

FORMAL OPINION NO. 25*

The committee's opinion on a matter of ethics has been requested with reference to the situation reflected by the following facts:

Attorney A is a member of the Board of Trustees of a Village wherein he resides and conducts his practice. He has associated with him, in his practice, Attorneys B and C, as a partner and as a law clerk respectively. A client of the firm desires to bring a suit against the village. Query: Can A, B or C represent the client in bringing the suit?

It is obvious that A can not ethically ignore his obligation to the Village arising out of his trusteeship, and can not represent the client whose interest is adverse to A's obligation to the Village. Canon 6 is involved, and states, in part: "It is unprofessional to represent conflicting interests. . . . Within the meaning of the Canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose."

While Attorney A's position with the Village is not that of an Attorney-Client relationship his duty to the Village is nonetheless at least as great. We think it quite clear that a partner or associate may not do that which Attorney A cannot do himself. The firm, and its clerks or employees are one and the same. Henry Drinker on Legal Ethics, at page 106 covers the principle involved in the following words:

"The injunction not to represent conflicting interests applies equally to law partners representing different clients who have different interests conflicting with one another; also to lawyers, not partners, having offices together."

The American Bar Association Committee on Professional Ethics, in its Opinion No. 284A, has said that two lawyers who share offices, but with no other tie or relationship between them, to represent conflicting interests, there can be no doubt about the impropriety of partners or clerks of one representing the Village in a capacity of trusteeship, in representing one with adverse and conflicting interests.

We answer the question with great emphasis in the negative.

*This is an undated opinion. See, DR 5-105 (A), (B) and (D), Idaho Code of Professional Responsibility.