

INFORMAL OPINION NO. 113

The Committee on Professional Responsibility of the Idaho State Bar Association has been asked to comment on whether or not any ethical problems arise when a father and son who are also attorneys practice in the same community where one is the prosecuting attorney and the other intends to defend criminal cases.

In and of itself, there is nothing in the fact that opposing attorneys are also father and son that necessarily creates any ethical impropriety. However, as with many ethical issues, the question is often one of proximity and degree, and there are circumstances in which ethical violations could arise. DR 5-101(A), for example, provides in part that "a lawyer shall not accept employment if the exercise of his professional judgment on behalf of the client will be or reasonably may be affected by his own financial, business, property or personal interests." Thus, if the relationship between father and son is such that the relationship may impair the lawyer's professional judgment, a conflict would exist. This is, of course, something only the father and son themselves know. A father and son may have a very close and friendly relationship or they may, as sometimes happens, have a very antagonistic relationship. In either case, there is the potential that the relationship may cause the lawyer to do something other than exercise his best professional judgment on behalf of his client.

There is also an obligation on behalf of lawyers to avoid the appearance of impropriety. Canon 9 of the Code of Professional Responsibility states, "A lawyer should avoid even the appearance of professional impropriety." The Committee has previously noted that the "appearance of impropriety" test is incapable of precise definition and that the test is difficult to apply to specific factual circumstance. See Formal Opinion No. 110. The attorneys should be sensitive to the possibility that an appearance of collusion or other form of impropriety may result. If the relationship between the father and the son were likely to lead to the public impression that some criminal defendants received either harsher or more lenient treatment than other defendants, then public confidence in the criminal justice system would be jeopardized. The burden of deciding whether a conflict exists will fall upon the attorney who is faced with representing the criminal defendant in light of his position as the second of the attorneys to become involved and that a prosecuting attorney is required to fulfill certain statutory duties as a result of his position.

Thus, although there is nothing in the disciplinary rules which necessarily prohibits the representation of opposing sides in a criminal case by a father and a son, the lawyers involved should be sensitive to the potential problems outlined above.

DATED This 20th day of April, 1983.

COMMITTEE ON ETHICS AND
PROFESSIONAL RESPONSIBILITY

By 
ALFRED C. HAGAN, Chairman

By 
FRANK E. CHALFANT, JR.

BY 
DEAN J. MILLER