

## Utah Ethics Opinions

1971.

### 4. USB EAOB Opinion No. 4

Ethics Advisory Opinion No. 4

Approved December 1, 1971

**Summary:** It is improper for the partner of a deputy district attorney to defend any client in a criminal case which the deputy district attorney may not handle himself.

**Comments:** See Utah Opinions 25, 34, 35 and 36.

Facts: You have requested an opinion concerning the propriety of one of your firm members handling criminal matters when one of your associates is serving as deputy district attorney. You have cited us to Section 78-51-30, Utah Code Annotated 1953, stating that it is not clear from that statute whether the firm might practice criminal defense work. From your letterhead, and from your letter, it appears that you are a partnership and the "associate" you will be engaging who is a deputy district attorney, will, in fact, be an employee of the partnership.

**Opinion:** While Section 78-15-30, speaks of the relationship as a "partner" and speaks of the "district attorney or other public prosecutor", the obvious evil which is sought to be controlled by the statute is equally applicable to "associates" and "deputy prosecutor."

The question posed appears to be directly answered by ABA Formal Opinion 142, which holds that it is improper for the partner of an assistant prosecutor to defend any client in a criminal case; that neither a law firm nor a partner thereof could properly accept employment which any member of the firm could not properly accept.

However, the Commission is of the opinion that attorneys falling within the purview of the Canons enumerated should not be assigned under circumstances which smack of violations of those Canons so that they are placed in a position of violating the Canons in order to honor their oath as attorneys to defend the oppressed.

I have been directed by the Commission to advise you of the Commission ruling on the matter and to urge that you take this matter up with the District Judges Association to see if the matter might be resolved.

**References:** ABA Formal Opinions 261, 262; Canon 5, DR 5-105(D).