

Nebraska Ethics Advisory Opinion for Lawyers
No. 78-9

IT IS NOT PER SE UNETHICAL FOR AN ATTORNEY TO REPRESENT DEFENDANTS IN CRIMINAL CASES IN A COUNTY IN WHICH A CLOSE RELATIVE OF THE ATTORNEY, SUCH AS A BROTHER, SISTER, FATHER OR SPOUSE, IS THE COUNTY ATTORNEY, WHETHER OR NOT THE MATTER MAY BE PROSECUTED BY A DEPUTY COUNTY ATTORNEY.

FACTS

You have requested the opinion of The Advisory Committee regarding the propriety of an attorney representing defendants in criminal cases in a county in which a close relative of the attorney, such as a brother, sister, father or spouse, is the county attorney, even though the matter may be prosecuted by a Deputy County Attorney.

DISCUSSION

This question was dealt with in Formal Opinion No. 340 of the American Bar Association Committee on Ethics and Professional Responsibility. That committee concluded that there was no necessary disqualification involved in the situation you present. However, the committee pointed out the sensitivity involved in such a situation and suggested that lawyers must be extremely careful to guard against violations of their professional responsibilities in such matters. The wishes of the clients must also be carefully observed.

CONCLUSION

Accordingly, we conclude that there is no consistent or mandatory disqualification involved in the situation you present. We suggest that in most cases, the lawyers involved should carefully examine the circumstances in each case before accepting employment, should make a full disclosure to the client, and should refrain from

accepting any such employment if there is any suggestion or possibility of disqualification.

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