STATE OF WISCONSIN | CIRCUIT COURT CIVIL DIVISION | MILWAUKEE COUNTY

JAMES B. BRENNAN, in his official capacity as City Attorney of the City of Milwaukee, and individually as a resident and taxpayer of the City of Milwaukee and as a representative of a class of residents and taxpayers of the City of Milwaukee,

Plaintiff,

- vs -

EMPLOYMENT RELATIONS COMMISSION of THE STATE of WISCONSIN and MILWAUKEE POLICE ASSOCIATION,

Defendants.

Case No. 550-949

MEMORANDUM DECISION

Decision No. 18459-B

The Court would like to address all of the questions raised by both parties regarding their respective motions and would feel comfortable in doing so, however, based upon the law as it exists today, the Court has no alternative but to dismiss the action because of the conflict of interest of the City Attorney bringing this action individually and in his official capacity as "City Attorney of the City of Milwaukee". It would appear that the plaintiffs do not seriously pursue the class action in any event.

The Court feels that it does not have the authority to require the resignation of the City Attorney in order to pursue this matter, as the Court does not feel that it either has the authority or should. In any event, for the following reasons, the Court does in fact dismiss the action because of the conflict of interest: The plaintiff is not only a city employee, but he is the highest legal officer in the legal department of the city of Milwaukee. 56 Am. Jur. 2d Municipal Corporations, etc., sec. 277, p. 328. Coste v. City of Superior, 231 F. Supp. 261, 264 (W.D. Wis. 1964), affirmed, 343 F. 2d 100 (7th Cir. 1965). A city attorney is duty bound "to act in the best interest of the city." It is obvious that the interest of the city may be different than those of the individual.

This Court has an affirmative obligation to protect the parties and the public from such conflicts of interest. In Ennis v. Ennis, 88 Wis. 2d 82, 96-97 (App. 1979), it is stated:

> " The trial court refused the requested relief apparently on the assumption that it had no power to grant it, and that defendant's only remedy was to complain to the State Bar of Wisconsin in a grievance proceeding. This assumption is incorrect. The Wisconsin Supreme Court has held that trial courts have not only the power but the duty to intervene where the professional misconduct of an attorney before it affects the substantial rights of the parties."
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> "The interests which warrant and necessitate this power in the trial court are broader than those of the individual litigants. The interests of the public and of the profession are also involved... /T/his issue goes to 'the heart of our attorney system.' Attorneys and judges alike have a responsibility to protect that system from abuse."

More importantly, it is a well-settled general rule that an attorney cannot represent conflicting interests or undertake the discharge of inconsistent duties. This is a fundamental rule which arises of necessity out of the confidential and fiduciary character of the relationship between attorney and client. Mitchell v. McKenna, 199 Wis. 608, 610 (1929).

The Wisconsin Supreme Court Rules provide if, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or she or a lawyer in his or her firm are to be called as a witness on behalf or his or her client, the lawyer shall withdraw from the conduct of the trial and the firm, if any, may not continue representation in the trial. SCR 20.25.

There are other and various authorities that militate against the conflict of interest, but further authority is not necessary for recitation at this time; they only would become tautological.

Therefore, the above-entitled action is dismissed for the foregoing reasons.

Dated at Milwaukee, Wisconsin this 4th day of June 1981.

BY THE COURT:

David V. Jennings, Jr. /s/
DAVID V. JENNINGS, JR.,
Circuit Court Judge, Branch 24