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**E-86-5      Conflict of interest: Family law practice  
by spouse of a full-time family court  
commissioner**

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**Facts**

A husband and wife have engaged in the practice of law as a partnership. Recently one of the spouses accepted the position of full-time family court commissioner (FCC) in the county in which the couple's law office is located. The husband-wife team will dissolve the law partnership, and the remaining spouse will continue in private practice in this county as a sole practitioner.

**Questions**

Upon termination of the law partnership under the above-stated facts, may the spouse practicing as a sole practitioner represent clients in matters which:

1. Would prospectively involve any action by the FCC spouse in his/her official capacity?;
2. Would either prospectively involve any action by a FCC other than the spouse in his/her county and/or a post-divorce or post-paternity matter heard or decided by such a FCC?; [or]
3. Would involve representation in a post-divorce or post-paternity action, when the spouse FCC had entered the Temporary Order or held the initial appearance in the underlying action?

**Opinion**

1. The answer to question number (1) is, "no." *See* Wisconsin Supreme Court Rules (SCR) 20.48(6) and 20.49(3). For the duties of a Family Court Commissioner see SCR 60.03 and 60.19(3). *See also* ABA Standing Committee on Ethics and Professional Responsibility, Informal Op. 1372 (Sept. 13, 1976).

2. Our answer to question (2) is, "yes." Statutorily, the practice in the county in which the sole practitioner and the FCC spouse practice would be circumscribed by section 767.16, Wis. Stats., only if the partnership association

continued. Ethically, in response to a similar question, this committee previously has found the proposed representation proper. *See* Committee on Professional Ethics, Formal Op. E-82-13, 57 Wis. Bar Bull. 78-79 (June 1984), and E-84-20, 58 Wis. Bar Bull. 41 (February 1985). Accordingly, we conclude that this practice ethically may include matters for which a FCC other than the spouse has or had responsibility.

3. Regarding the representation of clients in post-trial proceedings when the FCC spouse exercised some responsibility in the underlying proceedings, we believe that the answer is less clear than those to the previous questions. Such representation is not *per se* prohibited by either statutory or disciplinary rules. Yet, it could raise questions in an opposing party's or another's mind concerning the integrity of the legal system and profession. *See, e.g.*, SCR 20.48 and 20.49(3). A lawyer must keep in mind the continuing duty to represent his or her client zealously and should always exercise independent professional judgment on behalf of a client. *See* SCR 20.35 and 20.23. The committee concludes, with these things in mind, that you may accept such representation.