

BOARD OF ETHICS
WASHINGTON SUBURBAN SANITARY COMMISSION

ADVISORY OPINION # A-12-06

SUBJECT: CODE OF ETHICS § 3-2 RESTRICTIONS ON OTHER EMPLOYMENT AND FINANCIAL INTERESTS

By request dated August 8, 2012 and revised request dated August 28, 2013¹, a WSSC Intergovernmental Relations employee (Requestor) has asked the Board of Ethics (Board) to issue an advisory opinion as to whether the WSSC Code of Ethics (Code) prohibits Requestor from re-opening a law practice, focusing on DUI and DWI representation in Prince George's County, Maryland and the District of Columbia. As set forth in the Request for Advisory Opinion, Requestor would "refuse representation on matters involving WSSC employees, contractors or others with whom we have substantive relationships."

Section 3-2(a) of the Code generally restricts an employee from engaging in outside employment if it is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest. Specifically, Section 3-2(a) states:

An employee must not engage in outside employment if the hours of such employment conflict with the employee's normal work shift at WSSC or where the outside employment is of such a nature which does or may create a conflict of interest or the appearance of a conflict of interest.

Section 3-2(b) of the Code sets forth specific restrictions on other employment and financial interests. It states:

Unless the Board grants a waiver under Section 2-3, or as permitted by an advisory opinion under Section 2-2, an employee must not:

- (1) be employed by, or have a financial interest in any business that:
 - (A) is regulated by WSSC;
 - (B) negotiates or has entered into a contract with WSSC; or
 - (C) is a subcontractor for any business that has a contract with WSSC;
- (2) hold any other employment relationship that would impair the impartiality and independence of judgment of the employee; or
- (3) be employed by an entity that is a party to a contract that binds or purports to bind WSSC if the duties of the employee include matters substantially relating to or affecting the contract and the contract binds or purports to bind WSSC to pay more than \$1,000.

Requestor's primary role at WSSC is to assist on governmental and legislative matters relevant to WSSC by developing, analyzing, formulating, lobbying and representing WSSC's position before Maryland's General Assembly, County Governments and other appropriate governmental and legislative bodies and groups. Requestor serves as a key WSSC liaison before governmental and legislative organizations. Although Requestor is a licensed Maryland attorney, the Requestor's current WSSC

¹ Upon Board's review and deliberation of Advisory Opinion request, the Board sought further clarification from Requestor. As a result, Requestor submitted a revised request on August 28, 2013.

employment does not require state bar membership or the ability to practice law. Due to the nature of Requestor's position at WSSC position, the issue before the Board is whether Requestor's outside employment as a practicing attorney could create either a conflict of interest or the appearance of a conflict of interest.

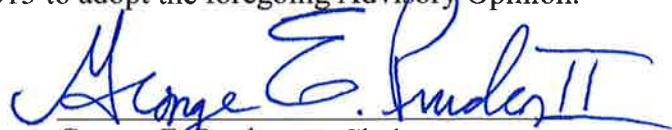
Under the circumstances presented here, the Board advises that Requestor may re-open the law practice in the areas of DUI and DWI pursuant to the following limitations.

1. Requestor must be mindful at all times not to directly or indirectly commingle the WSSC intergovernmental relations role with that of the private law practice.
2. Requestor is prohibited from engaging in any outside employment or activities on WSSC time or using WSSC resources, including office space, equipment, services and supplies.
3. Requestor must not engage in the practice of law that creates or may create a conflict of interest, the appearance of a conflict of interest, require the Requestor to take a position in conflict with WSSC's interests, or to interpret any statute, regulation, or rule administered or issued by or on behalf of WSSC.
4. Requestor shall not represent any party (including related business partners, family members or significant others) that has a direct or indirect interest in WSSC. This includes employees, contractors, subcontractors, potential contractors or subcontractors, businesses regulated by WSSC, legislators, regulators, lobbyists or lobbying organizations and affiliates, elected or appointed officials, and witnesses or parties to lawsuits involving WSSC.
5. Coworkers or individuals with whom the Requestor comes in contact with as a WSSC official cannot be solicited as clients for outside employment or activities such as legal, referral or consulting services.
6. The Requestor is prohibited from referring clients to any firm with which the law practice is associated, nor may Requestor share in any fees generated by any law partners for their representations to WSSC or the prohibited sources noted above.
7. Requestor must remain mindful of Code § 3-4 (a)-(c), which prohibits an employee from intentionally using the prestige of office or public position for private gain or that of another.

Based on the specific facts presented and pursuant to the restrictions noted, the Code does not prohibit Requestor from opening the outside law practice and limiting his practice to DUI and DWI. The legislative process is a dynamic one. As a result, it is impossible to speculate on all possible situations that Requestor could be faced with as a WSSC intergovernmental relations representative. It is imperative that Requestor ensure that conflicting situations are avoided and remain mindful that WSSC business be conducted at all times in an impartial manner to avoid any potential conflict of interest or appearance of conflict of interest.

Requestor is also strongly encouraged to obtain approval from Requestor's director prior to engagement in any outside employment. If circumstances change or additional concerns arise, further guidance should be requested from the Board.

On motion by Robert Moore, seconded by Steve Hyman, the Board agreed at its meeting held on September 12, 2013 to adopt the foregoing Advisory Opinion.


George E. Pruden, II, Chair