
**E-85-2 Conflict of interest: Lawyer
representing criminal defendants when
lawyer's spouse is county sheriff**

Question

Is it permissible for a lawyer to represent criminal defendants when the lawyer's spouse is the sheriff in the county where the lawyer practices?

Opinion

In Formal Opinion E-80-6, 57 Wis. Bar Bull. 66 (June 1984), the Committee on Professional Ethics considered a conflict of interest question involving two lawyers married to each other. Although the instant question does not involve two lawyers, many of the same considerations apply. In Formal Opinion E-80-6, the committee found that the only situation implicitly prohibited in all circumstances is that of one lawyer/spouse representing interests and appearing against the other lawyer/spouse. In those situations, the committee believes the intent, if not the letter, of the Supreme Court Rules is violated.

The situation involving the lawyer/spouse representing criminal or traffic defendants when the sheriff/spouse is directly involved (i.e., conducting or supervising the investigation) is not expressly prohibited anywhere in the Code of Professional Responsibility. However, the lawyer/spouse should be aware of potential problems in exercising independent professional judgment on behalf of his or her client. Ultimately, SCR 20.24(1) governs these situations; so long as the lawyer fully informs the client of the possible adverse affect on his or her professional judgment, and the client consents, there is no ethical bar to representation.

Any conflict of interest resulting from the lawyer-sheriff relationship is personal to the lawyer/spouse and does not affect the ability of other attorneys in the firm to handle criminal defense cases. *See* Memorandum Opinion 9/77C, 57 Wis. Bar Bull. 102 (June 1984); *cf.* ABA Model Rules of Professional Conduct, Rule 1.8(i) (Comment) (disqualification is personal and not imputed to firm members). Other firm members handling criminal or traffic cases in which the sheriff is directly involved should inform clients that the law-

yer/spouse is an associate in the firm, so that they may make an informed choice about retaining the firm. ABA Formal Opinion 340 (Sept. 23, 1975).