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**2007 Wis Eth Bd 10**  
**DISQUALIFICATION**

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Facts

¶1 You are a member of the Legislature. A bill before the Legislature, 2007 Assembly Bill 243, would prohibit a judge officiating in a proceeding to grant or to modify a judgment for divorce to consider a party's receipt of veterans disability payments when [1] deciding whether to require a party to pay maintenance or [2] determining the amount of maintenance to require. Your spouse receives veterans disability payments.

Question

¶2 The Ethics board understands your question to be:

Consistent with statutes that the Ethics Board administers may you participate in discussions, deliberations, and votes concerning 2007 Assembly Bill 243?

Discussion

¶3 The provision of the Ethics Code most pertinent to your inquiry is §19.46 (1) (a), *Wisconsin Statutes*. That section provides, in relevant part, that a state government official may take no official action substantially affecting a matter in which the official or the official's spouse has a substantial financial interest.<sup>1</sup> The statute pertains regardless of whether an official is party to a marital property agreement that provides for the separation of the official's and spouse's income.

Advice

¶4 Two reasons cause us to conclude that the provision just cited does not bar your voting on, or otherwise participating in the consideration of 2007 Assembly Bill 243.

¶5 First, the bill's effect, if any, on your spouse's finances is remote and speculative. Public policy supports a public official's exercise of official duties when the financial effect of an official decision on the official's personal interests is uncertain and speculative.<sup>2</sup>

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<sup>1</sup> Section 19.46 (1) (a), *Wisconsin Statutes*, provides:

**19.46 Conflict of interest prohibited; exception. (1)** Except in accordance with the board's advice under sub. (2) and except as otherwise provided in sub. (3), no state public official may:

(a) Take any official action substantially affecting a matter in which the official, a member of his or her immediate family, or an organization with which the official is associated has a substantial financial interest.

<sup>2</sup> See, e.g., 2002 Wis Eth Bd 05; 1995 Wis Eth Bd 3, ¶12; 8 Op. Eth. Bd. 33 (1985).

¶6 Second, as we noted in the Ethics Board's guideline, "Mitigating conflicting interests: private interest vs. public responsibility" [Ethics Board publication #232], an official may participate in a legislative action, even though the action will affect the official or a member of the official's immediate family as long as:

- The official's action affects a whole class of similarly-situated interests;
- Neither the official's interest, the interest of a member of the official's immediate family, nor the interest of a business or organization with which the official is associated is significant when compared to all affected interests in the class; AND
- The action's effect on the interests of the official or of a member of the official's immediate family is neither significantly greater nor less than upon other members of the class.

¶7 Your participation on matters affecting 2007 Assembly Bill 243 is likely to meet this test because the bill would affect all veterans receiving disability benefits and to affect them equally.

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