

Kentucky Bar Association
Ethics Opinion KBA E-386
Issued: September 1995

Since the adoption of the Rules of Professional Conduct in 1990, the Kentucky Supreme Court has adopted various amendments, and made substantial revisions in 2009. For example, this opinion refers to Rule 1.6, which was amended, and Rule 1.8(i), which was deleted, and the substance moved to Comment 11 of amended Rule 1.7. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: May the spouse of a prosecutor practice criminal law in the same jurisdiction as the spouse-prosecutor, so long as the spouses do not appear in the same cases, and so long as the client consents after consultation?

Answer: Yes.

References: Rule 1.8(i); KBA E-305 (1985).

OPINION

In an opinion issued under the Code of Professional Responsibility, we answered this questions “No.” However, this was “reversed” with the adoption of Rule of Professional Conduct 1.8(i). That Rule clearly states that the representation is proper with the consent of the client. The Rule makes it clear that any disqualification (e.g., due to lack of consent) is ordinarily personal and not imputed to the disqualified lawyer’s firm.

The requestor does not propose that the spouses will ever personally appear on “opposite sides of the v.” in the same case, and the Committee need not address such issued as consent by the State.

Lawyers are directed to Rules 1.6 and 1.8(i), which we set forth in their entirety:

Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

(b) A lawyer may reveal such information to the extent the lawyer reasonably believes necessary:

(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or
(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client.

Rule 1.8 Conflict of Interest: Prohibited Transactions

(I) A lawyer related to another lawyer as parent, child, sibling or spouse shall not represent a client in a representation directly adverse to a person who the lawyer knows is represented by the other lawyer except upon consent by the client after consultation regarding the relationship.

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.