
Wisconsin Memorandum Ethics Opinion 9/77 C
Representation of criminal defendant when partner's spouse is
prosecutor

Revised February 24, 2021

Conflicts arising from a lawyer's relationship to opposing counsel are addressed by SCR 20:1.7, ABA cmt. [11];

When lawyers representing different clients in the same matter or in substantially related matters are closely related by blood or marriage, there may be a significant risk that client confidences will be revealed and that the lawyer's family relationship will interfere with both loyalty and independent professional judgment. As a result, each client is entitled to know of the existence and implications of the relationship between the lawyers before the lawyer agrees to undertake the representation. Thus, a lawyer related to another lawyer, e.g., as parent, child, sibling or spouse, ordinarily may not represent a client in a matter where that lawyer is representing another party, unless each client gives informed consent. The disqualification arising from a close family relationship is personal and ordinarily is not imputed to members of firms with whom the lawyers are associated. See Rule 1.10

See also *Restatement (Third) of the Law Governing Lawyers* §123 cmt. g (2000).¹

Therefore, if defense counsel and a prosecutor are married, both would have a conflict under SCR 20:1.7(a)(2) if they were involved on opposite sides of the same matter. This conflict, however, is personal to the married lawyers and not imputed to other lawyers in the respective firms, so the conflict would be cured if the matter were transferred to another lawyer in either defense counsel's firm or the prosecutor's office. Both could also seek the written and signed informed consent to the conflict from their respective clients. Whether a prosecutor may obtain the written and signed informed consent of the prosecutor's client to a conflict is a question of law outside the disciplinary rules. See Wis. Formal Ethics Op. EF-11-02(2011).

¹ For an extensive discussion of conflicts arising from a lawyer's relationship with opposing counsel, see ABA Formal Ethics Op. 494 (2020).