

LEGAL ETHICS OPINION 85-6
Conflict of Spouses in the Criminal Practice Area

(May 1, 1986)

An inquiry has been received asking if the fact that an attorney is an associate of a law firm and is married to a county prosecutor disqualifies all members and associates of that firm from practicing criminal law in the county where the lawyer's spouse is the prosecutor, even though the associate does not practice criminal law in the county where the spouse is prosecutor.

Upon due consideration of this matter, the Committee on Legal Ethics has determined that even though there appears to be no rule in the Code of Professional Responsibility which would forbid acceptance of criminal defense work by the members of the law firm in question, as a matter of ethics, the Committee has determined that other considerations relating to such representation, including full constitutional protection for the defendant and avoidance of reversible error by the State, indicate that some caution be exercised in the answer of the inquiry.

Further, on January 9, 1986, the Board of Governors of The West Virginia State Bar filed for approval by the Supreme Court of Appeals new Rules of Professional Conduct which provide, in Rule 1.8(i), that such matters will be waivable by the defendant when, and if, the Supreme Court of Appeals of West Virginia adopts the Rules of Professional Conduct.

Given this situation, the Committee on Legal Ethics has determined not to issue a comprehensive advisory opinion at the present time, in anticipation of adoption of the Model Rules of Professional Conduct.