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**E-86-8      District attorney conflict of interest:  
Disqualification of assistant DAs**

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**Facts**

The district attorney's office in his/her county is staffed by the district attorney and one assistant district attorney. Prior to taking office, the district attorney represented various criminal defendants and individuals involved in Chapter 51 commitments and juveniles involved in delinquency petitions or other juvenile court matters. Some of these cases and matters are still pending, requiring prosecution in the district attorney's county.

**Question**

May the assistant district attorney prosecute these cases and matters in which the present district attorney previously represented the defendants, wards and juveniles?

**Opinion**

The Committee on Professional Ethics previously held that an attorney becoming a district attorney under the same circumstances described would be precluded from prosecuting all matters in which he or she once appeared as opposing counsel. See Formal Opinion E-80-12, 57 Wis. Bar Bull. 68 (June 1984). Compare Wis. Stats., section 59.49(4) (1983-84).

In Formal Opinions E-81-5 and E-83-19, 57 Wis. Bar Bull. 72 and 86, respectively, (June 1984), this committee considered issues relating to the appointment of district attorneys *pro tempore*, in pertinent part, those relating to disqualification of such attorneys' partners and associates.

The committee concludes that: (1) the close working relationship between a district attorney and his or her assistants, particularly in a small office; and (2) a district attorney's former substantial or total responsibility for representing persons in matters still pending involving that district attorney's office requires the disqualification of all attorneys in that office in such cases or matters. See SCR 20.28(1) and (4). In Accord Oregon State Bar Legal Ethics Comm. Op. 451

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WISCONSIN ETHICS OPINIONS

(7/80), reported at ABA/BNA Lawyers' Manual on Professional Conduct section 801:7105.