
**E-89-3 Lawyer spouses and imputed
disqualification**

Facts

[A] husband and wife are lawyers. One has been elected district attorney. The other practices with a law firm in the same county that represents criminal defendants.

Question

What ethical restrictions are imposed on the spouses and the law firm when the law firm and district attorney's office are opposing counsel in particular matters?

Opinion

The committee believes that SCR 20:1.8(i) and the comment to that rule provide clear guidance. In Formal Opinion E-88-7, we stated as dicta:

“Regarding possible imputed disqualification of other members of the lawyer's firm based solely on the spousal relationship, the committee points out that even as to lawyer spouses there would be no imputed disqualification. *See Hazard & Hodes, The Law of Lawyering* (1987 Supp.) at 171.”

We reaffirm this statement in E-88-7 in the context of the questions presented now. SCR 20:1.8(i) permits the district attorney to personally prosecute persons defended by partners or associates of the district attorney's spouse. And it permits the district attorney's spouse to represent persons prosecuted by other lawyers associated with the district attorney's office.

Regarding the possibility of the spouses personally appearing as opposing counsel, we believe however, that although SCR 20:1.8(i) permits this with appropriate disclosures and consents, this may not be a prudent practice. The primary problem presumably lies with the district attorney's office and with the state. Who would “appropriately” give consent under these circumstances? This issue obviously is beyond the jurisdiction of this committee to resolve.

In conclusion, we also would remind lawyer spouses and their offices in these circumstances of their responsibilities under SCR 20:1.6 (“Confidentiality of Information”) and SCR 20:5.1 and SCR 20:5.2 (regarding responsibilities of partners and associates to ensure that the rules of conduct are observed by those in a law practice).