



STATE OF CONNECTICUT  
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 87-10

State Contract with Spouse of State Employee

The Division of Criminal Justice occasionally enters into contracts with private attorneys to write appellate briefs for the State. Contracts are let when the number of responsive briefs to be filed exceeds the number that the Division's Appellate Unit can complete within a reasonable time. Attorneys to whom a contract is awarded are given the title of special assistant state's attorney. The contract price is at flat rates, all greater than \$100, determined by a published formula based on the number of issues raised in the brief and the number of pages of transcript involved.

The Office of the Chief Public Defender, for similar reasons, enters into similar contracts with private attorneys who serve as special public defenders in appellate cases.

Because criminal appellate work is specialized, these contracts have not been submitted for competitive bidding. They are awarded only to attorneys with extensive appellate experience and a thorough knowledge of criminal law in Connecticut.

The Division has asked the Ethics Commission:

(1) Is a qualified appellate attorney who is the spouse of an assistant state's attorney barred from entering into a contract with the Division as a special assistant state's attorney?

(2) Is a qualified appellate attorney who is the spouse of any State employee barred from entering into a contract with the Division as a special assistant state's attorney?

(3) Would the attorney-spouse in question 1 be barred from entering into a contract with the Office of the Chief Public Defender?

Under the circumstances presented, the answer to all three questions is yes; the Code of Ethics bars the spouses from contracting to prepare appellate briefs.

A contract with the Division of Criminal Justice or the Office of the Chief Public Defender is a contract with the State

for purposes of subsection 1-84(i), General Statutes. Subsection 1-84(i) provides that no member of a State employee's immediate family shall enter into a contract, valued at \$100 or more, with the State (other than a contract of employment as a State employee or pursuant to a court appointment) unless the contract has been awarded through an open and public process, including prior public offer and subsequent public disclosure of all proposals considered and the contract awarded. Entering into a contract in violation of the subsection is not only a violation of the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes) but the contract is voidable.

A spouse is a member of a State employee's "immediate family". Subsection 1-79(e), General Statutes. A contract with an attorney to prepare an appellate brief would not be a contract of employment making the attorney a State employee. The attorney would be an independent contractor, not a State employee.

Therefore, the spouse of a State employee may not become an independent contractor, under a contract with the State valued at \$100 or more, unless the contract is awarded through the open and public process of subsection 1-84(i). There need not be any particular relationship between the State employee and the agency with which the spouse of the State employee is contracting for a violation of the Code to occur. The present procedure for forwarding contracts for appellate briefs does not appear to meet the subsection's open and public criteria.

It is possible to establish an open and public process which would allow spouses of State employees, if qualified, to contract to prepare appellate briefs for State agencies. One acceptable process would include the following:

1. Notification, in a manner which will make the information available to all, or a substantial number, of those qualified that the Division has a need for services.

2. Criteria for eligibility contained in the notice should include the knowledge and experience desired.

3. Establishment of a list of those determined to meet the eligibility criteria, perhaps in categories if different levels of knowledge and experience are acceptable.

4. A published procedure for other interested persons to apply to be added to the list.

5. A published procedure for selection from the list to prepare an appellate brief; selection, on a rotating basis, of the first available and qualified person on the list would clearly comply with subsection 1-84(i).

Under such a system, a spouse of any State employee, including a spouse of an employee of the Division or the Office of the Chief Public Defender, could enter into a contract, valued at \$100 or more, with the Division or the Office.

It should be noted that an employee of the Division or Office whose spouse was an applicant to become eligible to prepare appellate briefs, or was on the list of approved attorneys, could take no official action with regard to the list or the selection of attorneys to prepare appellate briefs on contract.

By order of the Commission,



Julie Peck  
Chairperson

Dated Aug. 3, 1987

