

STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 83-5

Chief Probation Officer Instructing Insurance
Industry Concerning Criminal Justice System

During his years of service as an adult probation officer a chief probation officer has come to appreciate that insurance agents need a greater understanding of the criminal justice system in order to pursue certain claims effectively. He has asked whether it would be proper for him to conduct, part time, a training program for insurance agents while continuing to work full time as chief probation officer.

Probation officers conduct presentence investigations of criminal offenders and supervise people placed on probation by the courts in their district. Section 54-108, General Statutes. The presentence investigations are objective reports which provide pertinent social and criminal information on an individual convicted of a felony. Section 54-91a, *id.* They often suggest sentence alternatives. Judges use the reports as an aid in sentencing.

Among the duties of a chief probation officer is reviewing and approving presentence reports prepared by probation officers in his unit, and reviewing the casebooks of those in his unit who supervise probationers. He also supervises the collection of restitution monies when a court has deemed restitution appropriate. These monies are collected from the offender, deposited in a regularly audited account, and forwarded by the Office of Adult Probation using its own check.

When a judge imposes a sentence of probation or conditional discharge he may, as a condition of the sentence, order the defendant to "... make restitution of the fruits of his offense or make restitution, in an amount he can afford to pay or provide in a suitable manner, for the loss or damage caused thereby and the court may fix the amount thereof and the manner of performance; ... satisfy any other conditions reasonably related to his rehabilitation...." Subsections 53a-30a(4) and 53a-30(a)(9), *id.* Compliance with the conditions is monitored by the Office of Adult Probation. Subsection 53a-30(b), *id.* The court may modify or enlarge conditions during the period of probation. Subsection 53a-30(c), *id.* If any of the conditions of probation are violated during the probationary period, the probationer may be arrested by, among others, any pro-

bation officer, who can make the arrest without a warrant. Section 53a-32(a), General Statutes. If violation of a condition is established, conditions may be modified or enlarged or the sentence of probation or conditional discharge may be revoked and the defendant required to serve the sentence imposed or some lesser sentence. Section 53a-32(b), id.

Restitution may also be ordered by the Criminal Injuries Compensation Board, in the case of injury or death. Chapter 968, id. In determining the amount of compensation to be allowed, the Board considers amounts the applicant has or may receive from, among other sources, insurance benefits. Section 54-208(e), id.

A victim of crime who has suffered a physical or property injury may be able to recover some of his loss under an insurance policy. An insurance company which pays on a policy normally is subrogated in a corresponding amount to its insured's right to obtain compensation from the person who caused the loss.

The chief probation officer involved here realizes that insurance companies sometimes can recover from the criminal some reimbursement for a claim paid to a crime victim. This could be ordered by a criminal court or the Criminal Injuries Compensation Board, or through a suit brought as the successor to the rights of the victim against the criminal. The chief probation officer's research has convinced him that insurance companies generally do not have sufficient understanding of the justice system process to obtain all the reimbursement from criminals that is available. He has developed a training program for insurance claims professionals which shows them how to develop better relationships with law enforcement agencies, how to document losses occurring as a result of crimes, how to be effective in criminal courts, etc. Executives in the insurance industry have agreed that their personnel need a training program, such as the one the chief probation officer proposes to offer, in order to improve their record in gaining reimbursement for claims paid to insured who are victims of crime. The proposed training program would provide information concerning not only Connecticut but other states as well. It is assumed the chief probation officer would expect to be compensated for his services.

The need for the insurance industry to gain a deeper understanding of the criminal justice system is not questioned. It would be troubling, however, if a chief probation officer were to develop the financial ties with insurance companies which would occur if he were to present the training program he has developed, the financial success of which is dependent to a large extent on the good will of the insurance industry.

The problem is only partly the power the chief probation officer has to review and approve presentence investigations which could include recommendations that a convicted criminal be placed on probation on the condition, perhaps among others, that he reimburse

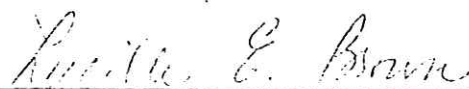
an insurance company which has paid a claim arising from the crime. The reports, as approved by the chief probation officer, could be slanted in some cases to favor every insurance company involved, or certain insurance companies. This would constitute an ethical violation even though presentence investigation reports merely provide suggestions to the judge, who makes the final decision.

The real problem is the power persons in the Office of Adult Probation have over probationers. The success, financial and otherwise, of the chief probation officer's private venture depends to some extent upon the relationship he gains and maintains with the insurance industry. The chief probation officer and his subordinates can recommend to a judge that a probationer reimburse an insurance company which, by paying the claim of an insured victimized by the probationer's actions, has become in a sense a victim of crime. They can then arrest or threaten to arrest a probationer who fails to make ordered payments to an insurance company when that is a condition of probation. If a probationer had insufficient funds to make ordered payments both to an insured victim partially compensated by an insurance company for a loss and to the insurer, a probation officer would be in a position to tell him that he would be arrested and perhaps jailed if he did not pay amounts due the insurer in full.

The chief probation officer would have the statutory authority to use his State position to further his private interests. This raises the question of whether he has accepted employment--his training program--which impairs his independence of judgment as to his official duties, in violation of subsection 1-84(b), General Statutes. It also would permit him to use his public office, and perhaps confidential information acquired in his official position, to obtain financial gain for himself or a business with which he is associated, a violation of subsection 1-84(c), General Statutes.

If the insurance industry needs to learn more about the criminal justice system and pays the instructor for imparting the knowledge, it should receive the training from someone other than a chief probation officer. The chief probation officer, who has demonstrated a commendable sensitivity to ethical issues by requesting advice in this instance, no doubt would not take advantage of the powers of his State position to further his private interests. Nevertheless, a situation which permits a State employee to deny an individual his liberty to further the employee's private interests should not be allowed, whether or not the State employee actually exercises the authority of his position in violation of the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes.

By order of the Commission,


Lucille E. Brown, Chairperson

Dated 1 March 1983

