

FORMAL OPINION NO. 84*

The Committee on Professional Ethics has been requested to render its opinion on the following state of facts:

If one member of a law firm is appointed as the Public Defender in a county with the Public Defender system, may the law partners of the Public Defender engage in the defense of paying clients on criminal matters?

While it is true that Sec. 19-860, Idaho Code, provides that a Public Defender may not engage in the practice of criminal law other than in the discharge of the duties of his office the Committee does not feel that the law partners of the Public Defender would be similarly prohibited. Section 19-801, Idaho Code, gives every defendant the right to aid of counsel. A free choice of counsel, though not specifically provided in the statute, would seem inherent in the law and certainly any criminal defendant should be permitted to choose his counsel as freely as possible. In addition, Sec. 19-866, Idaho Code, provides that: "The protections provided by this Act (Public Defender Act) do not exclude any protection or sanction that the law otherwise provides." This statement suggests, at least, that the Legislature, in adopting the Public Defender Act, did not intend to deny solvent criminal defendants access to attorneys whose associates or partners might be public defenders.

Subject to the disciplinary rules of the Code of Professional Responsibility, particularly those disciplinary rules touching upon the independent judgment of the attorney and the avoidance of conflict of interest, it is the opinion of the Committee that law partners of a Public Defender can engage in the criminal practice of law as counsel for solvent defendants.

DATED this 30th day of December, 1974.

*Accord, I.S.B. Opinion No. 55 (November 3, 1971).
See, DR 5-105, Idaho Code of Professional Responsibility.