

Opinion No. 57-71

April 11, 1957

BY: OPINION OF Fred M. STANDLEY, Attorney General Howard M. Rosenthal,
Assistant Attorney General

TO: Donald A. Martinez, District Attorney, Fourth Judicial District, Las Vegas, New
Mexico

QUESTIONS

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"1. May a special Assistant District Attorney, serving only for a specified period of two or three months at a time, continue to handle automobile accident cases?

"2. May a firm of which such a special Assistant District Attorney is a regular full-time member continue to handle automobile accident cases?

"3. In the event such a special Assistant District Attorney may not, himself, handle such automobile accident cases, may he continue to handle such cases as he was already involved in at the time of his appointment?

"4. May a District Attorney continue to handle automobile accident cases in which he was retained prior to this election and taking of office?"

CONCLUSIONS

1. During the period in which an attorney is employed as assistant district attorney he may not represent a party plaintiff or party defendant in any civil action wherein a claim is made for damages growing out of an automobile accident occurring within his judicial district.

2. The same disability would apply to a firm of which such an assistant district attorney is a regular fulltime member

3. An assistant district attorney may not handle such automobile accident cases after January 1, 1957.

4. No.

OPINION

ANALYSIS

Section 17-1-3, N.M.S.A., 1953 Compilation, provides, among other things.:

"And provided, further, that, effective January 1, 1957, neither a district attorney nor any of his assistants shall represent a party plaintiff or party defendant in any civil action wherein a claim is made for damages growing out of an automobile accident occurring within his judicial district, and violation thereof shall be grounds for removal from office."

The above statute does not specifically differentiate between full time assistant district attorneys or part time assistant district attorneys. Therefore, in order to determine the applicability of this statute, we have first to determine the status of the individual involved.

If the nature of the appointment is such as to be of a continuing nature, meaning that the so-called part time assistant district attorney is held to be, at times, an assistant district attorney serving without pay, then said individual would be subject to the disability of the statute. On the other hand, if the individual selected as a part time assistant district attorney serves only between two specified dates and then is no longer an assistant district attorney, the disability of the statute would not apply. Hence, it is the opinion of this office with reference to question 1 that when an individual is actually serving as assistant district attorney he is subject to the statutory disability. Once his term of office terminates, his disability ceases.

With regard to question 2, precisely the same reasoning would apply, inasmuch as this office is of the opinion that neither the individual himself, nor a firm of which he is a participating member, is able to avoid the statutory disability during his term of office.

With regard to question 3, unlike the escape provisions in Section 17-1-14, N.M.S.A., 1953 Comp., Section 17-1-3, N.M.S.A., 1953 Comp., is mandatory in quality, and provides no alternative to the disability imposed. Hence, during his term of office an assistant district attorney may not handle such cases as he was already involved in at the time of his appointment.

With regard to question 4, the same reasoning would apply in that there is in the aforequoted statute an absolute prohibition against a district attorney handling automobile accident cases subsequent to January 1, 1957.