
**E-86-14 Conflict of interest: City attorney's
prosecution of city employee for an
ordinance violation**

Question

Is it ethically permissible for a small city attorney's office to prosecute a city employee for an ordinance violation if that city employee, both in the past and in the future, investigates, enforces and testifies on behalf of the city in various ordinance enforcement actions (actions unrelated to the employee's offense)?

Opinion

No. The working relationship between the employee in question and the city attorney's office is described as close and continuing. Under these circumstances, prosecution by a city attorney's office with a small staff could reasonably raise an appearance of impropriety in the public eye or result in an actual conflict of interest (e.g., interest of city attorney in continuing good working relationship with employee versus duty to exercise independent professional judgment as prosecutor). *See, e.g.*, SCR 20.48 and 20.49 and State Bar Formal Ethics Opinion E-82-9, 57 Wis. Bar Bull. 76-77 (June 1984). *See also Perillo v. Advisory Committee on Professional Ethics*, 83 N.J. 366, 416 A.2d 801, 807-808.

Furthermore, the prospect of attacking such an employee's credibility in one proceeding while attempting to sustain it in another would appear contrary to the best interests of the client (i.e., the city) in employee relations and law enforcement generally. *See, e.g.*, Committee on Professional Ethics Formal Opinion E-75-19, reported at 57 Wis. Bar Bull. 52 (June 1984).

Accordingly, such cases appear to require the appointment of an independent special prosecutor. *See* Formal Opinion E-82-9, *supra*.