

FORMAL OPINION NO. 53*

The question you have asked is related to other questions which the Committee has recently had opportunity to consider, and I will borrow from recent informal opinions to reply for and in behalf of the Ethics Committee.

You have asked whether the appointment of your law associate as a Deputy Prosecutor will preclude your representation of defendants in criminal cases out of your own county. Opinions 10 and 41, of the Committee on Ethics, correctly state the principles which must be applied. The formal opinions make reference to "Canon 6" and to opinions of the American Bar Association and all of which militate against such practice. The conflict of interest which precludes a law firm representing both sides in a controversy is extended in principle to criminal cases so as to preclude a partner of a prosecutor or deputy from accepting a criminal defense even though the case is in another jurisdiction. There would be no basis to distinguish between law partners and law associates in these matters.

A concise statement is found in Formal Opinion No. 142 of the A.B.A., Opinions on Professional Ethics, "It is improper for an assistant prosecutor or his partner to defend a client in a criminal case." A.B.A. Opinions No. 16 and 33, prohibit all members of a partnership from accepting any employment that any one member of a firm is prohibited from taking.

The exception which has been noted by the Committee is where counsel is appointed by the court with full knowledge of the conflict of interest, but where the reasons against such representation are overcome by the more compelling need to provide defense counsel and circumstance dictates it.

DATED this 13th day of September, 1971.