



OFFICE OF THE COUNTY ATTORNEY

Douglas M. Duncan
County Executive

Charles W. Thompson, Jr.
County Attorney

MEMORANDUM

TO: David D. Freishtat, Member
Cable Compliance Commission

FROM: Marc P. Hansen, Chief *MPH*
General Counsel Division

Edward B. Lattner *EBL*
Associate County Attorney

DATE: October 10, 2003

RE: **Application of § 19A-14(g) to your position on Cable Compliance Commission**

We are writing in response to your September 26, 2003, letter inquiring about the application of § 19A-14(g) of the County ethics law to your position as a member of the Cable Compliance Commission. We believe § 19A-14(g) prohibits you from representing clients in certain matters. We recommend that you obtain an advisory opinion from the Ethics Commission to obtain a definitive reading of the ethics law on the question you raised. You may also seek a waiver from the Ethics Commission, if desired.

As a member of a County board, commission, or committee, you fall within the definition of public employee. Section 19A-14(g) prohibits a public employee from representing another person if either (1) the County or a County agency is a party to the matter and the person being assisted has a position adverse to the County or the County agency or (2) the County or a County agency has a direct and substantial interest in the matter that is adverse to the interests of the person being assisted.

There are a number of exceptions to this rule in §§ 19A-14(g)(2) and (3). Depending upon the specific circumstances, your representation of a client might fall within one of the exceptions to the general prohibition contained in § 19A-14(g). For example, the prohibition would not apply to your representation of (1) a client in a personnel action, (2) a member of your immediate family (if you provide that representation without compensation), or (3) a person for whom you serve as guardian, trustee, or other personal fiduciary. § 19A-14(g)(2).

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Unfortunately, you would not fall within the general exception for members of exclusively advisory boards, commissions, or committees, because your commission performs a quasi-judicial function when it resolves complaints regarding the provision of cable services.

Your representation of a client in a matter could violate § 19A-14(g) if the County or a County agency is a party to that matter and your client's position is adverse to the County or the County agency. Similarly, your representation of a client in a matter could violate § 19A-14(g) if the County or a County agency has a direct and substantial interest in that matter that is adverse to your client's interest. For example, 19A-14(g) would prohibit you from representing a client in a legal action where the County becomes a party opponent unless you first obtain a waiver from the Ethics Commission. But we do not think a client has a position adverse to the County if you lobby on behalf of the client or represent a client before a County agency or quasi-judicial board seeking a license or approval for the client to undertake some action.

In sum, depending on the situation, your outside law practice could run afoul of the prohibitions in § 19A-14(g). You should seek an advisory opinion from the Ethics Commission for a formal determination of the ethics law and, if need be, a waiver.¹ Please be as detailed as possible in your request to the Ethics Commission by describing the type of cases for which you want Commission guidance.

If you have any questions, please do not hesitate to call Ed Lattner (240) 777-6735 or Marc Hansen (240) 777-6740.

ebl

cc: Elizabeth K. Kellar, Chair, Ethics Commission
Clifford L. Royalty, Associate County Attorney
Deborah Goodwin, Special Assistant to County Executive

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¹ The criteria for a waiver of the prohibitions in § 19A-14(g) are found in § 19A-8(a). The Commission may grant a waiver if it finds that (1) the best interest of the County would be served by granting the waiver; (2) the importance to the County of a public employee or class of employees performing official duties outweighs the actual or potential harm of any conflict of interest; and (3) granting the waiver will not give a public employee or class of employees an unfair economic advantage over other public employees or members of the public.