

FORMAL OPINION NO. 76

The Committee on Professional Ethics has been asked the following question:

Would a law firm, appointed by the County Commissioners to be the Public Defender's Office, be ethically precluded from representing private clients on civil matters if the private clients' interests were against those of the County which paid the salary of the Public Defender's Office?

It is first observed that those needy persons qualifying for representation by a Public Defender seem to be the clients of the Public Defender. While it is true that the County in question may pay a certain fee to the Public Defender, the Public Defender does not undertake to represent the County in a criminal proceeding. Rather, he represents the individual needy person and the interests of the Public Defender in representation of his clients and the County's interests become the subject of adversary proceedings. The client, therefore, is not the County.

We find that there appears to be nothing in the Code of Professional Responsibility which would, per se, prohibit a Public Defender from representing private clients in civil matters when the County may be a defendant or adverse party. The Committee cautions, however, that DR 5-101 mandates that an attorney may not allow his interests to impair his independent professional judgment. Certain cases could arise where the Public Defender could have his professional judgment impaired because of his fee arrangement with the County in criminal matters. Of course, this would be the subject of an individual situation and is beyond the purview of this opinion.

DATED June, 1974.