THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS

Proposed Opinion PO 2026-1

Posted for Public Comment October 21, 2026

QUESTIONS PRESENTED

1. Does a lawyer violate the Texas Disciplinary Rules of Professional Conduct regarding conflicts of interest by taking a job as a part-time prosecutor in a district attorney's office while also representing a private client who is being prosecuted by other lawyers in the same district attorney's office?

2. Under what circumstances may the other lawyers in the district attorney's office prosecute a defendant who is currently or was formerly represented by the part-time prosecutor?

STATEMENT OF FACTS

Husband and Wife are in an active, contested divorce proceeding in Texas state court. Lawyer A represents Husband. During the divorce proceeding, Husband and Wife are involved in a domestic altercation for which Husband is arrested and criminally charged. Lawyer A also represents Husband in the criminal case.

While both the divorce and criminal cases are pending, Lawyer A takes on a job as a part-time prosecutor with the district attorney's office in the county where both cases are pending. This Opinion assumes that a Texas lawyer is permitted to maintain a private law practice while serving as a part-time prosecutor, though that is ultimately a question of substantive law outside the Committee's purview. *See, e.g.*, Tex. Att'y Gen. Op. KP-0400, at *1-2 (2022); TEX. GOV'T CODE § 41.011; *see also* Margaret Raymond, *The Other Half: Challenges of the Part-Time Rural Prosecutor*, 69 S.D. L. REV. 504, 506 (2024) (recognizing that many states allow for such arrangements but that the practice "raises complex ethical and legal concerns").

Upon joining the district attorney's office, Lawyer A does not immediately withdraw from representing Husband in either the divorce or criminal proceeding.

DISCUSSION

This Opinion raises several questions about the application of the Texas Disciplinary Rules of Professional Conduct when a lawyer seeks to maintain a private law practice while at the same time serving as a part-time prosecutor.

PROPOSED OPINION

Lawyer A must withdraw from representing Husband in the criminal case.

Lawyer A may not continue representing Husband in the criminal case while working, even part-time, for the same district attorney's office prosecuting Husband.

Rule 1.06(a) says that "[a] lawyer shall not represent opposing parties to the same litigation." So, there is no question that Lawyer A would not be permitted to represent the State in prosecuting Husband, even if Lawyer A withdraws from representing him. *See also* Rule 1.11(e) ("a lawyer serving as a public officer or employee shall not: (1) participate in a matter involving a private client when the lawyer had represented that client in the same matter while in private practice"); TEX. CODE CRIM. PROC. art. 2A.105(a) ("A district attorney may not represent the state in a criminal case in which the attorney has been, before the attorney's election, employed adversely to the state.").

But Lawyer A may not continue representing Husband even if others in the office handle the prosecution. Rule 1.06(b) provides, with certain exceptions, that a lawyer shall not represent a person if the representation of that person: (1) involves a substantially related matter in which that person's interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm, or (2) reasonably appears to be or become adversely limited by the lawyer's or law firm's responsibilities to another client or to a third person or by the lawyer's or law firm's own interests.

Lawyer A's continued representation of Husband would violate both prongs of Rule 1.06(b). The criminal case is a substantially related matter in which Husband's interests are materially and directly adverse to the interests of the State, "another client of the lawyer" (in the role as part-time prosecutor). *See* Rule 1.06(b)(1). And Lawyer A's representation of Husband would reasonably appear to be limited by the lawyer's own interests and loyalties to colleagues in the district attorney's office. *See* Rule 1.06(b)(2); Professional Ethics Committee Opinion 497 (August 1994) (city commissioner's representation of defendants in cases "in which employees of the city are involved creates a conflict between the client's interests and city's interests as well as the attorney's own interests"). Though conflicts under Rule 1.06(b) may be waived under certain circumstances, waiver is not available here—including because Lawyer A's representation of Husband is independently prohibited by the imputed Rule 1.06(a) conflict discussed in the next section.

Authorities across the country have similarly concluded that part-time prosecutors may not represent criminal defendants in the counties where they work as prosecutors, though the specific approaches vary. *See, e.g.*, Ohio Board of Commissioners on Grievances and Discipline, Opinion 14-002 (2014); Az. Committee on the Rules of Professional Conduct, Opinion 87-20 (1987); *see also* Raymond, *supra*, at 516-20 (noting various approaches in other states).

PROPOSED OPINION

No other lawyer in the district attorney's office may prosecute Husband until Lawyer A has withdrawn from the representation of Husband in the criminal case.

For as long as Lawyer A continues to represent Husband in the criminal case, the other lawyers in the district attorney's office may not prosecute him either. As noted, Rule 1.06(a) bars a lawyer from representing opposing parties in the same litigation. And Rule 1.06(f) says "[i]f a lawyer would be prohibited by this Rule from engaging in particular conduct, no other lawyer while a member or associated with that lawyer's firm may engage in that conduct." *See also* Rule 1.10(a) (Imputation of Conflicts: General Rule).

The Terminology section of the Rules defines "Firm" to include "a lawyer or lawyers employed in the legal department of a corporation, legal services organization . . . or in a unit of government." A district attorney's office is thus a firm under the Rules. *See also* Professional Ethics Committee Opinion 24-5 (____ 2026). And Lawyer A is at least associated with the district attorney's office for purposes of the Rules, despite serving on a part-time basis. *See* Professional Ethics Committee Opinion 577 (March 2007) (providing factors for when a lawyer is considered to be "in" a law firm and including contract lawyers and part-time lawyers). So, because Lawyer A may not prosecute Husband—and certainly not while also representing him—the other prosecutors may not prosecute Husband while Lawyer A still represents him.

For this analysis, the Committee has applied the general conflict and imputation standards of Rules 1.06 and 1.10, rather than the rules for successive government employment in Rule 1.11. That is because the Committee reads the relevant prohibition in Rule 1.11(e) to speak only to situations where a government lawyer *formerly* represented the client in private practice ("had represented," in the language of the Rule); it says nothing about the unique scenario in which a government lawyer *currently* represents the client. So, rather than presuming the Rules have nothing to say about this scenario, the Committee concludes that the general conflict rules continue to apply—meaning Lawyer A may not prosecute Husband while also representing him and, for as long as that is true, Lawyer A's conflict is imputed to all other lawyers in the district attorney's office under Rule 1.06(f).

Once Lawyer A withdraws from representing Husband in the criminal case, other lawyers in the district attorney's office may prosecute Husband with certain protective measures.

Once Lawyer A withdraws from representing Husband in the criminal case, Husband becomes a former client, and Rule 1.11(e) governs. Although Rule 1.11(e) prohibits Lawyer A from prosecuting a former client in the same matter, other lawyers in the district attorney's office may be permitted to continue prosecuting Husband in the criminal case, with certain protective measures. Comment 9 to Rule 1.11 provides that subsection (e) "does not disqualify other lawyers in the agency in which the lawyer in question has become associated." Thus, the other lawyers in the district attorney's office may presumptively continue prosecuting the criminal case against Husband.

PROPOSED OPINION

Comment 9 says that "[a]lthough the rule does not require that the lawyer in question be screened from participation in the matter, the sound practice would be to screen the lawyer to the extent feasible." The concept of screening "denotes the isolation of a lawyer from any participation in a matter through the timely imposition of procedures within a firm that are reasonably adequate under the circumstances to protect information that the isolated lawyer is obligated to protect under these Rules or other law." Rules – Terminology.

Though Comment 9 to Rule 1.11 refers to screening as a "sound practice" rather than a mandatory one, the Committee firmly believes it should be done here given Lawyer A's personal representation of Husband in the same case, the overlapping representation in the civil case, the presumption that Lawyer A got confidential information from Husband under Rule 1.05, and the potential for conflicting loyalties in light of the co-working relationship between Lawyer A and the other prosecutors in the district attorney's office.

While Rule 1.11(e) does not prohibit the other prosecutors from continuing the case against Husband, they must remain alert to the possibility that their representation could "reasonably appear[] to be or become adversely limited" by their own interests and loyalties to Lawyer A, now a co-worker. Rule 1.06(b)(2). As comment 4 to Rule 1.06 explains, the critical question is whether such a conflict "will materially and adversely affect the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client," in this case, the State.

This Opinion only addresses the duties and responsibilities of the participating Texas lawyers under the Rules. Whether and when a trial court has the authority to disqualify members of the district or county attorney's office, and what conflicts of interest scenarios might violate the due process rights of a criminal defendant, are matters of substantive law outside the Committee's purview.

Lawyer A may not continue representing Husband in a substantially related civil case without satisfying both prongs of Rule 1.06(c).

Finally, Lawyer A's continued representation of Husband in the divorce case would also involve a "substantially related matter in which [Husband's] interests are materially and directly adverse to the interests of another client of the lawyer or the lawyer's firm." Rule 1.06(b)(1). Specifically, the divorce case is "substantially related" to the criminal prosecution because there is a substantial risk that confidential information obtained in the divorce would materially advance the State's position in the related criminal matter, and vice versa. *See* Rule 1.09, comment 3 (regarding former client conflicts). Further, Husband's interests in the domestic violence prosecution are materially and directly adverse to the State—another "client of the lawyer or the lawyer's firm." *See* Rule 1.06(b).

Accordingly, Lawyer A may not continue to represent Husband in the divorce proceeding without satisfying both prongs of Rule 1.06(c): (1) the lawyer must reasonably believe the representation of each client will not be materially affected; and (2) each affected or potentially affected client—the Husband and the State—must consent to such

PROPOSED OPINION

representation after full disclosure of the existence, nature, implications, and possible adverse consequences of the common representation and the advantages involved, if any.

Authorities in other jurisdictions have prohibited civil representations by prosecutors in situations that raise similar issues. *See, e.g.*, *In re Toups*, 773 So.2d 709, 716 (La. 2000) ("[I]n order to comply with the Rules of Professional Conduct, a district attorney must immediately withdraw from the civil representation of a client when there is substantial reason to believe that charges of criminal conduct have been or will be filed against the civil client."); *West Virginia ex rel. Bailey v. Facemire*, 413 S.E.2d 183, 190 (W. Va. 1991) ("[A] prosecuting attorney is required to withdraw from representing a private client in a domestic proceeding in the event the attorney identifies a potential or actual conflict of interest between his duties owed to the state and the interests of the private client"). While those authorities are not controlling in Texas, they highlight the concerns raised by this arrangement.

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer who joins a district attorney's office as a part-time prosecutor must withdraw from representing a defendant in a criminal case being prosecuted by the same office. Until the part-time prosecutor withdraws from representation of the criminal defendant, no other lawyer in the district attorney's office may participate in prosecuting that defendant.

Once the lawyer withdraws from representing the client in the criminal case, other lawyers in the district attorney's office may proceed with the prosecution if adequate screening measures are in place and their representations are not adversely limited by their own interests and loyalties to their co-worker, the defendant's former lawyer.

The lawyer may or may not be able to continue representing the client in the substantially related civil case, depending on whether the representation will be materially affected by the part-time-prosecutor role and whether both clients have consented.

PROPOSED OPINION