
Wisconsin Memorandum Ethics Opinion 1/71 C Potential conflicts in representing criminal defendants

Revised March 29, 2021

Question:

May a lawyer for a local police association represent criminal defendants at the same time?

Opinion:

The analysis of this question would depend upon whether members of the police association were adverse witnesses in the criminal case.

If adverse police witnesses were members of the police association the lawyer would face a possible personal conflict which could materially limit his representation of the client in the criminal matter. SCR 20:1.7(a)(2). Aggressive confrontation of adverse witnesses against the client may be required as part of competent and diligent representation. 20:1.1, 20:1.3. However, to do so would risk harming the lawyer's relationship with the association and its members. If the lawyer chose to not risk offending the police association members it would deprive the client of competent and diligent representation.

Representation of both clients would require the lawyer to reasonably conclude that adequate representation of both clients was possible and obtain written informed consent from each client. SCR 20:1.7(b)(4). Absent consent, the lawyer would have to decline representation of the criminal defendant, or, if already involved in the case, to withdraw.

On the other hand, representation of a police association alone is insufficient to create a conflict in any criminal case simply because the lawyer may be required, as part of representation of a defendant, to aggressively examine a police officer from an agency unconnected to the police association.