

Nebraska Ethics Advisory Opinion for Lawyers
No. 77-5

IT WOULD NOT BE PROPER FOR AN ATTORNEY WHO, AS A PART-TIME JOB, SERVES AS EXECUTIVE DIRECTOR OF THE NEBRASKA COUNTY ATTORNEYS' ASSOCIATION, TO CONTEMPORANEOUSLY REPRESENT CLIENTS IN A PRIVATE PRACTICE IN ANY OF THE FOLLOWING CHARACTER OF MATTERS:

- (1) Representation of a criminal defendant being prosecuted by a county attorney on behalf of the State of Nebraska;
- (2) Representation of an estate in the determination of inheritance taxes;
- (3) Representation of a client in a civil matter where the opposing party is the State of Nebraska or an agency thereof; and
- (4) Representation of a client in a dissolution of marriage where minor children are involved.

FACTS

You state that the Association is a private nonprofit corporation with members who are county attorneys, deputy county attorneys and assistant attorneys general holding office in Nebraska; that the Association is governed by a Board of Directors and officers who are county attorneys and deputy county attorneys.

You further stated your principal duties as such Executive Director of the Association were (a) the preparation and mailing of a monthly newsletter to members of the Association containing material of general interest and assistance to the county attorneys; (b) representing the Association in appearances before Committees of the Nebraska Legislature and dealing with individual members thereof as occasion might warrant; and (c) performing legal research on questions

requested by members, especially out-state county attorneys.

CONCLUSION

It is the opinion of the Committee that Canons 5 and 9 of the Code of Professional Responsibility provide the answer to your inquiry. Canon 5 states that a lawyer should always be able to exercise independent professional judgment on behalf of a client and Canon 9 states that a lawyer should avoid even the appearance of professional impropriety.

Disciplinary Rules DR 5-101(A) and DR 5-105(A) provide:

"5-101(A) 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."

and

"5-105(A) A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a 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 interests, except to the extent permitted under DR 5-105(C)."

As these cited Rules are applied to your fact situation, even though all of the services performed for the Association are not necessarily the practice of law, your status as a practicing attorney obligates you to treat your position as the Association's Executive Director as if such services were being performed for the Association as a primary client. Accordingly, your acceptance of employment by another client in any of

the four categories inquired about where county attorneys would likely (or in Category 4 possibly) be representing the State of Nebraska as an adverse party to your new client could involve you in a situation where your ability to exercise independent judgment for the new client could be compromised. And this situation is all the more likely to occur if the county attorney opposing your new client would be an officer or member of the Board of Directors of the Association, who for example, had helped set your compensation as Executive Director or was, in part, directing your activities as Executive Director.

This latter risk is epitomized in Ethical Consideration EC 5-1 which states:

"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."

It further seems to the Committee that your position as Executive Director of the Association is likely to give you somewhat of a public image as a spokesman for and close associate to county attorneys, so as to have you possibly identified as one and the same. Thus, even though you would endeavor to be circumspect in your conduct and zealous in your carrying out of duties for the Association and in representation of other clients in the categories inquired about, the potential for your being regarded as having conflicting interests exists and the proscription of Canon 9 applies.

We would add one final note. You further inquired that if a conflict of interest were determined by the Committee to exist in the four categories of matters questioned, whether it would make any difference if you were appointed by a Court to represent the new client in the matter. The Committee's answer is that it should not. When contacted by a Court with respect to any such

representation, it is the Committee's view that you would be bound to call the Court's attention to the facts which you believe make it improper under the Code of Professional Responsibility for you to assume representation of the client. However, if the Court, in a particular case, decides there is no feasible alternative and assigns you such representation, you would be free to proceed. (See [Opinion 72-14](#) of this Committee).

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