

Committee Opinion  
May 2, 1989

LEGAL ETHICS OPINION 1241

APPEARANCE OF IMPROPRIETY-  
COMMONWEALTH'S ATTORNEY:  
LAW FIRM REPRESENTING CLIENT IN  
CIVIL ACTION WHEN  
PARTNER/FORMER ASSISTANT  
COMMONWEALTH'S ATTORNEY  
PROSECUTED JUVENILE PROCEEDING  
ARISING OUT OF THE SAME  
INCIDENT.

You would like to have the Committee consider the propriety of a law firm's representation of a defendant in a civil action where a partner in that firm formerly acted as the prosecutor in the juvenile proceeding against the client arising out of the same accident which forms the basis of the claim being asserted in the current civil action.

The relevant facts surrounding this issue are as follows. The law firm has been retained by an insurance carrier to defend an insured who had been involved in an automobile accident approximately 1-1/2 years earlier. The firm entered an appearance for the insured and began actively pursuing his defense in the civil action. During the course of discovery, it came to the firm's attention that the Assistant Commonwealth's attorney who prosecuted the insured in the juvenile proceedings is an attorney who subsequently joined the firm as a partner several months prior to the firm's accepting the instant matter. The former Assistant Commonwealth's attorney/partner has never taken an active role in the defense of the insured in the civil matter and has no plans to do so.

You have inquired (1) whether it is improper for your firm to continue with the representation of the client under the circumstances described; (2) whether it is possible to cure the impropriety, if any, by obtaining the consent of the parties involved; and (3) if there is an impropriety which can be cured, whose consent is necessary.

The appropriate and controlling rule relative to your inquiry is DR:9-101(B), which provides that a lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

While you have indicated that the partner/former Assistant Commonwealth's attorney has not been involved nor will he become involved in the defense of the civil action in question, the Committee is of the view that the law firm's representation of the defendant in an action arising out of a former criminal proceeding prosecuted by a partner of the firm constitutes the appearance of impropriety. While the Committee believes that neither the law firm nor any of the individual partners has engaged in any unethical conduct, the Committee believes that the firm's continued involvement in the case would be improper because of the need for a heightened sensitivity to public perception regarding the private practice of a former public official. No consent would cure the appearance of impropriety under the general prohibition of DR:9-101(B). (See also LE Op. 702)

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**Legal Ethics Committee Notes.** – Rule 1.11 allows a law firm to avoid disqualification in certain circumstances if it screens the former government lawyer.