



# Committee on Professional Ethics

Opinion #378 - 3/26/75 (8-75)

Topic: Representation of defendants in criminal cases when spouse is probation officer.

Digest: Not improper per se for attorney to represent defendants in criminal cases when spouse is probation officer if appearance of propriety is preserved.

Code: Canon 9;  
DR 9-101(C)

## QUESTION

May an attorney represent defendants in criminal cases in the county in which the attorney's spouse is employed as a probation officer?

## OPINION

At the time an attorney is retained to represent a defendant in a criminal case a probation officer is not generally involved. Such involvement may never come into existence; the client may be acquitted, the case may be assigned to another person in the probation office, the spouse may not be so employed at the time of the probation report, or a new question may be presented which would be based on future facts not presently determinable.

There would be no conflict of interest or appearance of impropriety per se in the questioned representation prior to the necessity for a probation report. The attorney should be careful to guard against any intimation that there could be any advantage to the client because of the spousal relationship. N.Y. State 368 (1974); DR 9-101(C). However, because of the inseparable intimate relationship and economic interests of husband and wife, N.Y. State 340 (1974), an appearance of impropriety in violation of Canon 9 arises when defense counsel and a probation officer who are spouses are involved in the same criminal proceeding or subsequently acts as the probation officer to which the defendant must report.

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