

You advise that you have been elected Commonwealth's attorney, a part-time position, effective January 1, 1988. You will also continue with your civil practice. You have learned that a contract exists between the Commonwealth's attorney's office and the Department of Social Services for collections of overpayments on welfare, food stamps and similar programs. The office of the Commonwealth's attorney is also responsible for the prosecution of criminal cases of welfare fraud as they are presented by the Department of Social Services.

You wish to know whether or not this situation is improper.

Since the office of the Commonwealth's attorney represents the same client (the Department of Social Services) in both civil and criminal matters, this situation presents no Canon 4 or Canon 5 violations. The Commonwealth's attorney must, however, be extremely careful to avoid any violation of DR:7-104. DR:7-104 states that "a lawyer shall not present criminal or disciplinary charges solely to obtain an advantage in a civil matter."

The Committee also refers you to LE Op. 731. That opinion states, in part, that "the criminal prosecution by a part-time Commonwealth's attorney of a civil client's husband might well suggest to the public some inappropriate conduct in the public office. Accordingly, while there is no provision of the Virginia Code of Professional Responsibility which per se disqualifies a part-time Commonwealth's attorney from the criminal prosecution, the provisions of DR:9-101 and Ethical Consideration 9-2 merit consideration and exercise of sound judgment by the part-time Commonwealth's attorney." (See also EC:8-10)

Committee Opinion
January 7, 1988