

State Bar of South Dakota

Ethics Opinion 97-8

October 29, 1997

- **Rule 1.7(b)**
- **Subject: Conflict of interest; Office employees and law enforcement personnel**
- **Summary: Attorney must have "reasonable belief" that her representation of client will not be adversely affected, where secretary's spouse is an adverse witness. Client must also consent after consultation.**

FACTS

You are an attorney whose secretary is married to a law enforcement officer. You are defending a client accused of serious offenses. You have been advised that the prosecutor intends to call your secretary's husband as a witness in the criminal trial to testify to alleged admissions against interests by your client.

You ask whether you may continue to represent the accused defendant and whether your future representation of criminal defendants is jeopardized if your secretary's husband is involved in the investigation.

OPINION

SDCL 16-18 Appx. Rule 1.7(b), in pertinent part, states:

A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to ... a third person, or by the lawyer's own interests, unless

- 1) the lawyer reasonably believes the representation will not be adversely affected; and
- 2) the client consents after consultation

It is the opinion of the Committee that you are not necessarily precluded from either your present representation or future representations of criminal defendants, solely because your secretary's husband is involved in the prosecution. However, on a case-by-case basis, you must reasonably believe the representation would not be adversely affected by the fact of the secretary's husband's involvement. The Comments suggest that such reasonable belief exists only if the fact of the husband's involvement does not "materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." Rule 1.7, Comment; Loyalty to a Client.

Assuming that reasonable belief exists, Rule 1.7(b)(2) still requires that the client consent "after consultation." As to this client, and any future cases involving the secretary's husband, you may proceed only after an evaluation and determination of reasonable belief and with the informed consent of the client or prospective client.

Assuming you proceed with this or a future similar representation, you should review and comply with Rule 5.3. Responsibilities Regarding Non-lawyer Assistants. Specifically, you must "make reasonable efforts to ensure that [your secretary's] conduct is compatible with the professional obligations of the lawyer...." Rule 5.3(b).

Lonnie R. Braun
Chair, Ethics Committee
State Bar of South Dakota