

Re: Advisory Opinion 2003-02

Date: June 9, 2003

Subject: Criminal Defense Practice by a Law Partner of a District Judge

Facts: A law firm has among its members a part-time district judge. His jurisdiction, which is primarily criminal, is limited to one county of a four county circuit. The law firm includes a lawyer who wishes to practice criminal defense law in district and circuit courts in the other three counties of the circuit.

Discussion: The Arkansas Rules of Professional Conduct do not specifically cover the relationship of lawyers and part-time judges within a single law firm.

In our opinion 2001-01 we stated that a member of a firm could not represent a client against a municipality when another member of the firm was a part-time attorney for the city. In contrast, here the lawyer does not intend to practice in the county where the law partner presides.

When one member of a law firm is disqualified, that disqualification as a general matter is imputed to the entire law firm. Rule 1.10(a). Likewise, we are aware that the Arkansas Supreme Court has applied the "appearance of impropriety" concept in disqualification matters. However, neither the case law nor the Rule expressly cover the relationship between part-time judges and their law partners.

The closest parallel is Rule 1.11, which governs lateral moves of attorneys between the public and the private sectors. To encourage lawyers to enter the public sector, the Rules specifically provide for a lessened conflict of interest standard. Comment 3. In particular, the Rule permits a screen or a "Chinese Wall". We conclude that the policy behind that rule should apply in this case. Arkansas has a wide spread use of part-time judges, and a corresponding public need for them. The interpretation of the Rules should not be a basis to discourage lawyers from partnering with such judges. However, the concomitant restrictions of Rule 1.11 should also be followed in this case.

Therefore the attorney may handle criminal defense matters in any courts outside the county where the law partner presides, provided:

- 1) Suitable methods of confidentiality are instituted to strictly segregate the criminal defense matters from the law partner judge;
- 2) Fees received from criminal defense matters are not shared with the law partner judge;
- 3) The criminal defendant is informed in writing that the lawyer practices with a judge. The criminal defendant should also be assured of the loyalty of the attorney, the non-interference of the law partner judge, and the wall of separation in place within the firm; and
- 4) The court is duly made aware that the criminal defense attorney practices law with a district judge.

We emphasize that our opinion does not permit the lawyer to handle criminal matters in the same

county where the law partner presides as judge. Such a close connection does not permit proper screening and does suggest to a reasonable person or lawyer the appearance of impropriety.

Conclusion: In accord with the guidelines stated, the law partner of a part-time district judge may handle criminal matters outside the county where the district judge presides.

NOTICE

"This is an opinion only of the Arkansas Bar Association which is a voluntary association of attorneys licensed to practice in the State of Arkansas, and reliance thereon is voluntary and relieves any Association member from liability for the content hereof. This opinion is intended to be the Association's best interpretation of the Model Rules of Professional Conduct as promulgated by the Supreme Court of Arkansas as that code applies to the written facts presented to the Committee."

ARKANSAS BAR ASSOCIATION

By: _____

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Reporter
Professional Ethics Committee