest in the representation of, any person other than the City in any formal or informal proceeding or transaction before any City agency in which the agency's action or non-action is of a nonministerial nature; provided that nothing in this subsection shall preclude any employee from performing the duties of his employment, or any elected official from appearing without compensation before any City agency on behalf of his constituents in the course of his duties as an elected official.

(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.

Representation encompasses "any activity in which a person acts as a spokesperson for some party or seeks to communicate and promote the interests on one party to another." (Case No. 90035.A.) An economic interest, as defined in Section 2-156-010(i), is any interest valued or capable of valuation in monetary terms. An "economic interest in the representation" thus includes, for example, compensation by a client for representation or compensation via partnership in a law firm that undertakes representation (Case No. 97061.A).

Subsection (a) of § 2-156-090 prohibits you, as a City employee, from representing or having an economic interest in the representation of any person other than the City in a transaction before a City agency where the agency's action involves discretion, except in the performance of your City duties. This subsection would prohibit you not only from performing legal services in [any case before a] City agency whose actions involve discretion, but also from being paid with fees earned by the firm for its representation in these cases.

In addition, subsection (b) of this provision prohibits you 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 the person's interest is adverse to the City's. This subsection would prohibit you, therefore, from being paid with fees earned by [Alpha] for its representation of clients in these circumstances, for example, clients suing the City in personal injury cases.

Other Restrictions: Sections 2-156-030, "Improper Influence," and 2-156-080, "Conflicts of Interest," prohibit you, as a City employee, from participating in, or in any way attempting to use your City position to influence, a City governmental decision or action in any matter in which you have an economic interest distinguishable from that of the general public. In a recent opinion, the Board considered the case of a City employee who had accepted a part-time, paid position with a non-City company. (Case No. 98062.A.) The Board concluded that the City employee had an economic interest by virtue of her employment with the company and determined that she was "prohibited from participating in, making or attempting in any way to use her City position to influence any City decisions or actions that will be related to or enhance her employment" with this company. Thus, if you are employed part-time by [Alpha] you would have an economic interest in your employment, and you would be prohibited, under the Ordinance, from making or in any way attempting to use your City position to influence a City governmental decision that would be related to or would enhance that employment.

Section 2-156-050, "Solicitation or Receipt of Money for Advice or Assistance," prohibits you, as a City employee, from accepting payment or anything of value in return for advice or assistance on the operation or business of the City. However, this provision does not prohibit you from accepting compensation for services that are wholly unrelated to your City duties and responsibilities and are rendered as part of your non-City employment. Section 2-156-060, "City-Owned Property," prohibits you from using any City property or resources in your non-City position, or for any private benefit, without authorization. Section 2-156-070, "Use or Disclosure Of Confidential Information," prohibits your using or revealing, except in the performance of your City duties, confidential information gained in the course of your City employment. Confidential information, for purposes of this section, means any information that may not be obtained pursuant to the Illinois Freedom of Information Act, as amended.

DETERMINATION: The Board determines that, while the Ethics Ordinance does not prohibit you from working part-time for [Alpha], it does impose serious restrictions on you. Further, recognizing that your employment with [Alpha] could significantly impair your ability to perform your City duties, the Board does not recommend that you accept this position.

The Board's opinion in this case is not dispositive of all issues relevant to this situation, but is based solely on the application of the City's Governmental Ethics Ordinance to the facts stated in this opinion. If the facts stated are incorrect or incomplete, please notify the Board immediately, as any change may alter our determination. We also note that other laws, rules, or regulations may apply to this situation. The City's Personnel Rules XVIII, Section 1, no. 43, and XX, Section 3, may impose additional restrictions on employees engaged in outside employment, and any City department, such as yours, has the authority to adopt and enforce rules of conduct that may be more restrictive than the limitations imposed by the Ethics Ordinance. We also advise you that there may be specific rules and regulations enforced by other administrative bodies (e.g., the Illinois Rules of

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Professional Conduct, about which you may seek advice from the Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois) that could apply to this situation.

RELIANCE: This opinion may be relied upon by (1) any person involved in the specific transaction or activity with respect to which this opinion is rendered and (2) any person involved in any specific transaction or activity indistinguishable in all its material aspects from the transaction or activity with respect to which the opinion is rendered.

Darryl L. DePriest
Chair

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