

August 28, 2006

By Electronic and First-Class Mail

Re: IO-06-50

You inquired whether your representation of a private client in a case in which the county is a nominal party would violate the ethics law restrictions on secondary employment. You are an attorney in private practice and a member of the ethics commission. The commission advises that your continued representation of a client in this lawsuit will not adversely affect the county's interests, and that consequently, you may continue to serve as a member of the ethics commission while you represent your private client in this matter.¹

In a suit filed on behalf of your client to quiet title to the client's property, the county has been named as a party defendant. The reason for the inclusion of the county in the lawsuit, is that the county may have an interest in a platted road that at least on paper, runs through the client's property. In that case, the county and your client will have to resolve the property interests involved prior to the resolution of the law suit.

Under §7-5-104, a county employee, or in the case of a member of the ethics commission, a volunteer with the county, may not, "assist or represent a person in any matter . . . before any governmental unit or employee of the County; or in which the County has an interest."

The ethics commission has consistently interpreted this provision to apply only where the county's interests may become adversarial to the interests of the party being represented or assisted by the county employee (or volunteer). *See, for e.g.*, IO-03-85, IO-00-114, IO-99-76, AO-99-09.

The Anne Arundel County Office of Law has formally advised the ethics commission that the interest of your client is not adversarial to the interests of the county, and that a mutually beneficial resolution is pending between the county and your client in this matter. For this reason, the ethics commission advises that you may continue to serve on the ethics commission while you represent your client in the aforementioned lawsuit. Should other issues develop with the county, or should the resolution involving the county fail, please notify the commission promptly.

Thank you for your inquiry.

Anne Arundel County Ethics Commission

¹ The ethics commission acknowledges that its participation in an advisory opinion requested by one of its own members may create the appearance of favoritism, albeit not an actual conflict of interest. However, under §7-5-101(c)(1), an employee who is disqualified from participating in a matter may participate in the matter if the disqualification would "leave a body with less than a quorum capable of acting." The ethics commission is required by law to issue an advisory opinion to any employee who requests one; it is the only body capable of acting in rendering this opinion. The ethics commission member who requested this opinion did not participate in, and was not present during the discussion or vote on the matter.

By: _____
Betsy K. Dawson, Executive Director