

Nebraska Ethics Advisory Opinion for Lawyers  
No. 84-1

A LAWYER WHO IS ALSO A POLICE OFFICER SHOULD NOT UNDERTAKE TO REPRESENT THE DEFENDANT IN A CRIMINAL MATTER, AND THE LAWYERS WITH WHOM HE IS ASSOCIATED SHOULD LIKEWISE REFRAIN FROM SUCH REPRESENTATION.

FACTS

A law firm has its office in a city which has a Municipal Court. An associate of the law firm is also employed as an officer of the City's Police Department. The partners in the law firm have in the past represented persons charged with misdemeanors in the Municipal Court. The City Attorney objects to such representation, and the question presented is whether the Code of Professional Responsibility, as adopted by the Nebraska Supreme Court, precludes the associate and the partners in the law firm from representing defendants charged with criminal violations.

DISCUSSION

EC 5-1 of the Code of Professional Responsibility is as follows:

The professional judgment of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interests, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client.

DR 5-101(A) is as follows:

Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his

professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests.

DR 5-105(A) is as follows:

A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of his client will be or is likely to be adversely affected by the acceptance of the proffered employment, or if it would be likely to involve him in representing differing interest, except to the extent permitted under DR 5-105(C).

In the case of *Tucker v. Kentucky Bar Association*, 550 S.W.2d 467 (Ky. 1976), a lawyer was also an officer of the Jefferson County Police Department. He was also a legal advisor to the Department. The Kentucky Bar Association issued an advisory opinion in which it was said that neither the lawyer nor any of his associates could represent defendants in any criminal matters. The Supreme Court of Kentucky affirmed the opinion of the Kentucky Bar Association. The Court said:

As to representation in criminal cases, we are of the opinion that petitioner is in the identical position as the Commonwealth's attorney who is likewise not permitted to defend criminal cases anywhere within the Commonwealth. As we view the proposition, it is not a question of propriety, it is the fundamental fact that petitioner by virtue of his position with the Jefferson County Police Department owes his allegiance to the Commonwealth, and the defense of criminal cases outside Jefferson County would not be consistent with such allegiance.

#### CONCLUSION

This Committee agrees with the opinion of the Supreme

Court of Kentucky. A lawyer who is also a police officer should not undertake to represent the defendant in a criminal matter, and the lawyers with whom he is associated should likewise refrain from such representation. The conflict of interest involved in such a situation is contrary the ethical standards of the legal profession.

Nebraska Ethics Advisory Opinion for Lawyers  
No. 84-1