



**STATE BAR OF NEVADA
STANDING COMMITTEE ON PROFESSIONAL RESPONSIBILITY AND CONDUCT**

**Formal Opinion Number 1
April 23, 1986**

QUESTION - May a private attorney who has formed a partnership for the practice of law with a part-time deputy district attorney for a rural Nevada county defend a person charged with a violation of any Nevada ordinance or law in any of the courts of the State of Nevada?

ANSWER - No.

AUTHORITIES RELIED ON

NRS 7.105 (1985)

NRS 252.120 (1985)

Nevada Rules of Professional Conduct

(Supreme Court Rules 157, 160 Op. Nev. Att'y Gen. No. 126 (Apr. 25, 1973))

DISCUSSION

This opinion discusses the ethical issues raised in Nevada when an attorney forms a partnership or association for the private practice of law with another attorney who serves as a part-time deputy district attorney for a rural Nevada county. Specifically, it discusses whether the partner or associate of the deputy district attorney may engage in criminal defense work in any court of the State of Nevada. For the reasons discussed below, it is the opinion of the Committee that the partner or associate may not.

NRS 7.105 states:

No city attorney, state district attorney or attorney general or their deputies and assistants hired or elected to prosecute persons charged with the violation of any ordinance or any law of thisshall, during their terms of office or during the time they are so employed, in any court of this state, accept an appointment to defend, agree to defend or undertake the defense of any person charged with the violation of any ordinance or any law of this state.

(Emphasis added.)

Indisputably, a district attorney or deputy district attorney is disqualified by the terms of NRS 7.105 from defending any person charged with violating the criminal laws of the State of Nevada in any Nevada state court. The precise question presented, however, is whether the disqualification of a deputy district attorney applies to partners or associates of the deputy district attorney.

NRS 252.120 prohibits any partner of a district attorney from appearing in any criminal action, or from aiding, counseling, or assisting in the defense in any criminal action, within the county in which the district attorney serves. The same statute also prohibits the district attorney or his partner from appearing in any civil action begun or prosecuted during the district attorney's term, on behalf of any person suing or sued by the State of Nevada or any county of the State of Nevada. The Attorney General has interpreted NRS 252.120 as prohibiting a district attorney from representing a private client in any state or county civil action where the interests of the private client are adverse to those of the State of Nevada or any county

thereof. Op. Nev. Att'y Gen. No. 126 (Apr. 25, 1973). Logically, then, the statute would also prohibit the district attorney's partner from making any such appearances in civil actions.

By its Order filed January 27, 1986 (effective March 28, 1986), the Nevada Supreme Court adopted, with certain amendments, the Model Rules of Professional Conduct adopted by the House of Delegates of the American Bar Association on August 2, 1983, as the rules of professional conduct for lawyers who practice in Nevada. These rules may be referred to as the Nevada Rules of Professional Conduct, and are comprised of Supreme Court Rules 150 through 203.5, inclusive.

Supreme Court Rule 157 (1) provides that "[a] lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless . . . the lawyer reasonably believes the representation will not adversely affect the relationship with the client . . . and each client consents, preferably in writing, after consultation." Supreme Court Rule 160, entitled "Imputed Disqualification," provides in subsection 1 that "[w]hile lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by [Rule] 157, 158(3), 159 or 168."

A lawyer who represents criminal defendants and whose partner or associate represents the State, though in different cases and in different counties, has divided loyalties. The lawyer may be called upon at time to attack statutes the partner or associate must later defend, or to cross-examine and impeach witnesses on whom the partner or associate must rely tomorrow. The effectiveness of a prosecutor may be diluted if the efforts of the partner or associate on behalf of defendants, even in other cases in other counties, are misconstrued by law enforcement officials.

A law firm is not permitted to represent adverse parties in contested proceedings, whether in the same or a different court; nor may it represent one party in one matter and, at the same time, represent an adverse party in a different matter. The State and those it prosecutes for crimes are adversaries.

The State of Nevada has expressly withheld its consent for a district attorney or a deputy district attorney to represent criminal defendants in any court of this State. NRS 7.105 (1985). Therefore, the partner of a deputy district attorney cannot rely upon the exception in Supreme Court Rule 157(1) (b), which permits the representation of conflicting interests if each party consents to the representation. Since a deputy district attorney is expressly disqualified from being of counsel adversely to the State, no partner or associate of the deputy or of the deputy's firm may accept employment adverse to the State in any case, in any court. To do so is prohibited by Supreme Court Rules 157 and 160 and the statutory sections cited. This appears to be the rule in most jurisdictions. See, e.g., Professional Ethics Comm., State Bar of Texas, Op. 419 (Dec. 1984), digested in ABA/BNA Lawyer's Manual of Professional Conduct 801.8305 (1986); Comm. On Professional Ethics, State Bar of Wisconsin, Mem. Op. 2-69 (Feb. 7, 1969), reprinted in Wis. B. Bull. 84 (Supp. June 1979), digested in O. Maru, 1980 Supplement to the Digest of Bar Association Ethics Opinions 13111, at 602 (1982); State Bar of Michigan, Informal Op. 49, reprinted in 57 Mich. St. B.J. 309 (Feb. 1978), digested in O. Maru, supra, 11496, at 286; Maryland State Bar, Informal Op. 77-57 (April. 28, 1977), digested in O. Maru, supra, 11321, at 246. See also Thompson v. State, 330 S.E.2d 348, 350-52 & 351 n.6 (Ga. 1985), and opinions cited therein. But see id. at 351-52 (because disqualification would limit the ability of criminal courts in rural areas to appoint competent counsel, the court declined to adopt a rule of automatic disqualification, and instead adopted a rule requiring disqualification only when an actual conflict of interest exists).

CONCLUSION

A private attorney who has formed a partnership for the practice of law with a deputy district attorney for a rural Nevada county may not defend any person charged with a violation of any Nevada ordinance or law in any Nevada Court.

This opinion is issued by the standing committee on ethics and professional responsibility of the State Bar of Nevada, pursuant to SCR 225. It is advisory only. It is not binding upon the courts, the State Bar of

Nevada, its board of governors, any person or tribunals charged with regulatory responsibilities, or any member of the state bar.