

# *The Supreme Court of Ohio*

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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## **OPINION 88-15**

Issued June 17, 1988

*Withdrawn by Adv. Op. 2022-04*

*[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]*

**SYLLABUS:** A former county public defender, now serving as county prosecutor, may ethically appoint one of his or her assistants as special prosecutor to handle those cases which were pending before the public defender's office at the time he or she served as county public defender. In order to avoid any appearance of impropriety, the county prosecutor should not be involved in any aspect of the cases assigned to the special prosecutor.

**OPINION:** We have before us your request for our opinion regarding your duties as county prosecutor. You inquire whether you may ethically appoint your assistant as special prosecutor to handle cases that were pending before the public defenders office while you served as county public defender. You wish to avoid any possible conflicts or the appearance of impropriety.

Although there are no provisions in the Code of Professional Responsibility that specifically apply to your request, Canon 9 recommends that lawyers should avoid even the appearance of professional impropriety. It is our opinion that appointing your assistant to prosecute those cases which were pending before the public defender's office while you served as public defender is an ethical way in which to handle the situation and thereby avoid any appearance of impropriety.

The ABA has held that DR 5-105(D), which imputes a lawyer's disqualification to other members of his or her law firm, is inapplicable to government lawyers. ABA Comm. on Ethics and Professional Responsibility, Formal Op. 342 (1975). However, the ABA opinion also states that:

[a]lthough vicarious disqualification of a government department is not necessary or wise, the individual lawyer should be screened from any direct or indirect participation in the matter, and discussion with his colleagues concerning relevant transactions or set of transactions is prohibited by those rules. Id.

Therefore, once you have appointed a special prosecutor, your paramount concern should be divorcing yourself from any hint of participation in the affected cases.

In conclusion, it is our opinion and you are so advised that by appointing your assistant to assume the duty of prosecuting cases that were pending in the public defender's office while you served as county public defender, it appears that you have resolved any conflicts of interest or appearance of impropriety. However, we recommend that you screen yourself from any participation in the particular cases.

**This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.**