

**ETHICS COMMISSION  
CITY AND COUNTY OF HONOLULU**



**ADVISORY OPINION NO. 187**

The question is whether an attorney who works for the City as such may have a private professional practice.

In general, the Ethics Commission [Commission] believes that any attorney may do so, provided 1) the outside work does not impinge on the performance of official duties; 2) City time, equipment, material, or premises are not used; and 3) the attorney's department head does not prohibit private practices or outside employment altogether.

The Commission understands the facts to be as follows: Attorney X is a former federal employee and a deputy in Department Z. He also has a small private practice limited to plaintiffs in medical malpractice cases.

Two general rules apply to the facts in this case. First, under the City's standards of conduct, attorneys who come to work for the City have a reasonable time in which to complete cases from their previous employment, whether the work was for the government or for private clients, provided the City attorneys do not use City time, equipment, material, or premises to do so. Therefore, Attorney X should be allowed a reasonable time to complete necessary work for his former employer or private clients.

Second, full-time City and County officers, such as deputy prosecuting attorneys or deputy corporation counsels, may have gainful, occupational employment or private, professional practices, provided the employment or practice is compatible with official duties under Section 11-102.3, Revised Charter of the City and County of Honolulu 1973 (1984 Ed.) [RCH]. This rule was established in Advisory Opinion No. 141, which concerned a specific category of licensed professional. In accordance with Section 11-104, RCH, relating to fair and equal treatment, the Commission has extended this rule to all categories of licensed professionals who work as such for the City.

For attorneys, the second question of compatibility turns initially on definitions of the terms "gainful" and "occupational." "Gainful" means for compensation and "occupational" means the kind of law the government lawyer practices. Therefore, in general deputy prosecuting attorneys should not, for compensation, have a criminal law practice while deputy corporation counsels should not, for compensation, have clients who are suing the City. If this requirement is satisfied, the question of compatibility on a case-by-case basis needs to be answered.

Because the facts of each case vary, a deputy prosecutor or deputy corporation counsel should request an opinion from the Commission if any connection exists, or may appear to exist, between a private client or case and official duties of the employee's department.

In this case, Attorney X has a small number of private clients who are plaintiffs in medical malpractice suits. Because no relation exists, or appears to exist, between such plaintiffs or suits and the work of Department Z, the private practice is compatible with the official duties of Attorney X and Department Z.

In conclusion, under either of two rules, Attorney X should be allowed to finish representation of clients in malpractice cases, as long as such representation does not impinge upon the performance of his official duties. First, attorneys entering City employment should have a reasonable amount of time to complete cases from previous practices. Second, licensed professionals may have outside professional practices, provided the practice is compatible with official duties. In this case, the malpractice cases appear to be compatible with the official duties of Attorney X and Department Z. However, the head of Department Z may establish a higher, or more restrictive, standard of conduct, and thereby prohibit any outside gainful, occupational employment or private professional practice.

Dated: July 25, 1988

JANE B. FELLMETH  
Chair, Ethics Commission

