

Nebraska Ethics Advisory Opinion for Lawyers
No. 76-15

A COUNTY ATTORNEY WHO PRIOR TO BECOMING SUCH HAD REPRESENTED A WIFE IN A DIVORCE ACTION RESULTING IN A DECREE REQUIRING CHILD SUPPORT FROM THE HUSBAND, SHOULD NOT INSTITUTE CRIMINAL CHARGES AGAINST THE HUSBAND FOR NON-SUPPORT, BUT SHOULD ARRANGE FOR THE COUNTY BOARD TO EMPLOY A SPECIAL PROSECUTOR TO PROSECUTE THE NON-SUPPORT ACTION.

FACTS

Before you became County Attorney you represented the wife in a divorce action which resulted in a decree requiring child support from the husband. As County Attorney you have now instituted criminal charges against the husband for non-support. The question is raised as to whether you are in a position of conflict of interest whereby you should or should not withdraw.

DISCUSSION

This Committee has held in [Opinion No. 74-1](#) that a County Attorney is precluded from prosecuting a criminal action against one of the parties to a divorce proceeding for failure to pay child support in a case where the County Attorney had permissibly represented one of the parties in the divorce proceeding. The prohibition is based in part upon the necessity to avoid the appearance of impropriety by an attorney who is a public official in using his public position to further his professional success.

Your case presents a somewhat different factual situation in that your involvement in the divorce case occurred while you were engaged wholly in private practice and before you assumed your public position. Nonetheless, so far as the general public is concerned, for you now to prosecute the defendant on behalf of the State under these circumstances could well convey the

impression that you are utilizing your official position to harrass a private individual who was a former adversary, and could tend to adversely affect public confidence in the integrity and efficiency of our legal system.

CONCLUSION

The Committee feels, therefore, that your County Board should employ a special prosecutor to handle the non-support action in this particular case.

This opinion should not be construed as holding that a County Attorney may under no circumstances prosecute an individual who was a litigant in a proceeding in which the County Attorney was involved while engaged wholly in private practice and before assuming public office; it is limited to a criminal action arising out of the same proceeding in which the County Attorney was formerly involved.