
**E-86-15 Disqualification: Former partner
employed as assistant district attorney**

Facts

A lawyer who was a partner in a small law firm accepts a full-time position in the same county as an assistant district attorney with responsibility for prosecuting state criminal and county ordinance matters. The lawyer had an active criminal defense caseload in the county immediately prior to his departure from the law firm. For an indefinite period of time following his departure from the law firm, the lawyer will have a continuing financial interest in the law firm, related to, for example, division of fees from pending cases; joint professional liability exposure for law firm activity prior to his or her departure; and the real and personal property of the law firm partnership.

Questions

Under these facts and circumstances: (1) what disclosures, if any, ought or must the departing lawyer make to the district attorney and the law firm to its clients with matters in which the district attorney's office has an interest; and (2) should the departing lawyer, the law firm or district attorney's office be disqualified from handling any particular category of case (e.g., pending cases being handled primarily by the departing lawyer while with the law firm)?

Opinion

Prefatorily, we would call your attention to Committee on Professional Ethics Formal Opinions E-86-8 [59 *Wis. B. Bull.* 22 (July 1986)], E-84-9 [57 *Wis. B. Bull.* 87 (July 1984)], E-83-19 [57 *Wis. B. Bull.* 86 (June 1984)], E-81-5 [57 *Wis. B. Bull.* 72 (June 1984)], E-80-12 (June 1984) and E-79-1 [57 *Wis. B. Bull.* 60 (June 1984)]. Collectively these opinions address many of the issues raised by your inquiry.

1. Disclosures. Regarding all cases pending in the district attorney's office in which the departing lawyer had any involvement or contact while a partner in the law firm, the lawyer and law firm should provide the district attorney with a

list of such cases. This should be done prior to the lawyer's commencing employment in the district attorney's office. Otherwise the district attorney would not be in a position to fully assess the potential impact of this employment decision on his or her office or be prepared to screen the lawyer from contact with specific cases and files when appropriate. *See, e.g.*, E-86-8 and E-79-1, *supra*. *See also Disciplinary Proceedings Against Auerbach*, reported at 59 Wis. Bar Bull. 49 (Nov. 1986).

Regarding relevant matters (i.e., involving or potentially involving the DA's office) accepted by the law firm prior to the lawyer's departure in which the lawyer had no contact or involvement, these also should be made known to the district attorney. *See, e.g.*, E-80-12, *supra*. Of course if any law firm clients in question were not currently subjects of prosecution, their identities and relationship to the law firm could not be revealed unless and until they were. *See, e.g.*, SCR 20.21(5) and 20.22(1).

The law firm also has disclosure responsibilities to clients with matters accepted involving the district attorney's office until such time as the departing lawyer's financial interests in the law partnership's income and assets are terminated and until no relevant matters accepted during the lawyer's tenure with the firm remain open. *See generally*, SCR 20.24(1). Under these circumstances, the clients in question could perceive some impact on their representation which might prompt them to seek other counsel for their defense and/or to press for appointment of a special prosecutor. *See, e.g.*, SCR 20.24(1) and generally, the opinions prefatorily cited above.

2. Disqualification. The departing lawyer would be disqualified in all matters accepted by his or her former firm prior to his or her departure. *See, e.g.*, E-86-13 and E-80-12, *supra*. Whether he or she should also be disqualified from prosecuting other matters involving his or her former firm while retaining any financial interest in the partnership does raise ethical concerns. However, we believe that a lawyer should eschew handling or contact with *any* matter involving his or her former law firm until a reasonable person could not conclude that the lawyer's continuing financial, business, personal or property interests in his or her former law firm would affect the lawyer's or firm's representation of clients. SCR 20.24(1).

Whether the district attorney and other assistant district attorneys should be disqualified from handling matters with which the departing lawyer had respon-

sibility or contact while with the law firm would, in our opinion, depend upon: (a) the district attorney's implementation of effective measures to screen the lawyer from these cases; and (b) a court's approval of such measures as an acceptable alternative to disqualification. *See* E-84-9, *supra* (approving screening). *See also* Kaap, *Ethics and Professional Responsibility: A Handbook for Wisconsin Lawyers*, § 2.106 (ATS-CLE 1986); *see also* E-79-1, *supra*; *LaSalle National Bank v. County of Lake*, 703 F.2d 252 (7th Cir. 1983); *Schiessle v. Stephens*, 717 F.2d 417, 420-21 (7th Cir. 1983); and *People v. Miller*, 79 Ill. 2d 454, 404 N.E.2d 199 (1980).