
**Wisconsin Memorandum Ethics Opinion 2/76 A - Conflict of Interest:
District Attorney is sibling of Defense Counsel**

Revised April 13, 2020

Question: May a defense lawyer or members of his firm represent criminal clients in a county where the lawyer's sibling is the elected or appointed district attorney?

Answer: The defense lawyer may represent criminal defendants in the county without a conflict as long as the sibling is not involved personally in the case. The lawyer could oppose the prosecutor sibling in the same case if (1) the lawyer reasonably believed they could provide adequate representation and (2) obtained informed consent in writing from his client. SCR 20:1.7(a)(2), (b)(1) and (4). Other lawyers in the defense lawyer's private firm could represent clients in criminal cases without consent or screening because the defense lawyer's conflict is a "personal interest" conflict and is not imputed to other members of the firm. SCR 20:1.10(a)(1).

The district attorney sibling could appear against the defense lawyer in the same case if (1) the district attorney reasonably believed they could provide adequate representation and (2) could obtain valid informed consent in writing. SCR 20:1.11(d) (1). If there is uncertainty about whether the district attorney could obtain valid consent to the conflict, other prosecutors in the same office could appear opposite the defense lawyer sibling without conflict. The district attorney's conflict would not be imputed to the other prosecutors in the office given that a personal conflict of the district attorney would not be imputed to his staff. SCR 20:1.11(f); 20:1.10(a)(1). The district attorney could not be involved in the matter if another prosecutor handled the case, either directly or indirectly through supervision of the other prosecutor's handling of the matter.