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**E-83-19      Conflict of interest: Assistant district attorney pro tempore in private practice**

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**Question**

An attorney recently resigned from the position of assistant district attorney and entered private practice. The firm that attorney joined does a moderate amount of criminal defense work and, in addition, routinely handles cases involving traffic and ordinance violations. The law firm also handles paternity and child support cases.

Anticipating that the district attorney's office will ask the attorney to serve as an assistant district attorney pro tempore or as special prosecutor in a number of cases, he/she inquired: (1) whether under State Bar Formal Opinion E-81-5 the firm would be disqualified from handling criminal cases should he/she accept the appointment as assistant district attorney; (2) [whether] the disqualification would include the traffic, ordinance violation, and paternity matters; and (3) [whether] such disqualification would apply only to those cases acquired after the effective date of the attorney's resignation and to those cases acquired by the firm before the resignation for which he/she had substantial responsibility as assistant district attorney.

**Opinion**

The State Bar Professional Ethics Committee addressed the issue on conflicts of interest arising as a result of a lawyer being appointed district attorney pro tempore in Formal Opinion E-81-5 (August 1981). That opinion held that a lawyer, during the time of appointment as special prosecutor or district attorney pro tempore, was prohibited from appearing as defense counsel in criminal actions in the same county. The opinion stated that other members of the lawyer's firm were also precluded from providing criminal defense representation, unless the lawyer was appointed for a single trial.

The committee finds that the situation presented falls within the scope of Formal Opinion E-81-5. Accordingly, the law firm is precluded from providing representation in all matters in which the district attorney is involved as opposing counsel for the period in which the attorney serves as district attorney pro

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tempore. Furthermore, the committee finds no ethical distinction between the roles of assistant district attorney pro tempore and special prosecutor for a series of cases. In both situations the lawyer has all the powers of a district attorney while so acting. (*See* E-81-5.) Finally, the disqualification applies to any case, whether acquired before or after the date of the attorney's resignation.