

## The Professional Ethics Committee

### Opinion Number 554

August 2004

#### QUESTION PRESENTED

Is it permissible under the Texas Disciplinary Rules of Professional Conduct for a lawyer currently serving as a state Senator or state Representative to represent clients before a city, county, or state court located in the lawyer's legislative district?

#### STATEMENT OF FACTS

A lawyer elected and currently serving as a state Senator or state Representative desires to represent clients in the various courts located within his or her legislative district.

#### DISCUSSION

This Committee has addressed the ethical issues relating to lawyers who have been elected to city or county public office and who propose to represent private clients before courts located in the jurisdictional districts in which the lawyers were elected. Professional Ethics Committee Opinion 497 (August 1994), Opinion 530 (October 1999), Opinion 540 (February 2002), and Opinion 541 (February 2002) considered the representation of private clients by a lawyer who was also a city commissioner, a county commissioner, a county judge, or a municipal judge before courts within the jurisdiction of the particular public office involved. In each prior opinion, the lawyer as a public official had direct budgetary and/or personnel authority affecting the court and/or its officers. That direct authority regarding personnel or the funding of court operations reasonably appeared to adversely limit the lawyer's responsibilities to the private client and the public. Such circumstances would, unless the requirements for the exception of Rule 1.06(c) of the Texas Disciplinary Rules of Professional Conduct were met, constitute a violation of Rule 1.06(b)(2). Rule 1.06(b)(2) prohibits (absent the applicability of the Rule 1.06(c) exception) representation of a person if that representation, "... reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests."

The budgetary and personnel authority of the lawyer acting in the capacity of a state Senator or state Representative has only general and indirect application to all courts in Texas and is not specific to any one court. Because of this lack of direct budgetary and personnel authority at the local level, the lawyer/legislator's responsibilities to the private client and to the public are not adversely limited such that Rule 1.06(b)(2) would be violated. However, in the case of each proposed representation of a private client, the lawyer/legislator must consider the requirements of state statutes and the ethical rules applicable to the legislator's elected office.

#### CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who is also a state Senator or Representative is not prohibited because he or she holds legislative office from representing clients in the city, county and state courts in Texas, including those within his or her legislative district.