

CONFLICT OF INTEREST--PROSECUTING ATTORNEYS
AND ASSISTANTS--PARTNERSHIPS

The following inquiry has been submitted for the committee's opinion:

A is a deputy prosecuting attorney under B, the county prosecuting attorney. Both A and B are members of different law firms. Are A and B or members of their firms precluded from representing clients who have interests conflicting one with another?

It is fundamental that the relations of partners in a law firm are so close that the firm, and all members thereof, are barred from accepting any employment, that any one member of the firm is prohibited from taking (See Canon 6, and ABA Opinions No. 33, 49, 50, 72, 185, and 220). The same general rule is applicable to attorneys sharing offices even though they are not partners (ISB Op. No. 19).

The ultimate question then resolves itself as to whether or not A and B may represent clients who have interests conflicting one with another.

Needless to say, neither A, B nor their associates may undertake the representation of criminal or civil matters which conflict with the duties of A and B as attorneys for the county.

The propriety of A and B representing conflicting interests while at the same time associated as prosecutors is dependent upon the nature of their relationship. If no partnership or other arrangement exists between A and B, other than their association on public matters, and they do not occupy common offices for the general practice of law, then there would be no impropriety per se in their representing conflicting non-public interests.

Because there is some association between A and B which might conceivably mislead the public, we would admonish both A and B to keep in mind the principle embodied in Canon 6 which has led us to conclude an attorney holding public office should avoid all conduct which might lead the public to infer that the attorney is

utilizing his public position to further his professional success or personal interests (ISB Op. No. 14).

DATED this 5th day of December, 1960.

*See, DR 5-105(D), Canon 9 and DR 9-101, Idaho Code of Professional Responsibility. See also, I.S.B. Opinions 105 (August 14, 1981); 18 (undated); 17 (undated); and 10 (October 27, 1958).