

FORMAL OPINION NO. 43*

The Committee has been asked to address the following fact situation:

One member of a firm, a Deputy Prosecuting Attorney, is engaged in prosecuting a defendant for an alleged forgery. You have now inquired whether another member of your firm may properly represent your client, the alleged victim of the forgery committed by the defendant, in a civil action brought by the defendant concerning this identical transaction.

It is the view of our Committee that you are precluded from handling the civil case of your client under these facts:

Canon 36 of the Professional Ethics reads:

". . . a lawyer, having once held public office or having been in the public employ, should not after his retirement accept employment in connection in any manner which he has investigated or passed upon while in such office or employ."

Opinion 39 of the A.B.A. Professional Ethics Committee held, "A Prosecutor may not accept private employment in connection with any matter which he investigated in his official capacity."

Opinion 49 stated, "A firm may not accept employment in litigation involving the same facts as were passed on by a member when serving as a master."

Opinion 135 held, "A Prosecuting Attorney should not represent private litigants in an action based on substantially the same facts which he had investigated in an official capacity."

Opinion 33 held, "A firm may not accept employment which previous relations prevent a partner from accepting."

From all of the foregoing, it would appear to us that a conflict exists of such a nature as to preclude your representation of the civil aspects of this matter.

DATED this 20th day of May, 1964.

*See, DR 5-105(D) and DR 9-101(B), Idaho Code of Professional Responsibility; I.S.B. Opinions No. 18 (undated) and 32 (December 7, 1961).