

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 00-39
August 18, 2000

REPLACING A0 00-28

RE: May employee privately represent clients against a state agency?

DECISION: Yes.

This opinion is in response to your request for reconsideration of Advisory Opinion 00-28 issued at the April 28, 2000 meeting of the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the June 23 and August 18, 2000, meetings of the Commission, and the following opinion is issued.

You state the relevant facts as follows. You are an Internal Policy Analyst for the Cabinet for Health Services, Department for Public Health (the "Department"). You are also a licensed attorney but you do not practice law for the Department. You have been appointed by the Meade County District Court as guardian/conservator for a private client. A social worker from Community Based Services with the Cabinet for Families and Children has substantiated a finding of neglect by your client for his minor children. You wish to represent your client in this matter as his guardian and attorney in an administrative appeal before the Cabinet for Families and Children or in district court if necessary. The purpose of this administrative appeal is to determine what is in the best interest of your client's children. You ask whether or not this would be a conflict of interest for you.

KRS 11A.020(2) provides:

- (2) If a public servant appears before a state agency, he shall avoid all conduct which might in any way lead members of the general public to conclude that he is using his official position to further his professional or private interest.

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Additionally, KRS 11A.020(1)(b) provides:

- (1) No public servant, by himself or through others, shall knowingly:
 - (a) Use or attempt to use his influence in any matter which involves a substantial conflict between his personal or private interest and his duties in the public interest;
 - (b) Use or attempt to use any means to influence a public agency in derogation of the state at large;

In Advisory Opinion 97-23 (a copy of which is enclosed), the Commission concluded that a General Counsel for a state agency should not represent a client privately against a state agency either in court or before the agency. Such representation may be considered an attempt to influence a public agency in derogation of the state at large.

The Commission believes that KRS 11A.020 prohibits an employee from representing a client privately against the state agency for which he is employed, either in court or before the agency, but allows the employee to appear before other state agencies as long as the employee does not violate KRS 11A.020(2) as set forth above. The Commission believes that a public servant has "influence" before his own state agency but may not necessarily have the same influence before another state agency.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: Bertie Oldham Salyer, M.A., A.M.E.

Enclosure: Advisory Opinion 97-23