

Ethics Opinion

860903

QUESTION PRESENTED: May a part-time county attorney, one-half of whose salary is paid by the State of Montana, represent a plaintiff in a wrongful termination case against the Department of Fish, Wildlife and Parks?

ANSWER: Yes, if the attorney obtains the proper consent.

ANALYSIS: Section 7-4-2716, MCA, provides in pertinent part:

The County Attorney must

* * *

(3) . . . defend all suits brought against the State.

Clearly, a part-time county attorney represents the State of Montana on at least a limited basis civilly. Therefore, the representation would create a conflict of interest.

Rule 1.7, Conflict of Interest: General Rule provides:

A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

A part-time county attorney would need to obtain the consent of both the private client and the Department of Fish, Wildlife and Parks. Since most Departments have counsel representing them, in Montana consent is usually freely given. As a practical matter, a part-time county attorney has almost no involvement with the Department of Fish, Wildlife and Parks, and thus no access to confidential information. After receiving consent, the county attorney could represent the private client.

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