



Committee on Professional Ethics

Opinion #409 - 8/28/75 (69-75)

Topic: Conflict of interests;
Lawyer spouses as assistant
district attorney and
assistant public defender.

Digest: Not improper per se for a
spouse of an assistant
district attorney to be
employed in the same county
as a part-time assistant
public defender.

Code: Canon 9;
EC 5-2;
DR 4-101; 9-101(C)

QUESTION

May the spouse of an assistant district attorney be employed in the same county as a part-time assistant public defender?

OPINION

The problem of husband and wife lawyers in the same community with potentially conflicting interests has been arising with greater frequency since women are entering the profession in increasing numbers and many are married to lawyers. An illuminating discussion of husband and wife lawyers is presented in Proposed ABA Formal Opinion 340, ABA Journal (May 1975). It states, inter alia, that it should not be assumed that a lawyer whose husband or wife is a lawyer, will not obey all disciplinary rules, and thus it should not be assumed that the assistant public defender will disclose confidences or secrets of the accused to his or her spouse contrary to the provisions of DR 4-101.

It was held in N.Y. State 368 (1974), that it was not per se improper for a lawyer to represent a client against the county where the lawyer's spouse was employed in the county attorney's office. The opinion cautioned, however, that "the attorney must take special care not to accept employment which might give rise to any suspicion that his client might be able to gain advantage by reason of the spousal relationship in violation of Canon 9 or DR 9-101(C). Such an appearance of impropriety would be more likely where the attorney's spouse is the county attorney or indirectly responsible for handling or supervising the county's case." The opinion further stated that the husband and wife should not appear on opposite sides of the same matter.

Thus an assistant district attorney may prosecute in the same or different courts, in which an assistant public defender spouse represents those accused of crimes. However, since prosecution of an accused by the assistant district attorney places the accused's freedom at stake, it would present an appearance of impropriety and would be improper for an assistant public defender to represent an

accused being prosecuted by his or her spouse. Canon 9.

See also N.Y. State 336 (1974), which held it not per se improper, if the strictures of the Code were observed, for a law firm to represent defendants in criminal actions after a relative of a firm member was elected district attorney for the county in which the firm practices.
