

# 14

## ATTORNEY AS CITY COUNCILMAN

Adopted March 26, 1960.

Addendum issued 1996.

Addendum issued 2009.

### *Syllabus*

It is improper for an attorney who is also a city councilman to appear on behalf of defendants who are prosecuted for violation of city ordinances in the municipal court of that city.

### *Facts*

An attorney is a member of a city council. The city council hires the municipal judge and fixes his or her salary. The attorney, while serving on the city council, continues to practice in the municipal court on behalf of defendants who are charged with violations of city ordinances.

### *Opinion*

In the opinion of the CBA Ethics Committee (Committee), this practice is improper. Canon 6 of the Canons of Professional Ethics reads, in part, as follows:

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The Committee also relies on the spirit of Canon 3 of the Canons of Professional Ethics, the heading of which is “Attempts to Exert Personal Influence on the Court.”

The attorney in this fact situation, as a councilman, is one of those who have the authority to select the municipal judge before whom he practices. The temptation to exert influence on the judge through control of his tenure and salary, should the judge render decisions unfavorable to the attorney, seems obvious. The judge in this position might reasonably feel that influence is being exerted through this medium of council control, even though such influence is not in fact exerted. Even if this possibility never occurred to either the attorney-councilman or the municipal judge, members of the community might conclude that improper influence was exerted upon the judge.

Moreover, the attorney must be mindful of appearances of improper conduct that might reasonably cause members of the community to conclude that persons charged with violation of city ordinances might find it to their advantage to retain an attorney-councilman to appear on their behalf.

The situation in the statement of facts above must also be disturbing in its implications to the municipal judge who is placed in his or her office by the city council. Canon 13 of the Canons of Judicial Ethics states, in part, that “a judge . . . should not suffer his conduct to justify the impression that any person can improperly influence him or unduly enjoy his favor, . . . .”

As stated in Opinion No. 13, the Committee feels that this situation cannot help but seem suspect to the Bar and the community and thus have an adverse effect on the administration of justice and the public’s approbation of it.

### *1996 Addendum*

On January 1, 1993, the Colorado Rules of Professional Conduct became effective. Although the Canons of Professional Ethics that formed the basis for this Opinion are no longer the disciplinary rules governing lawyers, the Ethics Committee considers the conclusions of this Opinion to be correct based on the Colorado Rules of Professional Conduct. For an analysis of these issues, attorneys should review Rules 1.7(b), 8.4(d) and (e), and 3.5.

**2009 Addendum**

On January 1, 2008, substantial amendments to the Colorado Rules of Professional Conduct (Rules) became effective. Rules 1.7(b), 8.4(e) and (f), and 3.5 were revised. Rule 8.4(d) was not. The “appearance of impropriety” standard no longer appears in the Rules. The conclusion of Opinion 14 remains correct based on the current Rules.