



OFFICES OF THE

ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

December 19, 1973

JOHN C. DANFORTH
ATTORNEY GENERAL

OPINION LETTER NO. 341

Honorable Cloy E. Whitney
State Representative, 2nd District
8 Center Road
Kirksville, Missouri 65301

Dear Representative Whitney:

This letter is in response to your question with respect to House Bill No. 315 of the 77th General Assembly, Missouri's new divorce and domestic relations law, asking:

"Can a prosecuting attorney handle divorce cases or does his duties under Section 10, paragraphs 4 and 5 of the Act preclude and prevent a prosecuting attorney from representing a party in proceedings for dissolution of marriage?"

For the sake of brevity we will not quote the sections to which you refer.

The Missouri Bar Advisory Committee has already considered and ruled on the questions you ask. We defer to this authority which is given to the Committee under Supreme Court Rule 5.16. Such opinion, adopted December 6, 1973, which we quote, provides:

ADVISORY COMMITTEE
MISSOURI BAR ADMINISTRATION

FORMAL OPINION #108

PROSECUTING ATTORNEY - "NO FAULT" DIVORCE LAW

Question: May a Prosecuting Attorney, in the course of his private law practice, represent clients who are parties to an action

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brought under Chapter 452 effective January 1, 1974? Is there a conflict of interest with the duties of the Prosecuting Attorney set out in paragraphs 4, 5 and 6 of Section 10 of said chapter.

Answer: It is the opinion of the Advisory Committee that there is no inherent conflict between the duties of the Prosecuting Attorney under the bill and the representation of a party to an action brought under the bill in the first instance. In other words, the Prosecuting Attorney can ethically represent a party in an original divorce action under the provisions of said bill. If, however, after the termination of the original divorce action, the Prosecuting Attorney is called upon to fulfill his duties under Section 10 and if at that time a conflict of interest exists, then, of course, the conflict must be resolved. It might be accomplished by withdrawal as attorney for the private client, the request for appointment of a special Prosecutor in that particular case, or both, depending upon the circumstances.

ADOPTED DECEMBER 6, 1973.

Very truly yours,



JOHN C. DANFORTH
Attorney General