



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

ADVISORY OPINION NUMBER 88-12

DEPARTMENT OF MENTAL HEALTH EMPLOYEE PERFORMING
EVALUATIONS IN CAPITAL FELONY CASES

Ms. Deborah Scott, the Assistant Director of Forensic Services in the Department of Mental Health, has asked the Ethics Commission whether she may, with propriety, be compensated for performing private evaluations in capital felony cases.

Ms. Scott's primary State responsibility is the administration of four regional court clinics which perform competence to stand trial evaluations pursuant to Section 54-56d, General Statutes, and other pre-trial and post-conviction evaluations as ordered by the Commissioner of Mental Health. Currently, these do not include evaluations in capital felony cases.

The evaluations in question would be undertaken as part of the sentencing process after a conviction in a capital felony case. Pursuant to 53a-46a, General Statutes, the court must conduct a hearing in such cases to determine the existence of aggravating and mitigating factors before deciding whether to impose the death penalty. Specifically, Ms. Scott has requested advice concerning the appropriateness, under the Code of Ethics for Public Officials, Chapter 10, Part I, General Statutes, of her being retained by defense counsel to evaluate mitigating circumstances in these cases.

The performance by a State employee of various clinical evaluations for the parties in criminal cases was discussed in Ethics Commission Advisory Opinion No. 88-11, _____ Conn. L.J. No. _____, p. _____ (_____). In that instance one of Ms. Scott's subordinates, the Director of the Bridgeport Court Clinic, wished to provide the evaluations in question. However, the Commission held that the Director's potential clients, Connecticut's defense attorneys and prosecutors, were too

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closely involved with and interested in his official actions to permit the outside employment at issue. The case at hand is analogous.

No doubt Ms. Scott would be retained because of her qualifications. However, it would be suspected by many, and might well be true, that certain of the attorney/clients also would be seeking to ingratiate themselves with the individual who heads the State's clinical evaluation programs for criminal defendants and convicted persons. Under the circumstances, the public would question whether Ms. Scott had accepted employment which impaired her independence of judgment as to official duties in violation of subsection 1-84(b) of the Code. Additionally, it would appear that, however unintentionally, she was using her State position to obtain private work in violation of subsection 1-84(c) of the Code, which prohibits use of public position for personal financial gain.

Furthermore, with Ms. Scott's public duties so closely related to the subject of her private employment, it might sometimes be difficult for those involved in the process to discern when she was acting in her official capacity and when she was representing a private client. Thus, compounding the problem of inadvertent use of office for financial gain.

In summary, to avoid violations, both real and apparent, of subsections 1-84(b) and (c), General Statutes, the Assistant Director of Forensic Services in the Department of Mental Health should not, for compensation, perform private evaluations in capital felony cases.

By order of the Commission,



William A. Elrick
Chairperson

Dated 8-1-88