

Nebraska Ethics Advisory Opinion for Lawyers
No. 79-6

IT IS NOT PROPER FOR THE OFFICE OF PUBLIC DEFENDER TO REPRESENT TWO CRIMINAL DEFENDANTS IN THE SAME CASE WITH CONFLICTING INTERESTS.

FACTS

A sole practitioner was elected public defender. Because of the case load, he was authorized to have a deputy public defender. Such deputy public defender is a sole practitioner in another community. There are no other business connections between the two offices.

Two defendants are arrested for breaking into a building. The defendants give conflicting statements to the police officers. One defendant is attempting to lay the entire blame on the other defendant. Can the public defender represent one of the defendants and the deputy public defender represent the other?

DISCUSSION

The key to the problem is the fact that the public defender has appointed the deputy public defender and the deputy public defender serves within the discretion of the public defender himself. When the deputy acts for the public defender's office for that particular assignment, he is acting in the office of the public defender. If a lawyer is required to decline employment or to withdraw from employment under a disciplinary rule, no partner or associate, or any other lawyer affiliated with him or his firm, may accept or continue such employment (DR5-105). For the purposes of the assignment, the deputy would be considered to be in the same office and under the jurisdiction of the public defender himself who would be disqualified from acting.

Informal opinion 1418 of the American Bar Association Committee on Ethics and Professional Responsibility is

completely in point to this inquiry.

CONCLUSION

The public defender's office is disqualified under such circumstances from representing both defendants.

The additional question was asked as to whether or not it would make a difference if the public defender appointed attorneys on a case by case basis instead of employing a deputy. It would not make any difference. It would appear that the answer to this question would be that the Court should appoint someone else to defend one of the defendants.

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