
**E-88-2 Successive private practice and
government employment and related
lawyers**

Facts

Lawyer X practices law with his uncle, Y, and his uncle's son-in-law, Z. The share office space, letterhead and secretarial staff, consult with one another and refer cases among themselves. But they do not share income and they are not employees of one another. Z is a part-time municipal judge for a municipality adjacent to city A and often acts as a substitute municipal judge for city A. X plans to terminate his private practice and become assistant city attorney for city A, primarily handling ordinance violations, X expects to continue to receive some income from his private practice during the course of its termination. These attorney's fees will be processed by his former firm and forwarded in full to him. The former firm will provide X with such secretarial support as he may need during the termination of his practice. And X, Y and Z and their families will continue to socialize at least on a weekly basis.

Questions

1. May X as assistant city attorney for city A appear before Z while Z is sitting as municipal judge for city A?
2. May X prosecute former clients of his former firm:
 - a. Whom he personally represented in matters unrelated to the prosecutions?
 - b. With whom he had no contact while practicing with the firm?
3. May X act as prosecutor when Y or Z is defense counsel?

Opinion

Question number 1 is answered in the negative. SCR 60.03 would require Z to recuse himself when X appeared as counsel. And SCR 20:8.4(d) and (e)

would render X's appearance before Z at best questionable and at worst prohibited conduct.

Question number 2A must be answered by X on a case-by-case basis with reference to SCR 20:1.9(b), since the premise of the question is that the matters are unrelated. The answer will depend whether X acquired information in the prior representation, which is not generally known and which could be used to the disadvantage of the former client in the prosecution. *See generally* Committee on Professional Ethics Formal Ops. E-85-8 and E-85-9 (1985).

Question number 2b should be answered in the affirmative. *See* SCR 20:1.11(c)(1).

Question number 3 is answered "Yes, but ..." SCR 20:1.8(1) does not prohibit the proposed representation nor does it require informed consent of the clients to it. However, SCR 20:8.4(d) may alone or in conjunction with any applicable code of ethics for governmental employees render such representation at a minimum inadvisable to the extent that the public may perceive some advantages accruing to the benefit of Y and Z when appearing against their relative. *See also* generally Committee on Professional Ethics Formal Op. E-85-2 (1985); and sections 19.45 and 19.46, Wis. Stats. (1985-86) relating to standards of conduct for public officials. In view of the close business and social relationship among X, Y and Z, X should consult with his or her superiors and obtain their express consent to the kind of representation in question. *See* SCR 20:1.7(b).

Caveat

The committee expresses no opinion on the office sharing arrangement described herein. However, lawyers engaged in office-sharing practices should be aware of: SCR 20:1.6(a) and 20:7.5(d); Committee on Professional Ethics Formal Op. E-86-2; and Kaap, *Ethics and Professional Responsibility: A Handbook for Wisconsin Lawyers* (ATS-CLE 1986) at section 2.4.