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## Wisconsin Memorandum Ethics Opinion 2/69 B

### Prosecutor as Witness

*Revised February 2, 2021*

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A prosecutor may not appear as an advocate in a case in which the prosecutor is likely to be a necessary witness on a contested material fact. SCR 20:3.7(a). Exceptions to the rule apply for testimony on uncontested matters, testimony concerning the costs of legal services, or when disqualification would be a substantial hardship on the lawyer's client. SCR 20:3.7(a)(1)-(3). A necessary witness is one whose testimony is relevant, material, and unobtainable by other means.

The rule seeks to preserve the distinction between evidence and advocacy and avoid confusing the fact finder. *See Restatement (Third) of the Law Governing Lawyers* §108 cmt. b (2000).

If a prosecutor is disqualified because they are a necessary witness, another prosecutor in the same office may represent the state unless the appearance of the other lawyer would present an unconsentable conflict of interest in violation of SCR 20:1.11(d)(1).