

Committee Opinion
February 8, 1988

LEGAL ETHICS OPINION 1043

CONFLICT OF INTEREST –
COMMONWEALTH'S ATTORNEY.

You have inquired of the Committee as to whether or not you may ethically proceed, as Commonwealth's Attorney, to prosecute a defendant who at one time was a client of your employer in regard to the same matter for which that defendant has been indicted and will be tried.

This case is governed by the opinions rendered by this Committee in LE Op. 993, LE Op. 940, and LE Op. 240, interpreting Canons 4 and 5, DR:5-105(D). See also, *Silver Chrysler Plymouth v. Chrysler Motor Corp.*, 518 F.2d 751 (2d Cir. 1975). If you were not involved with the plaintiff's case, nor if you have any confidential information relative to the case as a result of your earlier employment, then the presumption that you acquired confidential information based on your relationship with the former firm would be rebutted. It would therefore not be a violation of the Canons for you to proceed.

Please be advised that this opinion is advisory only, and is solely based on the facts you have presented and is not binding on any court or tribunal. As a result, a differing opinion may be reached by a trial or an appellate court impressed as much by constitutional limitations as ethical ones. In that sense, in the event the trial of the defendant might be considered at some time to have been prejudiced as a result of your prosecution, it could be imprudent to pursue the prosecution. The Committee directs your attention to Canon 7, and in particular, DR:7-101(A)(3) and (B)(2).

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