

**LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

ORDER

Pursuant to Rule 2.16 of the Rules of Lawyer Disciplinary Procedure, the Lawyer Disciplinary Board has the authority to issue Legal Ethics Opinions. Based upon recommendations made by the Opinion Review Committee of the Lawyer Disciplinary Board, the following previously issued Legal Ethics Opinions issued by the Lawyer Disciplinary Board are hereby vacated:

1. 90-02 CONFLICTS OF INTEREST FOR WV PROSECUTORS IN CROSS COMPLAINT PROSECUTIONS

Opinion deals with when citizens could institute criminal warrants and investigations in Magistrate Court. This was changed by Rule 3 of the Magistrate Rules for Criminal Procedure which requires that all criminal complaints be presented to the Magistrate Court by a prosecuting attorney or law enforcement officer showing probable cause.

2. 87-02 LIMITATION OF PRACTICE OF LAWYERS WHO ARE FAMILY LAW MASTERS

Opinion deals with whether attorneys appointed as Family Law Masters may also have a private domestic relations practice. This system was superseded by the Family Court Division, W.Va. Code § 51-2A-1, et seq. The statute further provides "[a] family court judge is not permitted to engage in the outside practice of law and shall devote full time to his or her duties as a judicial officer." W.Va. Code § 51-2A-4(b).

3. 86-2 CHILD ADVOCATES - LIMITATIONS ON PRACTICE

W.Va. Code § 48-18-110 establishes that Child Support Enforcement Attorneys represents the State and does not represent the child or either parent. Furthermore, W.Va. Code § 48A-1-1 et seq. has been repealed.

4. 85-6 CONFLICT OF SPOUSES IN THE CRIMINAL PRACTICE OF LAW

This opinion dealt with law firm members in which the spouse of a prosecutor in

another county are precluded from accepting criminal cases involving that county. The Committee on Legal Ethics declined to issue an opinion and acknowledged that the West Virginia Rules of Professional Conduct were then under consideration by the Supreme Court and felt that Rule 8.1(i) would address the issue.

5. 84-01 DISQUALIFICATION OF PROSECUTING ATTORNEY WHEN ACCUSED IS A FORMER CLIENT

This opinion was applicable when many prosecuting attorneys were still part time employees. If not actual conflict existed, the LEO suggested it was appropriate for the prosecutor to go forward with prosecution. But with the extent of prior representation of the accused by the prosecuting attorney in other prior matters, at a minimum, the appearance of an impropriety would exist if he or she were to proceed in the current prosecution. Opinion is therefore not appropriate today.

6. 80-3 LEGAL ADVERTISING: LAW FIRM SPONSORSHIP OF EDUCATION COURSES

Superseded by Rule 7.2 of the Rules of Professional Conduct.

7. 78-9 REAL ESTATE - EMPLOYMENT OF ATTORNEYS BY PARTIES

This opinion was expanded upon and superseded by LEO 89-01 - Conflicts of Interest in Real Estate Practice.

8. 78-8 LEGAL ADVERTISING - DISTRIBUTING 4-H PAMPHLETS TO CLIENTS

Confusing opinion and covered by current Rules of Professional Conduct.

It is further directed that this Order vacating the above-listed Opinions shall be published in *The West Virginia Lawyer and Bar Blast*.

APPROVED by the Lawyer Disciplinary Board on the 14th day of September, 2012, and **ENTERED** this 24 day of September, 2012.



Charles J. Kaiser, Jr., Chairperson
Lawyer Disciplinary Board