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Ernest W. Stephens, Retired

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Re: State Bar Ethics Opinion
86-6

Dear Mr.

You have submitted the following question to us:

"In your capacity as Deputy State's Attorney it was discovered that a particular retail establishment within your county employed a manager who embezzled funds from that store, and from a store in a community in a neighboring county. The manager was charged with embezzlement in your county and entered a plea of guilty pursuant to the plea bargain. The plea bargain provided that he would receive a suspended imposition of sentence on condition he make restitution for a specified sum embezzled from the store in your community and likewise that he not violate any laws for a period of one year. During the same time frame the individual entered into a plea bargain with the neighboring county State's Attorney which provided that no charges would be brought against him in that neighboring county. At the time of the entry of his plea, the plea bargain was accepted by the Court and the Defendant paid for the restitution amount in full in your county. The owner of the store has now asked you, acting as a private attorney, to bring a civil action against the former employee for the amounts that he embezzled from the store in the neighboring county. You inquire as the whether such employment should be accepted."

A majority of the committee does see problems in you representing the owner of the store in a restitution action. It appears that implicit in the decision not to prosecute in the neighboring county, was an agreement not to seek restitution in that criminal action. This then made a civil suit for embezzled funds likely. For you to accept the civil case and compensation for your legal work would involve a question of whether you are receiving benefit from the earlier criminal plea agreement.

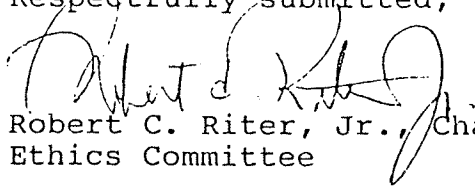
We draw your attention to Ethics Opinion 85-1 where we did approve a State's Attorney's law firm representing an accident

victim against the person they had just prosecuted. We did, however, set out certain preconditions to that type of employments.

Under DR 9-101(b) a lawyer cannot represent a private client in any matter in which he had substantial responsibility as a public employee. It appears you participated personally in the disposition of the criminal charges in your county. Thus there is a real risk that public confidence would be eroded by your now representing the owner of the store in the restitution action. Additionally, the possibility of making use of information received while performing duties as Deputy State's Attorney raises a question and perhaps the appearance of impropriety. See, General Motors Corp. v. City of New York, 501 F. 2d 639 (1974).

Based upon the above it is our opinion that you should not accept private employment in this matter. Additionally, we encourage you to review Ethics Opinion 85-1 when questions regarding a State's Attorney's law firm representing a private party after the completion of criminal actions is being considered.

Respectfully submitted,


Robert C. Riter, Jr., Chairman
Ethics Committee