

NEW HAMPSHIRE BAR ASSOCIATION ETHICS COMMITTEE

Advisory Opinion #1987-88/5

Conflicts of Interest: Service As a Member of an Adjudicating  
Board and Attorney Within the Same Governmental Department

March 8, 1988

---

RULE REFERENCES:

- \*Rule 1.11(b)
- \*Rule 1.11(c)
- \*Rule 1.11A(b)
- \*Rule 1.12

STATUTORY REFERENCES:

- \*RSA 169-B
- \*RSA 169-C
- \*RSA 169-D
- \*RSA 170-H:13
- \*RSA 500-A:12

SUBJECTS:

- \*Conflict of Interest
- \*Disqualification
- \*Government Representation
- \*Public Officials

ANNOTATIONS:

A lawyer must adhere closely to the restrictions of Rule 1.11(b) and (c) relating to successive government and private employment, when employed by DCYS while serving on the juvenile parole board. (Rules 1.11(b), (c))

---

QUESTIONS:

1. May the inquiring attorney serve as a member of the state Juvenile Parole Board while at the same time the attorney is rendering legal services under two Department of Health & Human Services contracts? Specifically, the contracts are two years each, one with the Division of Children & Youth Services and the other with Adult and Elderly Services.
2. If the answer to the first issue is in the affirmative, are there any restrictions?

RESPONSE:

The Juvenile Parole Board is a five member tribunal, all of whom are appointed by the Governor. The Tribunal holds hearings periodically to determine whether a juvenile delinquent should be released on parole. It is an independent board but is administratively attached to the Department of Health & Human Services. RSA 170-H:13. It is charged by the statute to "exercise its powers, duties, functions and responsibilities, independently of the department of health & human services and without approval or control of the department, ..." RSA 170-H:13II(a).

The work which the inquiring attorney would perform for the Division of Children & Youth Services (herein called DCYS) involves legal professional services within the framework of the Child Protection Act as detailed in RSA 169-C and the Children In Need of Services chapter as detailed in RSA 169-D. Based upon prior experience, the factual settings and background of the cases and the type of legal

services rendered do not place such work within the scope of the Juvenile Parole Board and its review of cases arising under RSA 169-B.

The legal work rendered under the contract with Adult and Elderly Services (herein called AES) clearly does not involve work which would come within the scope of the Juvenile Parole Board.

The fact that the inquiring attorney, as an independent contractor working for the Department of Health & Human Services, may be subjected to certain supervisory review by that department's personnel, does not, in the Committee's view, constitute a sufficient single reason for barring service on the Juvenile Parole Board. It is assumed by the Committee that such supervisory review by the department's personnel is not of a quality or magnitude that it would interfere with the independence required of a member of the Board.

Issue No. 1. Yes, the attorney may serve as a member of the Juvenile Parole Board while contracting for legal services as detailed in the response.

Issue No. 2. In serving as a member of the Juvenile Parole Board, the lawyer should adhere closely to the restrictions imposed by Rule 1.11A(b) and Rule 1.12 of the New Hampshire Rules of Professional Conduct. In addition the lawyer should observe the requirements of Rule 1.11 (b) and (c) to the extent a factual situation should arise that make those rules applicable. The attorney should also excuse himself or herself from sitting on any case before the Juvenile Parole Board if to do so would violate the standards set for a qualified juror under the provisions of RSA Chapter 500-A:12. Should the attorney's contractual legal services change so that the attorney was performing legal work that in all probability would come within the review of the Board, on a recurring basis, then the attorney should either not contract for such work or the attorney should resign from the Board.