

The basis facts of your inquiry are as follows:

1. Husband and wife practice law together in a law firm;
2. Wife is a member of the County Board of Zoning Appeals;
3. Husband occasionally represents clients before the Board of Zoning Appeals (three or four times yearly); and
4. Wife disqualifies herself on the record and does not discuss husband's cases with other members of the Board of Zoning Appeals.

You have further inquired about a particular occasion on which wife did discuss a client's matter with a member of the staff, the Zoning Administrator of the county, related to the need to file an application for a variance.

With respect to the first inquiry, whether husband may continue to represent clients before the Board of Zoning Appeals even though wife is a non-participating member of the Board, it is the opinion of the Committee that husband's representation before the County Board of Zoning Appeals under such circumstances is not *per se* a violation of the Virginia Code of Professional Responsibility. However, the potential for the appearance of an impropriety is significant and should be scrupulously guarded against.

Disciplinary Rule 9-101(C) [DR:9-101] of the Virginia Code of Professional Responsibility prohibits a lawyer from stating or implying the ability to influence improperly a tribunal, legislative body or public official. This disciplinary rule does not require disqualification of a law firm simply because of a personal relationship with one of the members of a public governing body.

Disciplinary Rule 8-101 [DR:8-101] also addresses the duties of a lawyer who holds public office. This does not prohibit a wife from participating as a member of the County Board of Zoning Appeals on matters unrelated to the interest of her clients or those of her husband and law firm.

Furthermore, DR:5-101(A) prohibits a lawyer from accepting employment if his professional judgment on behalf of his client may be affected by his own financial, business, property or personal interests except with his client's consent after full and adequate disclosure. Therefore, the Committee believes that husband's clients should be informed of the relationship and consent to proceed should be obtained prior to proceeding before the Zoning Board.

With respect to the question concerning the single occasion on which the wife spoke with a Zoning Administrator, it is the opinion of the Committee, based upon the facts presented, that this did not violate the standards of the Code of Professional Responsibility. However, the wife should refrain from any further contacts of a similar nature in an effort to avoid even the appearance of impropriety, in accordance with DR:9-101.

Committee Opinion  
November 16, 1988

**Legal Ethics Committee Notes.** – This opinion is overruled to the extent that it conflicts with L E Op. No. 1718.

