

Utah Ethics Opinions

1976.

24. USB EAOC Opinion No. 24

Utah State Bar

Ethics Advisory Opinion No. 24

Approved March 15, 1976

Summary: A criminal-felony deputy attorney may serve as a pro-tem judge in misdemeanor matters in a different county.

Facts: You have inquired whether it would be ethical for you as a full-time prosecutor in the criminal-felony division of the county attorney's office in County A to serve as a pro-tem judge in County B in misdemeanor cases where a defendant does not waive his right to trial by an attorney-judge.

Opinion: Clearly, it would be improper for you to act as a judge in any case in which you had any involvement as a prosecutor, or in which your office had any involvement whether you have participated in any way in the matter. Such involvement would involve problems of conflicts of interests under Canon 5 and the appearance of impropriety under Canon 9.

Similarly, it would be difficult for you to serve as pro-tem judge on a regular basis in a court in which you practice. ABA Formal Opinion 242 analyzed this situation and stated:

"* * * one who assumes to act as a judge on one day and as an advocate the next in the same judicial system is confronted with inherent difficulties that ought to be avoided and deprecates the employment of such a system."

Your regular employment in one judicial system apparently precludes your appearing in the judicial system in the other county as an attorney, which appears to eliminate the difficulties suggested by the ABA opinion.

We see no ethical disqualification in your serving as pro-tem judge for misdemeanor matters in County B by reason of your full-time employment as a criminal-felony deputy county attorney in County A.

Outside the scope of the ethical inquiry, of course, are employment problems and pay problems as they relate to your employment by separate public agencies.

Rules Cited:

Canon 5 Canon 9