

FORMAL OPINION NO. 51*

Our committee unanimously feels that it is improper for you, as a partner in a firm acting as attorney for the City of Buhl, which representation includes the prosecution of criminal cases, to individually represent defendants charged with crimes at any level of our court system. The recent enactment of our overall court reform in Idaho eliminating separate municipal, justice and probate courts, in our view, makes this decision even more, not less compelling.

Opinions No. 10 and 41, Committee on Ethics, correctly state the principles which must be applied. In addition, under the new Code of Professional Responsibility, and particularly Canons 1 and 9, lawyers must maintain the integrity of the profession and stringently avoid even the appearance of impropriety.

Even though on a limited basis, your firm does act as a public prosecutor. If you as a member of that firm elected to defend (absent a court appointment to act in such capacity) a person charged with a crime at either the Magistrate or District Court level, you would be at cross purposes with your own firm. Prosecution on the one hand and the defense of one charged with crime on the other are wholly incompatible. The interests served by each are mutually exclusive. Any crossing over, because of the conflicting interests, in our view, could result only in the diminishing of public confidence and respect for law enforcement and the integrity of the bar.

You infer that particularly in Gooding County, it is a problem to find attorneys outside of the public defender's office to represent criminal defendants. We don't feel this would be sufficient reason to modify the standards of conduct which are so basic to the profession we practice. The obligation would under these circumstances fall on the court to appoint counsel who would have no alternative but to accept the appointment.

DATED this 28th day of July, 1971.

*This opinion is superceded by I.S.B. Opinion No. 105 (August 14, 1981). See, DR 5-105 and Canon 9, Idaho Code of Professional Responsibility.