

**Opinion 323**  
**October 1966**  
**23 Baylor L. Rev. 851 (1972)**

**CONFLICT OF INTEREST - CRIMINAL PRACTICE BY ATTORNEY ASSOCIATED WITH COUNTY ATTORNEY IN CIVIL PRACTICE - CRIMINAL PRACTICE BY FATHER OF COUNTY ATTORNEY - PRIVATE EMPLOYMENT OR COURT APPOINTMENT**

A County Attorney's disqualification to defend criminal cases extends to his partners or associates in all courts throughout the state whether privately employed or court-appointed. The father of a County Attorney is not per se disqualified to defend a criminal case prosecuted by his son but such practice should be discouraged.

Canon 6.

**QUESTIONS**

A judicial district composed of several sparsely populated counties has only a few lawyers and the problem of providing counsel for defendants in criminal cases is acute. In County X there is only one attorney A, who is also the County Attorney. In County Y there are two attorneys, the County Attorney B and his father C, who is associated with him in the practice of civil law. In County Z there are two attorneys, the County Attorney D and his partner in civil practice E.

Two questions are presented:

1. May any of the attorneys other than the County Attorneys act as counsel in the defense of criminal cases.
2. Does it make any difference whether the representation is by private employment or by court appointment?

**OPINION**

1. County Attorneys are prohibited by Article 2.08 of the Texas Code of Criminal Procedure from acting as counsel adversely to the state in any case in any court and this Committee has consistently ruled that the County Attorney's partners and associates are likewise disqualified under Canon 6, even though the partnership or association is for the practice of civil law only. Opinions 23 (December, 1949), 37 (May, 1951), 183 (October, 1958), 187 (October, 1958), and 318 (October, 1966).

We do not have before us squarely the question of whether the father of a County Attorney, who is not associated with his son in practice in any way, would be disqualified from acting as defense counsel in a criminal case prosecuted by his son, but the question is obliquely presented and we consider it proper to comment thereon. While there is no statute or canon which expressly creates a disqualificationXsee Opinions 35 (March, 1951) and 135 (September, 1956)Xsuch representation is pregnant with the appearance of impropriety and should be discouraged. (8-0.)

2. The foregoing disqualifications are the same whether representation results from private employment or court appointment. (8-0.)

We recognize that the problem of providing counsel in criminal cases in sparsely settled counties may be acute but that does not justify departure from established sound principles of professional ethics.