

ETHICS OPINION

RO-95-10

QUESTION:

"I have recently passed the July 1995 bar exam and have taken a position as an Assistant District Attorney in B ██████ County Alabama. My older brother, M ██████ ██████, who is also an attorney, does a lot of criminal defense work in the circuit in which I am a prosecutor. Due to the heavy caseload and number of cases that come through the District Attorney's office it is inevitable that at sometime or another we would be on opposite sides of the same case. For this reason I would like to make a request for a formal opinion.

My question is: Is there a conflict of interest, an ethical issue or any violation of the rules of professional responsibility for me as a prosecutor to try a case or negotiate a plea agreement at the juvenile, district, or circuit level when counsel for the defendant is the prosecutor's sibling?"

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ANSWER:

You may represent the State as prosecutor in criminal cases defended by your brother only if both the District Attorney's Office and your brother's client(s) give their informed consent to such representation.

DISCUSSION:

Rule 1.8(1) of the Rules of Professional Conduct provide as follows:

"Rule 1.8 Conflict of Interest
Prohibited Transactions

- (1) 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."

Pursuant to the above-quoted rule, you may not prosecute cases in which your brother is defense counsel unless all the parties to the proceeding give their informed consent. Please note that the consent, particularly the consent of your brother's clients, may be obtained only "after consultation regarding the relationship". Therefore, your brother should make a concerted effort to insure that his clients fully understand his relationship to you and the implications or ramifications this relationship may have for the

clients' effective defense. If such consent is obtained, the Rules of Professional Conduct allow you to prosecute cases defended by your brother. However, because these circumstances are so fraught with the potential for conflict, it is the recommendation of the Disciplinary Commission that every effort should be made to avoid placing yourself in this situation. Where at all possible it would be preferable for another member of the District Attorney's staff to prosecute cases defended by your brother.

LCK/vf

11/28/95