

Committee Opinion
March 15, 1985

LEGAL ETHICS OPINION 673

ATTORNEY SPOUSE OF ASSISTANT
COMMONWEALTH'S ATTORNEY.

Where an attorney ("assistant") is both the spouse and law partner of a private practitioner, and is the sole assistant to a commonwealth's attorney:

I. Criminal and Divorce Cases

The spouse of "assistant" may represent a defendant in criminal proceedings brought by the commonwealth's attorney. The spouse of "assistant" may represent either the plaintiff or defendant in a divorce proceeding where criminal charges brought by the commonwealth's attorney against a spouse constitute the grounds for divorce. The "assistant," however, may not represent the plaintiff spouse in a divorce proceeding where the commonwealth's attorney's charges against the defendant spouse constitute the grounds for the divorce proceeding. Similarly "assistant's" spouse may not represent the plaintiff spouse where the defendant spouse is prosecuted by "assistant."

It is not improper for either the "assistant" or her spouse to represent a party seeking support or child custody where no government agency is a party.

II. Criminal and Traffic

It is not improper for the spouse of "assistant" to handle a personal injury or property damage action arising out of a traffic or other offense (minor or not) so long as it is not prosecuted by the "assistant." If such representation begins before a warrant is issued, the assistant herself should not prosecute the case, felony or not.

III. Criminal and Collection

"Assistant's" spouse may pursue civil collection against a party at the same time that the commonwealth's attorney's office is prosecuting the same party for show cause of nonpayment of fines, costs, or restitution so long as the "assistant" is not prosecuting the action. (EC:9-2)

Conversely, it is improper for the commonwealth's attorney's office to prosecute a party for nonpayment where the "assistant" is pursuing a civil claim of debt against the same party. (EC:9-2) [See EC:9-2, DR:8-101(A)(2), DR:5-101(A), DR:4-101 and LE Op. 358.]

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