

## COA Opinion: The Attorney General's office may sit on decision-making body and later defend the decision of that body

19. August 2011 By Nicole Mazzocco

In *Monroe v. State Employees Retirement System, No. 27220*, the Michigan Court of Appeals affirmed the denial of Petitioner Monroe's application for disability retirement benefits. Monroe challenged the denial on three grounds. First, Monroe claimed that the application proceedings violated her due-process rights because a member of the Attorney General's office represented the State Employees Retirement System against her, and a different member of the Attorney General's office was a member of the State Employees Retirement Board ("SERB"), which denied her application. The Attorney General representative on the SERB did not participate in Monroe's case. The Court held that this situation did not present a risk of actual bias sufficient to deprive Monroe of due process. The Court also stated that the Attorney General's office did not violate the Michigan Rules of Professional Conduct.

Second, Monroe argued that SERB violated MCL 38.24 because its medical advisor, Dr. Kaul, did not personally examine Monroe, rather Dr. Kaul reviewed her medical records to formulate his opinion. MCL 38.24 requires the medical advisor to "conduct" an examination of the claimant. The SERB had adopted a rule defining conducting a medical examination as "either a personal medical examination of the member or a review of the application and medical records of the member." 2008 AC, R 38.35(1). The Court declined to hold that the SERB definition conflicted with the statute; the Court found no "cogent reasons" for overruling the agency's interpretation.

Third, Monroe challenged the sufficiency of the evidence supporting the denial of benefits. Retirement disability benefits require a finding that the claimant is "mentally or physically totally incapacitated . . . [and] that incapacitation is likely to be permanent." MCL 38.24(1)(b). None of the medical evidence Monroe presented stated that her incapacitation was likely to be permanent, rather

all the doctors believed Monroe could improve with treatment. Accordingly, the Court held the evidence supporting the denial sufficient.