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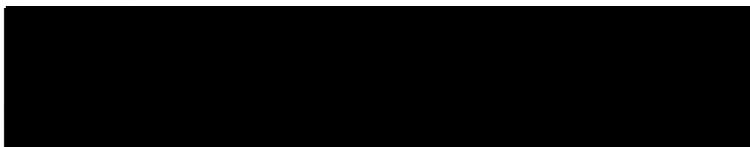


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September 18, 2013



Re: 13 A 0006
Providing Volunteer Legal Services to Persons in Chicago Police Custody

Dear 

This letter is in response to your email request dated September 9, 2013 for an advisory opinion. Your request asks whether, in your personal capacity, you can volunteer your legal services to a non-profit that provides advice and education to persons in, or who could eventually find themselves in, Chicago Police Department ("CPD") custody without violating the Cook County Ethics Ordinance ("Ethics Ordinance"). Based on the facts and circumstances set out below, it is the opinion of the Board of Ethics that your participation in the proposed volunteer activities does not violate the Ethics Ordinance.

I. BACKGROUND

First Defense Legal Aid ("FDLA") is a non-profit organization located at 5100 W. Harrison Street, Chicago, Illinois 60644. FDLA relies on a roster of approximately 100 volunteer attorneys, working in shifts, to provide free, 24-hour, legal representation to people in CPD custody and to provide educational seminars to at-risk Chicagoans about how to protect their constitutional rights if they are ever in police custody.

FDLA volunteer attorneys staff a hotline that is publicized to individuals who are arrested. When an arrestee calls the hotline, a FDLA volunteer attorney informs the arrestee of his or her constitutional rights, including the right to remain silent and the right to request an attorney. In addition, if requested and appropriate under the circumstances, a FDLA volunteer attorney may visit the arrestee at the police station, where the attorney, in addition to helping the client understand and assert his or her rights, may gather information about the arrest and

detainment, document any evidence of police brutality, advocate for medical treatment and inform the family and friends of the arrestee's status throughout the process. FDLA volunteer attorneys do not receive a fee for this service either from FDLA or the arrestee, and to the extent that an attorney-client relationship forms at all, it is terminated when the arrestee is released from police custody or is assigned a public defender at his or her arraignment or bond hearing.

In addition to staffing the hotline and/or visiting arrestees at CPD police stations, FDLA volunteer attorneys present "Street Law" classes to area students and community groups. These presentations focus on what to do if you are stopped, searched, or arrested by the police; how to assert your rights on the street and at the station; and what to do if you feel that the police have violated your civil rights. The aim is to enhance public understanding, especially in at-risk populations, of Fourth, Fifth and Sixth Amendment rights.

II. ISSUE PRESENTED

Does providing volunteer legal services to individuals in CPD custody constitute representing or having an economic interest in representing a person other than the County or representing a person whose interests are directly adverse to the County in violation of Section 2-579 of the Ethics Ordinance?

III. DISCUSSION

A. Jurisdiction

The first step in determining whether any individual's actions could violate the Ethics Ordinance is to determine whether the ordinance is applicable. The Ethics Ordinance provides that "[t]his Ordinance shall apply to all officials, board or commission appointees and employees of Cook County[.]" County Code, § 2-562. The Ethics Ordinance defines an "employee" as any "individual employed by the County whether part-time or full-time or by a contract of employment." *Id.* at § 2-561.

[REDACTED]
[REDACTED] As a County employee, her conduct must conform to the regulations set forth in the Ethics Ordinance.

B. Representation of Other Persons

There are no ethics issues implicated by a County employee volunteering her own time to educate Chicago residents about their rights under the U.S. Constitution, whether as the instructor of a "Street Law" course or by telephone on a legal advice hotline. The only instance in which the proposed volunteer activity even touches upon conduct mentioned in the Ethics Ordinance is if a FDLA volunteer attorney forms an attorney-client relationship with an arrestee and represents him or her in a Cook County court or before a County agency.

The Ethics Ordinance states, in relevant part, that:

- (a) No elected official or employee may represent, or have an economic interest in the representation of any person other than the County in a

formal or informal proceeding or transaction before any County agency¹ in which the agency's action or nonaction is of a nonministerial nature[.]

- (b) No elected official or employee may have an economic interest in the representation of any person in any judicial or quasi-judicial proceeding before any administrative agency or court in which the County is a party and that person's interest is directly adverse to that of the County[.]

County Code, § 2-579.

Neither provision, however, forecloses volunteering for FDLA. The pro bono nature of the legal services provided by volunteer attorneys eliminates any concerns the Board may have about the creation of an economic interest in the representation of a FDLA client.

Further, based on the Board staff's discussion of the matter with a FDLA representative, it does not appear that FDLA volunteer attorneys ever actually file appearances as the counsel of record in criminal or civil proceedings before the Cook County courts or other agencies. FDLA representation terminates when an individual is charged with a crime or is released from police custody. At most, a FDLA volunteer attorney may provide background information to an arrestee's actual counsel of record (often a public defender or private attorney retained after the initial detention) or may act as a fact witness to anything they observed during the visit to a police station. Neither activity is "representation" as that term is used in Section 2-579.

Finally, even if a FDLA volunteer attorney's activities constituted representation for the purpose of interpreting the Ethics Ordinance, the representation of a criminal defendant in an arraignment or bond hearing (or, for that matter, an arrestee in police custody) is not so adverse to the interests of the County as to invoke the prohibitory policy underlying Section 2-579. The government benefits from a citizenry that is well informed of their constitutional rights. It can claim no injury when individuals in police custody or appearing before its courts know when and how to invoke these rights appropriately.

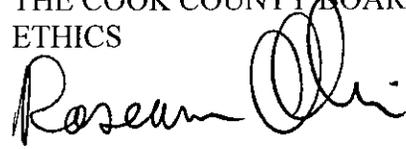
Please note the Board's determination herein is based solely on the application of the Ethics Ordinance to the general question posed by the Requestor. Other laws, rules or individual office policies may also govern the volunteer activity of County officials and employees; the Board's determination here is not binding with respect to their application.

We trust this advisory opinion addresses your concerns. We thank you for your inquiry and commend you for seeking to uphold the guiding principles of the Cook County Ethics Ordinance. Under the rules and regulations of the Cook County Board of Ethics, all requests for reconsideration of an advisory opinion must be filed within twenty days of the date of this opinion. Please do not hesitate to contact our office if you have questions or require additional information.

¹ The Ethics Ordinance defines an "agency" as "the County Board, any committee or other subdivision thereof, any County department or other administrative unit, commission, board or other division of the government of the County." County Code, § 2-561.

Sincerely,

THE COOK COUNTY BOARD OF
ETHICS

A handwritten signature in black ink that reads "Roseann Oliver". The signature is written in a cursive style with a large, looped "O" at the end.

Roseann Oliver,
Chairperson