Final

ETHICS ADVISORY PANEL
OPINION 95-59, - REQUEST # 630
ISSUED - FEBRUARY 8, 1996

FACTS :

The inquiring attorney is a Town Solicitor whose function is to prosecute criminal cases for the town in the District Court. He/she is an associate in a law firm which has a domestic relations practice. From time to time clients of the firm in domestic relations matters become victims of domestic assault by their spouses, who are then prosecuted by the town on criminal assault charges. Other spouses of clients are, from time to time, charged with felonies which are to be tried in the Superior Court by the Attorney General's Office.

ISSUES PRESENTED:

1.) May the inquiring attorney, representing the town, prosecute a matter against the spouse of a criminal defendant in the District Court?

(a.) No.

2.) Where the criminal charge is to be tried by the Attorney General's office in the Superior Court, may the inquiring attorney's law firm continue to represent the spouse of the criminal defendant in the domestic case?

(a) Yes, so long as the attorney reasonably believes the representation will not adversely affect the attorney's relationship with the client spouse or both parties consent after consultation.

REASONING:

Rule 1.11(a) **"Successive Government and Private Employment"** states in part:

> "(a) Except as law may otherwise expressly permit, a lawyer shall not represent a private client in connection with a matter in which the lawyer participated as a public officer or employee. No lawyer in a firm with which that lawyer is associated may knowingly undertake or continue representation in such a matter. . . ."

Rule 1.11, literally, addresses only successive employment, however, the Panel believes its rationale is equally applicable to concurrent employment. If the representation would be unacceptable after one has left government employment, then it follows that one may not represent the client while currently employed in a part-time capacity with the government.

In addition, Rule 1.10 entitled **"Imputed Disqualification: General Rule"** applies to this situation and states in pertinent part that (in general):

> while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so.

Finally, Rule 1.7 entitled **"Conflict of Interest: General Rule"** states the following:

> (a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:
>
> > (1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and
> >
> > (2) each client consents after consultation.

Depending upon the fact situation in each case, Rule 1.7 may apply. The interests of the town and the spouse of a criminal defendant could be directly adverse to each other and the resulting conflict make continued representation of the spouse in District Court improper unless consented to by the town and the spouse after consultation.