
**E-86-18 Public defender elected district attorney:
Disqualification and screening**

Facts

A trial attorney on the state public defender's staff is elected district attorney. The local public defender professional staff, of which he or she was a member, consisted of four attorneys. The district attorney's staff in question includes three assistant district attorneys. The county in which he or she will serve as district attorney is one of those served by his or her former local public defender's office.

Questions

Under what circumstances may:

1. Assistant district attorneys prosecute cases assigned to staff public defenders, other than the district attorney-elect, and about which he or she had no knowledge prior to his or her resignation from the public defender's staff?
2. Assistant district attorneys, when the D.A. assumes his or her office, continue to prosecute cases assigned to him or her about which he or she had actual knowledge prior to his or resignation from the public defender's staff?

Opinion

1. In response to question (1), we have previously held that a district attorney-former public defender would be precluded from acting in any matter which had been received by the public defender's office prior to his or her termination of employment with it. *See* Committee on Professional Ethics Formal Opinion E-80-12 [57 Wis. B. Bull. 68 (June 1984)]. Ordinarily, ethical prohibitions against one lawyer in an office handling a matter would be imputed to the other lawyers in his or her office. *See, e.g.*, SCR 20.28(4); and *Koehring Co. v. Manitowoc Co., Inc.*, 418 F. Supp. 1133 (1976).

But this committee has also previously held that these rules of vicarious disqualifications are "inapplicable to other government lawyers associated with a particular government lawyer who is . . . disqualified by reason of SCR 20.28."

See Committee on Professional Ethics Formal Opinion E-84-9 [57 Wis. B. Bull. 87 (July 1984)]. However, this committee's exception to the rules of vicarious disqualification in E-84-9, *supra*, was contingent on the implementation of effective "screening" measures to insulate the disqualified lawyer from any contact with the case(s) in question. Regarding screening as an alternative to disqualification, *see, e.g., Schiessle v. Stephens*, 717 F.2d 417 (CA 7 1983) and *LaSalle National Bank v. County of Lake*, 703 F.2d 175 (CA 7 1982). We reaffirm our holding in E-84-9, *supra*, as applied to the question presented here adding that for screening measures related to matters in litigation, court approval would be highly advisable. In so holding, this committee does not wish or intend to imply what result a court should reach under any particular facts and circumstances.

2. None. *See, e.g.,* Committee on Professional Ethics Formal Opinion E-86-8, *Ex Parte Spain*, 589 S.W.2d 132 (Tex. Crim. App. 1979) and Annot., 31 A.L.R.3d 953 (1970). *But see U.S. v. Caggiano*, 660 F.2d 184 (CA 6 1981) and *Gajewski v. u.S.*, 321 F.2d 261 (CA 8 1963).