

Committee Opinion
October 1, 1990

Affirmed and Clarified
November 15, 1990

LEGAL ETHICS OPINION 1383

CONFLICTS – CRIMINAL/CIVIL
CLIENTS: CRIMINAL DEFENSE
ATTORNEY REPRESENTING CIVIL
CLIENTS IN MATTER WHEN
COMMONWEALTH'S ATTORNEY IS
NOMINAL PARTY AS TRUSTEE OF
LAND.

You have advised that an attorney who does a fair amount of criminal defense work also represents two clients in a civil matter pending litigation regarding property owned by the clients in a Virginia Land Trust in which the trustee named is an assistant Commonwealth's attorney. Although, as trustee, the Commonwealth's attorney is a named party in the lawsuit together with the town, you have stated that the assistant Commonwealth's attorney has no beneficial interest whatsoever in either the real estate or the litigation in question.

You wish to know whether it is proper for the attorney to continue to represent the clients in the civil lawsuit in which the assistant Commonwealth's attorney is a named adverse party.

The appropriate and controlling disciplinary rules relative to your question are DR:5-101(A) and DR:5-105(A), (B) and (C). Disciplinary Rule 5-101(A) provides that a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client may be affected by his own financial, business, property, or personal interests, except with the consent of his client after full and adequate disclosure under the circumstances. In addition, since the attorney undertakes criminal defense work and, as such, opposes the assistant Commonwealth's attorney from time to time, DR:5-105(A), (B) and (C) would require the attorney to consider whether he should decline or continue employment on behalf of the property owners while continuing to defend clients against the Commonwealth's charges. A lawyer may represent multiple clients if it is obvious that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each (See DR:5-105(C))

Under the facts you have stated, the Committee assumes that the attorney representing the two clients in the civil property matter is not simultaneously representing the assistant Commonwealth's attorney/trustee in the same matter. Assuming that, the Committee is of the opinion that there would no impropriety in continuing to represent the clients since the attorney is neither representing two adverse clients, i.e., the property owners and trustee, nor representing the assistant Commonwealth's attorney simultaneously defending clients against prosecution by the same assistant Commonwealth's attorney. Conversely, the Committee believes that should the attorney be representing the assistant

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Commonwealth's attorney in the property matter, it would be improper for the attorney to continue to defend clients before the prosecutor who is the attorney's client, albeit in unrelated litigation, and similarly improper for the assistant Commonwealth's attorney to prosecute cases where defendants are represented by the same attorney. (See LE Op. 789)