

Public defender and private practice

Number: AGO 75-284

Date: November 10, 1998

Subject:
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PUBLIC DEFENDER--ASSISTANT PUBLIC DEFENDER MAY NOT BE MEMBER OF, OR ASSOCIATED WITH, FIRM ENGAGING IN CRIMINAL LAW PRACTICE

To: William Stafford, United States District Judge, Tallahassee

Prepared by: Gerald L. Knight, Assistant Attorney General

QUESTION:

May an assistant public defender be associated in private practice with an attorney who accepts appointments to represent indigent defendants in federal criminal cases?

SUMMARY:

Section 27.51(3), F. S., prohibits an assistant public defender from being a member of, or associated with, a private law firm which, through its members or associates, engages in the practice of criminal law in state or federal courts.

Section 27.51(3), F. S., provides in pertinent part that assistant public defenders

". . . may engage in the private practice of law only to the extent that it will not interfere with or prevent performance of their duties as assistant public defenders and *shall not otherwise engage in the practice of criminal law.*" (Emphasis supplied.)

There can be little doubt that the representation of defendants, indigent or otherwise, in criminal cases in federal court is "the practice of criminal law." Thus, it seems clear that an assistant public defender himself could not represent such defendants. As to whether an assistant public defender would be otherwise engaged in "the practice of criminal law" if such defendants were represented by other members of the law firm to which he belongs, AGO 069-108 concluded that, because of the then-stated position of the Professional Ethics Committee of The Florida Bar and the law of agency, s. 27.51(3), F. S., prevented an assistant public defender from being in partnership with another partner who engages in the private practice of criminal law.

Since the issuance of AGO 069-108, the Professional Ethics Committee has apparently changed its position on this matter (Advisory Opinion No. 75-23). However, the law of agency remains substantially applicable, and, most importantly, the Florida Legislature has effected no change in s. 27.51(3), F. S., which evidences a disagreement with the construction of that statute contained in AGO 069-108. Accordingly, until legislatively clarified to the contrary, it is the

opinion of this office that s. 27.51(3), prohibits an assistant public defender from being a member of, or associated with, a private law firm which, through its members or associates, engages in the practice of criminal law in state or federal courts.

Your question is answered in the negative.