

Anne Arundel County Ethics Commission

Advisory Opinion

99-185

Issue:

Whether a former member of the Departmental Charges Hearing Board of the county fire department can represent fire department employees before the Board as a private attorney.

Background:

Under rules and regulations adopted by the Anne Arundel County Fire Department, a career employee or volunteer member, who is accused of a disciplinary infraction, can choose to have the charges reviewed by either the Fire Chief, or by the Departmental Charges Hearing Board. The board is comprised of a deputy chief (appointed by the Chief of the department), who acts as the chairperson, a civilian, appointed by the county executive, and one other person, who, depending on the status of the charged person, is either a union member, a volunteer officer, or another designated person or officer in the fire department. After the hearing, the board makes findings and recommendations for action in the form of a report that is sent to the Fire Chief. The report of the board is advisory only.

A former civilian member of the board is a lawyer in private practice in Anne Arundel County, and is the spouse of a county firefighter. Now that the lawyer is no longer on the board, the former board member would like to represent firefighters who appear before the board on disciplinary charges. The lawyer acknowledges that as a former member of the board, the lawyer acquired considerable knowledge into the workings and practices of the board, and is concerned about the applicability of §3-109 of the Public Ethics Law, which states that:

(a) A former employee may not assist or represent a person in connection with a specific matter in which the former employee, as a County employee:

(1) acted on behalf of or represented the County in a matter involving substantial responsibility on the part of the employee; or

(2) with reference to which the former employee acquired information not generally available to the public when the former employee undertakes the assistance or representation.

Discussion:

The Public Ethics Law covers all employees. Section §1-101 of the law, defines "employee" to include, ". . . (ii) a member of any County board, commission, or similar entity, whether or not compensated;. . ." . The Disciplinary Charges Hearing Board is a "County Board" and so, its civilian member would be treated as an employee of the county for the limited

purpose of being subject to the provisions of the ethics law. And if the civilian member is no longer on the board, that person becomes a "former employee", subject to the provisions of §3-109.

The prohibition in §3-109 is limited to participation in "specific matters" in which the former employee previously participated as an employee. Participation on a board is not a specific matter. A matter refers to a particular issue, or to particular individuals, or to particular circumstances, not simply to a generalized participation on the board. Therefore, §3-109(a)(1) is not applicable to prohibit all representation of clients before the board. However, §3-109(a) would prohibit the former employee from representing clients in specific matters previously handled by that member. For example, the lawyer could not represent a firefighter on a second offense of any matter that the disciplinary board reviewed during the lawyer's tenure. The lawyer could not represent a firefighter charged with a disciplinary offense for which the disciplinary board on which the lawyer sat, established specific guidelines or specific recommended sanctions. There may be many "matters" in which the former member of the board cannot participate, but that consideration does not completely bar the former employee from providing any representation of firefighters before the board.

Section 3-109(a)(2) prohibits participation in a specific matter in which the lawyer acquired information not generally available to the public. Members of the board do have access to confidential and non-public information. (see RR: 3.3.1.1.) Under the rules of the board, a person who chooses to have charges heard by the board, must give the board access to that employee's personnel information. And, by departmental policy, the reports of the board are not available to the public. Therefore, to the extent that the former member has seen specific personnel records that might have a bearing on the matter before the board, the former employee cannot participate in the representation. If the former member has reviewed previous board reports that might have a bearing on a client's charges, the former member cannot participate in the representation. These restrictions may effectively preclude any significant practice before the disciplinary board by a former member; however, the law does not absolutely prohibit the representation of clients before the board by a former member.

Conclusion:

The ethics commission advises that the representation of clients before the Departmental Charges Hearing Board, by a former member of the board, is not absolutely barred by the provisions of §3-109 of the Public Ethics Law. However, the former member cannot represent clients in specific matters in which the former member previously participated as a board member. Further, the former member cannot represent firefighters in specific matters where knowledge of non-public information could have a bearing on the matter before the board. Finally, the former member should be aware that under §3-104 of the ethics law, confidential information received from a spouse cannot be used in the representation of any clients before the Hearing Board.

Date:

By: the Anne Arundel County Ethics Commission

