

EXECUTIVE BRANCH ETHICS COMMISSION

ADVISORY OPINION 99-39

August 31, 1999

RE: May former chief hearing officer represent clients before hearings branch?

DECISION: Yes, provided clients had no matters before hearings branch during the past three years.

This opinion is in response to your August 25, 1999, request for an advisory opinion from the Executive Branch Ethics Commission (the "Commission"). This matter was reviewed at the August 31, 1999, meeting of the Commission and the following opinion is issued.

You state the relevant facts as follows. You are the former chief hearing officer for the Administrative Hearings Branch, Cabinet for Health Services. You resigned your position on June 2, 1999 to become of counsel to the firm Tilford, Dobbins, Alexander, Buckaway & Black, LLP, effective July 1, 1999.

You desire to represent clients in administrative proceedings before the Cabinet for Health Services. During your tenure as a hearing officer, you conducted hearings on particular matters in which you were required to make a recommended or final decision for the Cabinet. Some of these entities now seek legal representation. You request an opinion as to the propriety of your professional representation with respect to clients and potential clients who may have had matters in which you were directly involved as a hearing officer. You do not intend to provide legal services with respect to any matter in which you were involved as a hearing officer. You intend only to offer professional services with respect to new or different matters in which you were not involved as the hearing officer.

KRS 11A.040(9) provides:

(9) A former public servant shall not represent a person or business before a state agency in a matter in which the former public servant was directly involved during the last thirty-six (36) months of his tenure, for a period of one (1) year after the latter of:

(a) The date of leaving office or termination of employment; or

EXECUTIVE BRANCH ETHICS COMMISSION
ADVISORY OPINION 99-39
August 31, 1999
Page Two

(b) The date the term of office expires to which the public servant was elected.

In Advisory Opinions 93-61 and 94-69, the Commission opined that an employee is prohibited from representing individuals in matters in which the employee was directly involved while working as a public servant. As chief hearing officer, the Commission believes that you were directly involved in all matters in the Administrative Hearings Branch.

The Commission believes that you are permitted to immediately represent clients before the Administrative Hearings Branch provided you do not represent persons or entities that had matters before the Administrative Hearings Branch during your last three years of employment. You are not permitted to represent persons or entities before the Administrative Hearings Branch if they had matters before the Administrative Hearings Branch during the last three years of your state employment.

Sincerely,

EXECUTIVE BRANCH ETHICS COMMISSION

BY CHAIR: CYNTHIA C. STONE
VICE CHAIR