
E-85-7 Partner representing partner in litigation

Facts

An attorney, who is a partner in X law firm, is a defendant in a lawsuit brought against the attorney and his wife. The lawsuit involves the private and personal interests of the attorney and is unrelated to the attorney's professional interests. It is expected that the attorney will be a material witness on his own behalf in the lawsuit if it should come to court.

Question

May another partner in X law firm represent the attorney and his wife in the lawsuit?

Opinion

Wisconsin Supreme Court Rule (hereinafter SCR) 20.25(1) states that a lawyer must withdraw from any litigation in which the "lawyer learns or it is obvious that he or she or a lawyer in his or her firm ought to be called as a witness on behalf of his or her client." *Cf.* ABA Model Rules of Professional Conduct 3.7; however, this prohibition is not applicable when the lawyer who is likely to testify is a party to the suit. *See* State Bar of Michigan Opinion CI-720 (January 7, 1982) (ABA/BNA *Lawyers' Manual on Professional Conduct* [hereinafter *Lawyers' Manual*] at 801:4835); *see also* Virginia State Bar Informal Opinion 114 (Maru, *Digest of Bar Association Ethics Opinions* [hereinafter Maru] #10045); Nebraska State Bar Association Opinion 74-6 (Maru, #8771).

A major purpose of SCR 20.25(1) is to prevent a situation in which a lawyer, or a lawyer in his or her firm, is placed in "the unseemly position of arguing his own credibility or that of a lawyer in his firm." ABA Formal Opinion 339 (Jan. 31, 1975). In such cases, "the weight and credibility of testimony needed by the client may be discounted" and thus be detrimental to the client's case. *Id.* However, under the facts in the present situation, no such risks are present. The lawyer-witness as a party to the lawsuit has an interest in the outcome of the litigation much the same as any nonlawyer party. In contrast, the lawyer-witness

who testifies for his or her client is in the position of “an obviously interested witness” who is “subject to the impeachment on that account.” *Id.*

In light of the above, it would be permissible for a partner in X law firm to represent the attorney who is a party to the lawsuit.