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OPINION COMMITTEE

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March 4, 2004

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FILE # ML-43552-04
I.D. # 43552-04

Ms. Nancy Fuller
Chair, Opinion Committee
P. O. Box 12548
Austin, TX 78711-2548

RQ-0190-GA

Re: Whether or not an attorney pro tem can be considered a
"de facto" county attorney and therefor precluded from representing a defendant in a
criminal matter.

Dear Ms. Fuller:

Your office indicated by letter to me that RQ-0128-GA was closed due to the fact there was "pending litigation." It was my understanding litigation involved a Motion to Disqualify the attorney in question. However, Mr. Scott filed a Motion to Withdraw as Council and was granted by the court. Now, the court cannot make a determination on whether or not an attorney pro tem is precluded from representing a defendant in a criminal matter.

I have a similar problem in my county and submitted a brief in the above request number as did Mr. Macha, District Attorney from Wichita County, Texas. Since a court will not be resolving the issue I am respectfully requesting your office use the briefs and make a determination as to the following:

1. Whether or not an attorney who is appointed in a particular county to prosecute criminal cases and receives an annual salary is disqualified from representing Defendants?
2. Whether an attorney is disqualified from acting as a criminal defense attorney in a misdemeanor or felony case on the grounds he or she is a de facto full time county attorney?
3. Whether or not an attorney is a "de facto" county attorney if the attorney is appointed the "attorney pro tem" and is the only attorney prosecuting criminal cases in the county, receives a monthly salary paid in the same amount each and every month, continual and without interruption?

4. Whether or not an attorney appointed as a "pro tem" and solely looked to by that one county to prosecute each and every criminal case can represent a defendant?
5. Whether or not an attorney who is the sole attorney signing every information filed as the prosecutor in every pending case in a particular county can represent criminal defendants?
6. Whether or not it would make any difference that the County Judge "appointed" the same attorney as the "attorney pro tem" in each case using a standard form filed in each and every case or would the attorney still be precluded from representing defendants?
7. Whether an attorney pro tem would be considered "de facto" full time county attorney and therefore precluded from representing defendants when that attorney acts exclusively, continually, and without interruption for a county?

I have formed several questions on the basis of issues that have been raised with me in a hope to finally put the issue(s) to rest. I respectfully request an expedited answer since the issue(s) was before the Opinion Committee and currently exists in my county where we have been anxiously awaiting an answer. Please keep in mind I have not filed a Motion to Disqualify, an attorney pro tem from an adjoining county represents a defendant, he acts exclusively, continually, and without interruption for a county and yet desires to represent defendants in criminal and all other facts are exactly described by Mr. Bird and Mr. Macha.

Thank you for your consideration and I look forward to your prompt reply.

Sincerely yours



Tempie T. Francis

TTF/ttf

CC: The Honorable Dan Mike Bird