

ADVISORY ETHICS OPINION 88-09

SYNOPSIS:

It is improper for a member of a law firm to act as a part-time prosecutor in one County, while this attorney and other members of the same law firm are conducting criminal defense work in other Counties.

FACTS:

A law firm has an office in County A in which its attorneys conduct criminal defense work. An attorney in the same firm's office located in County B is considering a position as a part-time prosecutor in County B. The law firm would handle all prosecution business in its County B office and would separate to the extent possible the mail, phone, and other office functions pertaining to the State Attorney's Office. The firm states that the part-time prosecutor may also be expected to do criminal defense work in other counties.

OPINION:

As the Court stated *In re Wakefield*,¹ "a State's Attorney in this state is not merely a prosecuting officer in the county in which he is elected. He is also an officer of the State, in the general matter of the enforcement of the criminal law. It is the State, and not the County that pays his salary and official expenses." ABA Formal Opinion No. 142, holds "for one county attorney to engage in undoing the work of another would present an appearance of confusion . . . and would tend to diminish the public's confidence in and respect for law enforcement".

Under DR 5-105 a lawyer cannot represent conflicting interests "except by express consent of all concerned given after a full disclosure of the facts." A prosecutor cannot represent both the public at large and any particular defendant. Nor can a law firm serve two masters, because the positions are inherently antagonistic. No question of consent can be involved as the public is concerned and it cannot consent.²

It is a well settled rule that if a conflict of interest exists as to any member of a firm, it exists also as to any partner or associate.³ If the attorney accepts the part-time prosecutor's position, the attorney must disassociate completely with the law firm in order to avoid this conflict of interest.

¹ *In re Wakefield*, 107 Vt 180 (1935)

² ABA Formal Opinion No. 142.

³ DR 5-105.