

LEGAL ETHICS OPINION 185

REPRESENTATION OF DEFENDANTS
BEFORE CRIMINAL COURTS IN
JURISDICTION WHERE ATTORNEY'S
SPOUSE IS ASSISTANT
COMMONWEALTH'S ATTORNEY.

Subject: Attorney's Representation of Defendants Before the Criminal Courts in a Jurisdiction where the Attorney's Spouse is an Assistant Commonwealth's Attorney.

Inquiry. Attorney's wife is an Assistant Commonwealth's Attorney. She is one of eighteen attorneys in that office and is one of four attorneys who are assigned to the Juvenile Division. The Juvenile Division also has a supervisor attorney and two other attorneys who take some of the overflow from that division. Her practice is primarily in the Juvenile and Domestic Relations Court, but she does handle some cases in the Circuit Court.

The attorney has asked the Committee if he may ethically practice criminal law in Juvenile and Domestic Relations Court, Police Court and/or Circuit Court in the jurisdiction where his wife is an Assistant Commonwealth's Attorney.

Opinion: The Legal Ethics Committee, in Informal Legal Ethics Opinion 412, held that it was improper for an attorney to practice criminal law in the courts of the county where his wife is an Assistant Commonwealth's Attorney, even though she had no part in the prosecution of the husband's cases and full disclosure was made to the defendant. It was the opinion of the Committee that such representation created an appearance of impropriety.

Council is of the opinion that LE Op. 412 does not properly recognize the provision of Canon 5 of the Code of Professional Responsibility, and particularly the provisions of Disciplinary Rule 5-101 [DR:5-101] which permit the disability arising from the presence of real or apparent conflicting interests to be overcome by consent of a lawyer's client after full disclosure of the conflict. Council does not believe, however, that consent after full disclosure standard could be applied to make ethically proper representation of a criminal defendant by an attorney whose spouse is an Assistant Commonwealth's Attorney under circumstances where the spouse has actual contact with the case. Accordingly, assuming full disclosure and consent pursuant to the provisions of Canon 5, Council holds it is ethically permissible for an attorney to practice before the criminal courts of a jurisdiction in which the attorney's spouse is an Assistant Commonwealth's Attorney if the attorney's spouse has not had and does not have any contact with the matter at issue.

Council Opinion
October 31, 1980

Legal Ethics Committee Notes. – Rule 1.8(i) now allows related lawyers to be directly adverse to one another if the clients consent.

Editor's Notes. – L E Op. No. 412 has been withdrawn by the Legal Ethics Committee.