

COMMONWEALTH'S ATTORNEY –
APPEARANCE OF IMPROPRIETY IN
REPRESENTATION OF DECEDENT'S
FAMILY IN WRONGFUL DEATH
ACTION HAVING PREVIOUSLY
PROSECUTED THE RECKLESS
DRIVING CHARGES AGAINST THE
DEFENDANT.

You advise that Attorney A was employed by a decedent's family to bring a wrongful death action against D. The Commonwealth's attorney in that jurisdiction unsuccessfully sought the issuance of a reckless driving warrant against D. Subsequently, A associated the Commonwealth's attorney for the purpose of trying the wrongful death action in the circuit court of the county for which he is Commonwealth's attorney.

You wish to know whether the Commonwealth's attorney may ethically represent the plaintiff under these circumstances.

Discipline Rule 9-101(B) [DR:9-101] provides that an attorney shall not accept private employment in a matter in which he had substantial responsibility as a public employee. Although no formal charges were brought against the defendant, the Commonwealth's attorney pursued a course of conduct within the scope of his duties which could have resulted in a criminal indictment. Therefore, the Committee opines that it would be improper for the Commonwealth's attorney under these circumstances to represent the plaintiff.

See also LE Op. 1012, LE Op. 942, LE Op. 702 and LE Op. 285.

Committee Opinion
July 13, 1988