

FORMAL OPINION NO. 78*

The Ethics Committee has been solicited for its opinion essentially summed up in the following question:

May an attorney refuse an appointment of representation for an indigent until such time as it appears that representation is otherwise unavailable after reasonable efforts on the part of the County Commissioners to obtain it within the meaning of § 19-859, Idaho Code?

The author of the question opines that it would be a discrimination against an attorney to subject him to orders of a Court as to whom they should or should not represent unless there is a showing for some need to make such an assignment. He further points out that there is nothing in the Idaho statutes which require an attorney to accept such an appointment, nor is there an express pronouncement in the Code of Professional Responsibility heretofore adopted by the Idaho State Bar.

"Historically, the need for legal services of those unable to pay reasonable fees has been met in part by lawyers who donated their services or accepted court appointments on behalf of such individuals. The basic responsibility for providing legal services for those unable to pay ultimately rests upon the individual lawyer, and personal involvement in the problems of the disadvantaged can be one of the most rewarding experiences in the life of a lawyer. Every lawyer, regardless of professional prominence or professional workload, should find time to participate in serving the disadvantaged. The rendition of free legal services to those unable to pay reasonable fees continues to be an obligation of each lawyer, but the efforts of individual lawyers are often not enough to meet the need. Thus, it has been necessary for the profession

to institute additional programs to provide legal services. Accordingly, legal aid offices, lawyer referral services, and other related programs have been developed, and others will be developed, by the profession. Every lawyer should support all proper efforts to meet this need for legal services." American Bar Association, EC 2-25.

"When a lawyer is appointed by a court or requested by a bar association to undertake representation of a person unable to obtain counsel, whether for financial or other reasons, he should not seek to be excused from undertaking the representation except for compelling reasons." American Bar Association, EC 2-29.

In light of the historic precedence it seems to us that a lawyer's refusal to undertake a court appointment because of the dereliction of the County Commission of its duties under § 19-859, Idaho Code, would constitute two wrongs and that the greater wrong would rest with the profession. A lawyer may not disregard his duty because someone else has disregarded his duty.

We agree that it is blatantly unfair for the profession to have to take up the slack for other public officials' dereliction of duty, but the remedy for such a problem should be in compelling such public officials into the paths of their duty through other means than our refusal to discharge a basic ethic that has existed since the days of the patriarchs of our profession.

*This is an undated opinion, believed to have been rendered in the latter part of 1974.