



# STATE OF CONNECTICUT

## STATE ETHICS COMMISSION

ADVISORY OPINION NUMBR 86-12

### Family Relations Counselor's Outside Employment as Bail Bondsman

A family relations counselor II, serving in a family relations unit of a judicial geographic area, wishes to write bail bonds. He has been licensed by the State Insurance Commissioner, pursuant to section 38-72, General Statutes, as a casualty agent. He has been employed by an insurance company whose agents write bail bonds throughout Connecticut and elsewhere in the United States. So far he has conducted no bail bond business because his superiors claim there are conflicts of interests between his duties as a family relations counselor and those of a bail bondsman. The counselor has asked the Ethics Commission whether, under the Code of Ethics for Public Officials (Chapter 10, Part, I, General Statutes) conflicts of interest prevent his proposed outside employment. If it would avoid problems, he is willing to write bail bonds only outside the geographic area he serves as a family relations counselor. The insurance company employing him already has agents serving as bail bondsmen in his geographic area.

The job specification for Family Relations Counselor II gives as examples of the duties of the class:

performs evaluative case studies involving disputed issues of custody, visitation, residence in the family home and family financial circumstances;

prepares reports and recommends solutions;

may conduct conjoint mediation counseling sessions with parties attempting to achieve amicable resolution of disputed issues;

represents the Family Relations Division in court for the purpose of furnishing testimony relative to case study reports;

presents to the court contempt motions and other related actions initiated by the Division, and assists the court in evaluation of matters for appropriate disposition;

interviews individuals and family members referred by the court relative to criminal charges involving domestic violence or neighborhood disputes;

consults with attorneys in dissolution cases on matters pertaining to studies or court-referred negotiation of disputed issues;

provides necessary services relative to direct referrals from parties pertaining to non-compliance with court orders;

provides services to explore with parties the possibilities for reconciliation;

identifies personal needs and problems, making referral to appropriate resources in the community;

monitors support enforcement cases to identify delinquent situations and takes such actions as necessary to ensure compliance with court orders;

performs other related duties as required.

See also sections 480 et seq., Conn. Practice Book, Vol. 1 (CPB).

The principal assignment of the family relations counselor in question has been and is to act as a mediator in the program established by section 54-56m, General Statutes, as amended by Public Act No. 85-344. See also subsection 482(b), CPB. Under the program, a judge may refer a criminal prosecution to a mediator for resolution. Typically, the case involves a dispute resulting in domestic violence or quarrels among neighbors. Mediation also can be used before an arrest in an effort to forestall a criminal case. Accused involved in mediation may or may not be in custody. If mediation is successful the prosecuting authority, upon the recommendation of the mediator, enters a nolle prosequi, the prosecution is terminated, and the defendant, if confined, is released from custody. Subsection 54-56m(b), General Statutes. If it is unsuccessful or the defendant fails to comply with the terms of the mediation agreement, the mediator notifies the prosecuting authority and prosecution of the defendant may be initiated. Subsection 54-56m(c), *id.* In the course of mediation, a counselor has access to pertinent police arrest reports, police files, and, to some extent, prosecutorial files.



While the family relations counselor for some years has confined his activities to mediation, family relations counselors are subject to reassignment as deemed necessary for proper disposition of family relations matters. Subsection 482(e), CPB.

Legislation which became effective very recently can be expected to increase dramatically the workload of members of family relations units and their association with persons who may be seeking bail. Public Act No. 86-337 forbids the past police practice of minimizing involvement in cases of bodily injury or of threats of physical harm which occur between or among members of a family or household. Under the Public Act, when violence has occurred arrests are to be made without regard to the relationship of the parties or the victim's requests and desires. Subsection 2(a). Persons arrested in a family violence case are released on conditions set by a bail commissioner in accordance with section 54-63d, General Statutes. Subsection 2(e). Family violence intervention units are to be established within each judicial geographic area. Subsection 3(b). Local family violence intervention units accept referrals from judges or prosecutors and by the next court date prepare for the court written and oral reports on each case. Subsection 3(c). The family violence intervention unit's report assists the court in deciding whether to confine or release an arrested person, what conditions should be imposed to ensure the arrested person's subsequent court appearances and to protect the victim, and how the case might ultimately be handled. One alternative is a special accelerated pretrial rehabilitation program which includes release of the defendant to the custody of a family violence intervention unit for a period of up to two years under conditions ordered by the judge. Subsection 3(f). Family violence intervention units must maintain centralized reporting procedures. Subdivision 3(c)(6). The Family Relations Division of the Judicial Department is required to maintain a statistical summary of all cases referred to family violence intervention units (section 8) and a registry of all protective orders in force which have been issued to prevent family violence (subsection 7(e)).

In most criminal cases persons arrested are released, rather than incarcerated, until trial on conditions considered sufficient to provide reasonable assurance of the arrested person's presence in court as required through final judgment. Article I, Section 8, Constitution of Connecticut, as amended; State v. Menillo, 159 Conn. 264, 269 (1970). In order of preference, release is upon a written promise to

appear, execution of a bond without surety, or execution of a bond with surety in no greater amount than necessary. Subsections 54-63c(a), 54-63d(a), section 54-64a, General Statutes. In addition, judicial authority may impose special conditions for release. Section 54-64a, General Statutes. Non-financial conditions imposed by a court may include such requirements as observing curfews, travel restrictions, avoiding contact with the victim, and family counseling, the last supplied by a family relations counselor in the Family Relations Division. Chapter 24, CPB; sections 54-63c through 54-64b, General Statutes. A judge may modify conditions of release. Sections 671 through 676, CPB; sections 54-69 through 54-69b, General Statutes. Information supplied to a bail commissioner for determining and recommending conditions of release is confidential. Subsection 54-63d(c), General Statutes.

If a surety bond is required it usually is written by a bail bondsman. The surety on a bond is notified of any hearing to modify conditions of release of his principal. Section 675, CPB; section 54-69, General Statutes. The principal is considered to be in the custody of his surety. State v. Nugent, 199 Conn. 537, 544-545, (1986). A bail bondsman who is surety upon a bail bond and believes that his principal intends not to appear in court as required may apply to a judicial authority to have the principal summoned or arrested and brought to court for a hearing. Section 675A, CPB; section 54-65, General Statutes. In addition, a bail bondsman, including an agent of an insurance bonding company, has a common law right to apprehend and deliver a principal who has failed to appear in court and has forfeited his bond. State v. Nugent, supra, 543-550.

A family relations counselor is a State employee subject to the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes. The Code forbids him to use his State position, or confidential information gained in it, for his financial benefit. Subsections 1-84(a), 1-84(c), General Statutes. ("Confidential information" in this context means information supplied to a bail commissioner to set terms of release, contained in prosecutorial files or family studies, etc., which is declared to be confidential or is not generally available to the public.) He may not work as a bondsman if it will require or induce him to disclose confidential information acquired in the course of his State employment, or impair his independence of judgment as a family relations counselor. Subsection 1-84(b), General Statutes.



As a mediator the family relations counselor may see potential criminal defendants before arrest, and see accused after arrest. The latter normally would have been released on conditions set without any input from him. However, his work involving an accused and the accused's family and his views as a counselor might be considered by a judge deciding whether to modify conditions on which an accused has been released or confined before trial. In the course of fulfilling his duties, a family relations counselor may provide information, recommendations, and support to judges, prosecuting authorities, police, and bail commissioners.

In addition to the problem caused by the fact that the counselor's State duties introduce him to potential customers for bail bonds, the interests of a family relations counselor and a bail bondsman are different and conflicting. The counselor participates in a judicial system which avoids pretrial confinement if there is reasonable assurance that an accused will appear for trial. As noted above, release is to be on the least restrictive terms which provide that assurance: first written promise to appear (with or without special conditions), next bond without surety, last bond with surety and the bond in no greater amount than is necessary. On the other hand, bail bondsmen make no money unless a surety bond is required, and the higher the bond the greater the commission. It is true that the family relations counselor will not write bonds in the same judicial geographic area in which he serves as a State employee. His employer does write bonds in that area. In addition, it is not at all clear that there are no conflicts, when a counselor is contributing to the determination of what conditions should be imposed on an accused prior to trial, between conditions which are least restrictive or promote mediation, and those which provide maximum security to the surety on a bond. For these reasons it appears that a family relations counselor who enters the bail bond business would be accepting employment which impairs his independence of judgment as a State employee, in violation of subsection 1-84(b), General Statutes. See Ethics Commission Advisory Opinion No. 83-5, 44 Conn. L.J. No. 39, p. 12B (March 29, 1983). There is also the danger that the State employee's private employment would induce him to disclose confidential information gained in the course of his State duties, in violation of the same subsection. For example, it is customary for agents writing bail bonds to agree to indemnify their company in the case of a forfeiture. A substantial amount of money is deposited with the company as security, from which forfeitures may be paid. Rice, Bail and the Administration of Bail in the State of Connecticut, 4 Conn. L. Rev 1, 29 (1971). It would be difficult to resist the temptation to use confidential State records to check the reliability of persons

for whom the counselor and his fellow agents were writing surety bonds, to minimize personal financial risk.

There are several problems under subsection 1-84(c), General statutes, even though the counselor's State duties would be conducted in a different geographic area than his bail bond business. Defense attorneys and defendants are not restricted to a particular geographic area.

State employees are assumed to be honest and ethical. A principal purpose of the Code of Ethics, however, is to foster and maintain public confidence in the integrity of the operations of State government. The Code therefore attempts to prevent situations in which a State employee seems invited to use his position for personal profit, can use it thus with little chance of detection, or in which State position can be used inadvertently. A defendant or a defense attorney in a geographic area in which the family relations counselor is writing bail bonds might consider it wise to buy surety bonds from the counselor in the hopes that it would generate good will should the defendant or defense attorney need it in the counselor's geographic area. When involved in cases in the counselor's geographic area, defense attorneys and defendants might for the same reason consider it prudent to utilize the counselor's company if a bail bond was required. The situation would permit the counselor's position being used for his financial benefit, whether he wished it or not. The situation also allows the inappropriate spectacle of a Judicial Department employee dickering with prosecutors and judges to compromise a bond he has written in a private capacity.

In summary, there are inherent conflicts of interests when a family relations counselor also represents a company engaged in the business of providing surety on bail bonds. He has accepted employment which impairs his independence of judgment and induces disclosure of confidential information for private financial gain. In addition, use of State position for personal financial gain, unintentionally or otherwise, is clearly a possibility. A family relations counselor should not engage in the business of writing bail bonds in Connecticut.

By order of the Commission,

  
Julie Peck  
Chairperson

Dated Nov. 3, 1986