

You advise that you have been asked to represent a man you previously represented on a charge of driving while intoxicated in an uncontested divorce action against his wife. While asking the man questions about the facts of the marriage you realized that you currently represent the wife in a criminal matter.

You wish to know if you may represent the husband in the divorce matter against the wife who you currently represent on a criminal matter. If it is not permissible for you to represent the husband in the divorce action, you wish to know whether you may represent the wife in the divorce action when you have had a conversation and learned information from the husband regarding the divorce.

With regard to your first question, in LE Op. 241, the Committee opined that “it is improper for a firm or an individual attorney to represent a client at the same time they are suing that client regardless of whether or not the matters are the same or substantially related.” The Committee therefore opines that it would be improper for you to represent the husband in a divorce action, even an uncontested divorce, against the wife when you represent the wife in an unrelated criminal matter. (See DR:5-105.)

You have also asked whether you can represent the wife in the domestic case, having discussed the matter with the husband. In LE Op. 337, the Committee opined that “It is improper for an attorney to represent a wife in a domestic matter when two years prior the attorney had conferred with husband with regard to legal advice concerning a separation from his wife.” (See DR:4-101(B), DR:5-105(D) and LE Op. 227 and LE Op. 452.)

In this instance, the Committee opines that it would be improper for you to represent the wife in the divorce matter when you previously conferred with the husband with regard to the divorce.

Committee Opinion January 5, 1988