

Committee Opinion  
November 24, 1987

LEGAL ETHICS OPINION 1008

COMMONWEALTH'S ATTORNEY –  
PERSONAL INTERESTS AFFECTING  
PROFESSIONAL JUDGMENT.

You advise that your firm recently reached an agreement whereby the assistant Commonwealth's attorney in your area will join your firm effective January, 1988. At the present time, the assistant Commonwealth's attorney handles many criminal cases in general district and circuit court while you handle criminal work in the other two courtrooms.

You wish to know whether or not it is proper for you to continue to defend cases which the assistant Commonwealth's attorney prosecutes between now and the beginning of 1988.

We feel that Disciplinary Rule 5-101(A) controls this situation. Disciplinary Rule 5-101(A) [ DR:5-101] states that "a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances."

The Committee, therefore, opines that you must disclose to clients in whose cases the assistant Commonwealth's attorney will be associated the fact that the assistant Commonwealth's attorney has accepted future employment with your office. Consent of the client must be received before you may represent him/her.

It is our feeling that the same conflict exists from the assistant Commonwealth's attorney's perspective as it applies under DR:5-101(A). Since the Commonwealth's attorney represents the public and the defendant's rights could be affected, we suggest that the relationship between you and the assistant Commonwealth's attorney ought to be disclosed to the court and that consent of all parties should be reflected on the record.

In addition, we believe that a very strong ethical consideration ought to be examined in this case by the Commonwealth's attorney in allowing the assistant Commonwealth's attorney to represent the public in any matter in which you or your law firm is involved. We refer you specifically to Ethical Consideration 9-2 [ EC:9-2].

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**Legal Ethics Committee Notes.** – Rule 1.11 allows a law firm to avoid disqualification in certain circumstances if it screens the former government lawyer.