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**E-76-11      Conflict of interest: May assistant district attorney's partners accept criminal defense clients even with full disclosure and consent?**

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The Ethics Committee has received an inquiry concerning the propriety of the following proposed conduct.

One member of a law firm which is involved in criminal law practice has been appointed an assistant district attorney to administer the Federal Child Support Program in that county. The duties include the determination of paternity and the collection of support obligations, both civil and criminal. The inquiry is whether any other member of that firm may accept the defense of private clients in criminal cases even though there is full disclosure and consent.

The answer is "no." The discussion and reasoning follows.

First, under § 59.49, Wis. Stats., the assistant district attorney can do no criminal defense work in light of this district attorney status. It would not matter if the duties were limited to the Federal Child Support Program. It seems clear that there would be a conflict of interest, or it would appear so, and would be contrary to DR 5-105 and DR 9-101 of the Code of Professional Responsibility.

Next, if the above is correct, may other members of that firm or partners defend criminal defendants? Both ABA Opinions, either formal or informal, have stated it to be improper for an assistant district attorney *or his partner* to defend a private client in a criminal case. Qualifications and exceptions lead to "hard cases." Where a partner was appointed a part-time corporation counsel and his duties specifically excluded criminal matters, the partner of such part-time corporation counsel could handle the defense of a criminal matter. A question of the availability of legal talent to represent indigent defendants has led to a holding that a city attorney, or his partner, could represent an indigent defendant in courts other than where he prosecuted such violations. But then, such city attorney should not be involved in the investigation of the criminal charges, which, of course, is a refinement that might make effective representation impossible.

The public impression of a firm representing a criminal defendant when such firm had a partner in the district attorney's office would lead to the appearance of a conflict of interest and not be in the best interests of a proper public impression, DR 9-101.

In summary, it would be ethically improper for a partner or associate of a part-time assistant district attorney appointed to administer the Federal Child Support Program to represent private clients in the defense of criminal matters.