FORMAL OPINION NO. 58*

An opinion has been requested upon two questions, first as to whether a firm may accept the defense of a civil assault and battery suit after an earlier refusal to represent the plaintiff in the matter; second if it would be proper to share reception room facilities with a physician.

DR 4-101 of the Code of Professional Responsibility requires that a lawyer preserve the confidences and secrets of a client and particularly not to use a confidence or secret of his client for the advantage of himself or of a third person, unless the client consents after full disclosure.

While a lawyer has a right to decline employment (ABA Canon 31) it would appear that your questions suggests a situation that might well involve a conflict of interest or breach of confidence.

> "It does not matter whether a fee was paid or whether after the encounter with the client, the attorney refused the case or withdrew before taking any overt action.
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> "The question is whether at the time the confidence was imparted the person regarded the lawyer as acting in a legal professional relation toward him. The deciding factor is what the prospective client thought when he made the disclosure, not what the lawyer thought.
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> "The fact that there are other and public sources from which the same facts may be obtained does not render the confidential communication any less privileged, even if the facts disclosed in the course of the communication by the client to the attorney were a matter of public record." Legal Ethics, by Raymond L. Wise, 1966; p. 168.

Any practice that might reflect unfavorably upon the profession should, if possible, be avoided. It is not a question as to whether the plaintiff's initial communication with you could be prejudicial to his case if you were to now take the defense, but whether the plaintiff might think so. The lawyer had best avoid making a judgment as to whether disclosures made by the prospective client would or could be prejudicial if he later considers representation of the adverse party.

Consent after a full disclosure to the parties concerned would, of course, eliminate the problem. Also, prior to existing client-attorney relationship might bear upon the question. It would appear proper to promptly refuse employment from a prospective but new client, and subsequently defend the adverse party if there was an immediate disclosure to such prospective client that the adverse party is your client and that you will likely be called upon to defend. The attorney would have declined immediately upon identity of the adverse party and with the explanation given, any question concerning possible conflicts or preservation of confidences could, in all probability, be satisfactorily settled at that time.

From a review of the Code of Professional Responsibility and of prior opinions it appears it would be entirely proper if it suits your need or convenience to share a waiting room with a physician. Joint office arrangements have been discouraged if there is any element of advertising, direct or indirect, if the layman's operation might result or be affiliated with legal matters or might be used as a feeder for the attorney's law practice. We find nothing unethical in the prospective situation you have described.

DATED this 20th day of November, 1972.

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*See, DR 5-105, Idaho Code of Professional Responsibility, which should be interpreted in connection with DR 5-101. Cf., I.S.B. Opinions No. 94 (May, 1976) and 49 (November 19, 1969).