

Dual Roles in Municipal Traffic Enforcement: Ethical Constraints on Lawyers Serving as Both Administrative Hearing Officers and Defense Counsel

Question: A part-time hearing officer for a suburban municipality presides over challenges to tickets issued by that municipality's police officers. The hearing officer has been approached by a potential client seeking representation in traffic court, where the hearing officer may need to cross-examine a police officer employed by the same municipality. May the hearing officer accept the representation? If it is a conflict, is it waivable?

Discussion: Illinois State Bar Association's Opinion 13-07 (Oct. 2013) provides the closest and most instructive guidance. In Opinion 13-07, the question considered was whether there was a conflict of interest when a lawyer serves both as municipal prosecutor and administrative hearing officer for the same municipality. The opinion concluded that a lawyer cannot simultaneously act as a municipal prosecutor and an administrative hearing officer for the *same* municipality because this dual role creates a non-waivable conflict of interest under Rule 1.7.

Although the dual roles in 13-07 involved prosecution rather than defense, the opinion's reasoning applies with equal force to the scenario presented here. The ISBA Committee opined that such dual attorney services for a single unit of government would create a concurrent conflict of interest under the Illinois Rule of Professional Conduct [1.7\(a\)\(2\)](#), which states that a conflict exists if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer."

When a lawyer serves as a hearing officer, the municipality is that "third person" to whom the lawyer owes duties of neutrality and impartiality. Acting as defense counsel against the municipality's police officers creates a significant risk that the lawyer's adjudicative responsibilities may be compromised or reasonably perceived as compromised. This risk exists even if the matters are unrelated.

In addition, the lawyer's private client might question whether the lawyer's personal interest in their continuing employment by the municipality, or their familiarity with the police witnesses, might affect their approach to presenting the most effective case for the client. That analysis, though, is beyond the scope of this article, except to note that Comments [10] and [11] to Rule 1.7 provide guidance concerning concurrent conflicts based on an attorney's personal interests.

ISBA Opinion 13-07 also draws on Rule [1.12](#), emphasizing that adjudicators must maintain strict neutrality. Illinois law treats municipal hearing officers as quasi-judicial officials who administer oaths, evaluate evidence, and issue findings. Because the conflict affects the integrity of the adjudicative process, the Opinion concludes, it is not waivable under Rule 1.7(b).

The Illinois Code of Judicial Conduct of 2023 reinforces this expectation. Canon 1, Rule [1.2](#) (Promoting Confidence in the Judiciary) and Canon 2, Rules [2.2](#) (Impartiality and Fairness) and [2.4](#) (External Influences on Judicial Conduct) require judges and judicial officers to avoid impropriety and the appearance of impropriety, act impartially, and avoid relationships that could influence their judgment.

Finally, a lawyer who serves as an administrative hearing officer functions in a quasi-judicial role. Under the Illinois Municipal Code, [65 ILCS 5/1-2.1-1 et seq.](#), every administrative hearing officer must be an attorney licensed to practice in Illinois for at least three years. In this role, the hearing officer presides over adjudicatory proceedings and is empowered to, among other things, hear testimony and receive evidence; issue subpoenas at the request of the parties; preserve and authenticate the record; issue written determinations regarding code violations; and impose penalties authorized by applicable ordinances (65 ILCS 5/1-2.1-4(b)).

Many municipalities further adopt their own ethics rules or contractual restrictions prohibiting hearing officers from representing private clients in matters involving the municipality. These statutory restrictions underscore why dual service presents significant conflicts and why dual service is ethically problematic.

Conclusion: A part-time municipal administrative hearing officer who seeks to represent a private client in traffic court likely faces a significant, non-waivable conflict of interest under Illinois Rules of Professional Conduct 1.7 and 1.12. The conflict arises because the lawyer would be cross-examining police officers employed by the same municipality for which the lawyer acts in a quasi-judicial capacity. Even when the matters are unrelated, the dual roles may create divided loyalties and undermine the appearance of impartiality required of adjudicators.

The Illinois Code of Judicial Conduct of 2023 (Canons 1 and 2) reinforces that quasi-judicial officials must avoid impropriety and the appearance of impropriety.

The Illinois Municipal Code's administrative adjudication provisions (65 ILCS 5/1-2.1-1 *et seq.*) likewise require hearing officers to maintain neutrality, judicial demeanor, and professional conduct, expectations incompatible with simultaneously acting as an advocate tasked with cross-examining agents of the municipality.

In addition, many municipalities adopt ordinances or contractual terms that independently prohibit hearing officers from representing private clients in matters involving the municipality. Because the conflict goes to the integrity of the adjudicative function, it cannot be cured by client consent.