

ETHICS ADVISORY PANEL  
Opinion 92-56, Request #279  
Issued August 12, 1992

An attorney seeks Panel advice as to whether a conflict of interest exists. The attorney-wife, is a chief hearing officer for the State of Rhode Island. Her duties include designating case assignments to hearing officers for a Rhode Island State agency. The attorney-husband is in private practice. It is asked whether a conflict of interest would exist if the attorney-husband appeared before other hearing officers within the attorney-wife's division. The attorneys state in the letter that the wife would sua sponte recuse herself in any matter with her husband.

The Panel agrees that Rule 1.8(i), "Conflict of Interest: Prohibited Transactions" addresses this issue. The rule states that:

A lawyer shall not represent a client in any matter where the lawyer knows that the lawyer's parent, child, sibling or spouse is the lawyer representing an adverse party to the transaction except upon consent by the client after consultation regarding this relationship.

The comments to the Rule state that "the disqualification stated in paragraph (i) is personal and is not imputed to members of firms with whom the lawyers are associated."

In addition, Rule 8.4(e) and (f) are equally applicable to this inquiry. The Rule states that:

It is professional misconduct for a lawyer to:

(e) state or imply an ability to influence improperly a government agency or official; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

The Panel believes that the attorney-wife should take great caution to insulate and recuse herself from any situation where the attorney-husband is involved. As the comments state, the disqualification applies only to the attorney-wife and not to the office as a whole. The husband may appear before another hearing officer so long as the wife completely recuses herself from the matter. The Panel believes that the attorney-wife must at all times comply with the Rules of Professional Conduct whether or not she is acting in a judicial or counselor capacity. It is generally recognized that attorneys are subject to discipline for improper conduct in connection with business activities, personal activities and activities as a judicial, governmental or public official. See, ABA Formal Opinion #336 (6/3/74). It is well settled that an attorney is bound by applicable rules of professional conduct whether or not he or she is acting in a professional capacity. See, Ethics Advisory Opinion 90-22.