

Committee Opinion
October 19, 1989

LEGAL ETHICS OPINION 1291

SPOUSES/LAW PARTNERS:
APPEARANCE BEFORE A TRIBUNAL
UPON WHICH SPOUSE/PARTNER IS A
MEMBER.

You have indicated that in 1988, your opinion was requested by an attorney regarding whether he might practice before your county's Board of Zoning Appeals while his wife, also a lawyer and his law partner, was a member of that body so long as the wife abstained from participating in any matter with which the husband/lawyer was involved before the Board. Your opinion, a copy of which was provided to this Committee, indicated that while the husband's appearance was permissible under the State and Local Government Conflict of Interest Act so long as the wife disqualified herself in the matter, you had concerns about the situation based upon the Code of Professional Responsibility and, in particular, Canon 9 regarding the appearance of professional impropriety.

The Committee is of the view that its earlier issued L E Op. No. 1123 is dispositive of the substantive matter you have raised.

In addition to the substantive matter, however, the Committee is of the opinion that the appropriate and controlling rule to the situation is DR:1-103(A) which requires, in pertinent part, that a lawyer having information indicating that another lawyer has committed a violation of the Disciplinary Rules that raises a substantial question as to that lawyer's fitness to practice law in other respects, shall report such information to the appropriate professional authority. Since it is beyond the purview of this Committee to make a factual determination as to whether or not the conduct you described is violative of the Code of Professional Responsibility, the Committee believes you have a responsibility under DR:1-103(A) to inform the District Committee in your jurisdiction of the matter so that they may make the appropriate factual determination.

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Legal Ethics Committee Notes. – This LEO was presumably overruled by L E Op. No. 1718.