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Sherry L. Robinson

Criminal District Attorney
Waller County

OPINION COMMITTEE

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May 9, 2002

Honorable John Cornyn
Attorney General
Attn: Opinion Committee Chairperson
Office of the Attorney General
P. O. Box 12548, Capitol Station
Austin, Texas 78711-2548

FILE # ML-42613-02
I.D. # 42613

Dear Opinion Committee Chairperson,

The Criminal District Attorney of Waller County respectfully requests the Attorney General issue a formal opinion regarding the following set of facts:

Opinion 540 of the Professional Ethics Committee of the State Bar of Texas confirms that a county judge may not practice law in the courts of his county without receiving a waiver of the conflict of interest from both his client and the county. Opinion 530 of the Professional Ethics Committee of the State Bar of Texas deals with a similar situation, and discusses the conflict of interest for a County Commissioner who desires to practice law in the courts of his county. In that opinion, the Ethics Commission says, "If Attorney is representing a client in a criminal matter, or in a civil matter where the county is an adverse party, the county attorney or district attorney must also consider how this conflict under Rule 1.06(b)(2) [Texas Disciplinary Rules of Professional Conduct] affects their governmental entity client." The Ethics Commission goes on to address a situation where the State has a conflict of interest in Opinion 539, wherein the Commission says that if the State has a conflict of interest in a case, the prosecutors representing the State are prohibited from participating in that case unless the prosecutors determine that representation of the State will not be materially affected by the representation, and even then, they must obtain a waiver of the conflict from the State of Texas.

- **Is it possible for a county judge to obtain a waiver of conflict of interest from the county, and if so, what is the mechanism for obtaining the waiver?**
- **Is it possible for the prosecutors representing the State of Texas to obtain a waiver from the State, and if so, what is the mechanism for obtaining the waiver?**

I have diligently searched the statutes and codes of the State of Texas, as well as case law, and I have not found any provision that would apply in this circumstance.

Frederick A. Edward
Asst. District Attorney

Stephanie Stephens
Asst. District Attorney

Mark Currier
Asst. District Attorney


Douglas Pettit
Asst. District Attorney Asst. District Attorney

I have enclosed copies of Opinions 530, 539, and 540. Please provide any guidance in light of these questions, and any legislative provisions that may apply. Due to numerous cases now pending in State and County Court, time is of the essence regarding this issue.

Feel free to contact me if I can provide any further information or assistance.

Thank you for your time and assistance in this matter

Sincerely,



Douglas H. Pettit
Assistant Criminal District Attorney
Waller County, Texas