

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-206
Issued: January 1979

This opinion was decided under the Code of Professional Responsibility, which was in effect from 1971 to 1990. Lawyers should consult the current version of the Rules of Professional Conduct and Comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question 1: May an attorney employed by a firm or in private practice represent a client where the opposing counsel is employed by the same firm or legal organization as the attorney's spouse?

Answer 1: Yes.

Question 2: May an attorney employed by a firm or in private practice represent a client where the opposing counsel is employed by the same firm or legal organization and the opposing counsel works in the same office that employs the attorney's spouse?

Answer 2: Yes.

References: DR 101(A)(B)(C), 5-101; EC 1, 5-1, 5-2, 9-6; ABA Formal Opinion 340

OPINION

According to ABA Formal Opinion 340,

.... a law firm employing a lawyer whose spouse is a lawyer associated with another local law firm need not fear consistent or mandatory disqualification when the two firms represent opposing interest, yet it is both proper and necessary for the firm always to be sensitive to both the possibility of disqualification and the wishes of its clients. Marriage partners who are lawyers must guard carefully at all times against inadvertent violations of their professional responsibilities arising by reason of their marital relationship.

A lawyer, in the exercise of his/her professional judgment, must be free from influences and loyalties to which he/she may compromise. A lawyer must never allow personal interest or the desires of third persons to affect his/her loyalty to the client (EC 5-1).

Were a lawyer to find himself/herself in a position where personal interests or desires will affect, or within reasonable probability, such interests could adversely affect services given to a client or prospective client, the lawyer must refuse to accept employment (EC 5-2).

DR 5-101 states that a lawyer has an obligation to disclose to his/her client any personal interests which may affect the lawyer's professional judgment. After full disclosure, the final decision to employ or not to employ rests with the client.

The relationship between attorney and client is a sacred one. It is imperative that a lawyer preserve the confidences and secrets of a client acquired within the realm of this professional relationship. A lawyer shall not knowingly ever use a confidence or secret for the advantage of a third person unless the client consents after full disclosure (DR 101(A) and (B)). The only exceptions to this rule are strictly enumerated in DR 101(C).

A husband and wife must guard the attorney/client relationship vigorously. Any personal interest which could adversely affect the advice or services given to a client must be carefully assessed. After full disclosure to the client, if the attorney feels that his/her personal interests would interfere, then the attorney should withdraw from the case.

The fiduciary relationship existing between a lawyer and client necessitates the highest confidence and secrecy. "A client must feel free to discuss whatever he wishes with his lawyer and a lawyer must be equally free to obtain information beyond that volunteered by his client" (EC 1). It follows therefore, that under no circumstances should a husband and wife be opposing counsel in the same case.

In any event, under EC 9-6, both husband and wife must avoid not only "impropriety, but the appearance of impropriety." If the attorney determines that by taking a case, he or she would not inspire the confidence, respect, and trust of his/her client and of the public, then the attorney should withdraw.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.