

Nebraska Ethics Advisory Opinion for Lawyers
No. 81-1

IT IS NOT UNETHICAL, PER SE, FOR AN ATTORNEY TO BELONG TO A VOLUNTARY NONPROFIT ORGANIZATION, WHICH IS A CORPORATION, SUCH AS THE AMERICAN LEGION, AND STILL BRING SUIT AGAINST THAT ORGANIZATION, IF HIS POSITION IN THE ORGANIZATION DOES NOT INVOLVE ANY DECISION-MAKING CAPACITY SUCH AS TO AFFECT HIS ABILITY TO COUNSEL WITH HIS CLIENT AND EXERCISE HIS FREE AND INDEPENDENT EXPERTISE FOR HIS CLIENT, AND HE WOULD NEVER BE PERSONALLY LIABLE FOR ANY JUDGMENT RENDERED.

FACTS

Attorney A has been contacted by a client to file suit against an American Legion Post, a nonprofit corporation, for unemployment insurance benefits allegedly due to the client by reason of his former employment by the American Legion Post. The lawyer is a member of the American Legion Post, having paid the necessary membership dues. That is his only connection with the Post. He is not on any Board of Directors or any other committees which govern the Post. His position in the nonprofit corporation will have no connection with the lawsuit as such and does not even patronize the Club facilities. Because the organization is a corporation, the lawyer would not be liable for any judgment rendered against the nonprofit corporation.

DISCUSSION

This committee has previously discussed the problems of the attorney who serves as a member of the Board of Directors of a Legal Aid Clinic and the problems with representing clients who will be in lawsuits involving the Legal Aid office. This problem is somewhat similar to the one presented here but it seems clear that in this case the attorney will have no function with the Board of Directors of the American Legion Post and will have no

ties with that organization which would be directly or indirectly affected by the lawsuit nor will he have any decision-making capacity with the American Legion Post as it related to the lawsuit. There does not appear to be a confidential relationship between the attorney and the American Legion Post and he does not counsel the organization in any legal matter. In addition, there is no possibility that would find himself liable for any judgment rendered.

CONCLUSION

Under the particular facts presented, the Committee is of the opinion that the attorney is not violating the Canons of Ethics by taking the case on behalf of the former employee against the American Legion Post. While it is true that an attorney should not give even the appearance of impropriety, it is not necessary for him to resign from every social function available to him by reason of his position as an attorney. This is especially true in the more remote areas where the only available social functions must necessarily involve the same people, such as is true in the area from which this problem arises.

We believe there is no conflict of interest presented in this case so long as full disclosure of all facts is made to Attorney A's client and to the American Legion Post and the express consent of all persons concerned is obtained.