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# The Commonwealth of Massachusetts State Ethics Commission

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CONFIDENTIAL

## CONFLICT OF INTEREST OPINION NO. EC-COI-85-82

### FACTS:

You are a member of the General Court and also have a private law practice. You are interested in representing private clients for compensation in proceedings before the Industrial Accident Board (IAB). The IAB is a state agency which administers the workmen's compensation statute, G.L. c. 152. Proceedings under G.L. c. 152 are initiated by an injured employee against an employer or insurer, and are presided over by a member of the IAB. See, G.L. c. 152, §§7C, 8. Each side is entitled to representation by counsel; the IAB does not represent the injured employee or otherwise serve as a petitioner or interested party in the proceedings. The role of the IAB member is to conduct investigations and hearings and to decide cases after making findings of fact and conclusions of law. Id. Within thirty days after the filing of a decision, either party may seek a claim for review by a board of review comprised of three IAB members. Id., §10. Decisions of the IAB and IAB review board are appealable to superior court. Id. §11.

### QUESTION:

Does G. L. c. 268A permit you to appear for compensation representing private clients before the IAB.

### ANSWER:

Yes.

### DISCUSSION:

As a member of the General Court, you are a state employee within the meaning of G.L. c. 268A. Section 4 of G.L. c. 268A establishes several limitations on the outside activities of state employees and generally prohibits state employees from representing private clients in proceedings

before state agencies. See, Commonwealth v Cola, 18 Mass. App. 598. (1984) EC-COI-85-40.1/ However, as a member of the General Court, you are subject to §4 only in certain limited circumstances. Under §4,

no member of the general court shall personally appear for any compensation other than his legislative salary before any state agency, unless:

(1) the particular matter before the state agency is ministerial in nature; or

(2) the appearance is before a court of the commonwealth; or

(3) the appearance is in a quasi-judicial proceeding,

For the purpose of this paragraph, ministerial functions include, but are not limited to, the filing or amendment of: tax returns, applications for permits or licenses, incorporation papers, or other documents. For the purposes of this paragraph, a proceeding shall be considered quasi-judicial if:

(1) the action of the state agency is adjudicatory in nature; and

(2) the action of the state agency is appealable to the courts; and

(3) both sides are entitled to representation by counsel and such counsel is neither the attorney general nor the counsel for the state agency conducting this proceeding.

Based upon a review of the IAB's statutory powers in administering the workmen's compensation statute, the Commission concludes that your appearance before the IAB on behalf of private clients would be "in a quasi-judicial proceeding".

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<sup>1</sup>/This citation refers to prior Commission conflict of interest opinions including the year they were issued and their identifying numbers. Copies of advisory opinions (with identifying information deleted) are available for public inspection at the Commission offices.

1. The proceedings of the IAB, whether before a member or review board, are adjudicatory in nature because the legal rights and duties of specifically named persons are determined after an opportunity for an agency hearing. See, G.L. c. 30A, §1(1); See, Borden, Inc. v Commissioner of Public Health, 388 Mass. 707, app. dism. 104 S.Ct. 323, cert. den. 104 S.Ct. 345 (1983); Compare, Labor Relations Commission Fall River Educators Association, 382 Mass. 465 (1981) [agency investigation is not an adjudicatory proceeding for the purposes of G.L. c. 30A].

2. Decisions of the IAB are appealable to court pursuant to G.L. c. 152, §11.

3. In cases initiated by injured employees against employers other than the commonwealth or a state agency, the parties are entitled to be represented by counsel, and neither the attorney general nor an IAB counsel may represent either party.<sup>2/</sup> Your appearance would be in a quasi-judicial proceeding and would therefore be exempt from §4. <sup>3/</sup>

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<sup>2/</sup>The Attorney General will appear in cases brought against the commonwealth or a state agency. You understand that §4 will not permit your representation in such cases, and your question is addressed solely to your appearance in non-state cases.

<sup>3/</sup>The Commission is aware that comprehensive legislation amending the workers compensation law and procedure is pending in the General Court. See, 1985 House Doc.6776. If amending legislation is enacted, you may wish to contact the Commission to ascertain whether IAB proceedings remain "quasi-judicial" for the purposes of the §4 exemption.

DATE AUTHORIZED: October 29, 1985