

FORMAL OPINION NO. 77*

The Committee's opinion has been asked by a law firm of several attorneys who have offices in two different counties and whose practice extends into other counties. One member of the firm handles juvenile prosecutions on a contract basis only but does not work out of the prosecutor's office. The question is whether the prohibitions expressed in our prior opinions restricting the criminal practice of partners and associates of prosecutors would apply to the partners of this firm in their practice in the other counties outside the county where their partner or associate is a part-time prosecutor.

The Committee does not wish to equivocate or qualify its prior opinions in this area of adverse influences and conflicting interests. DR 5-105(D) of the Code of Professional Responsibility reiterates the familiar admonition that no partner or associate may accept employment which another partner or associate is required to decline. DR 5-105(A) restricts a lawyer from entering into a business transaction with a client if they have differing interests therein (actual or implied), unless the client has consented after full disclosure. Because the prosecutor always represents the public in his official duties, consent is not possible. The public is incapable of giving consent for a prosecutor to represent inherently antagonistic positions. While we recognize that under the circumstances presented it is unlikely that there would ever be any actual conflict of interest in the criminal defense work of the prosecutor's partners or associates in the other counties, we feel that maintenance of public confidence in the Bar requires strict adherence to the clear mandate of the above-cited Code provisions and the principles more fully discussed in our prior opinions.

DATED this 20th day of September, 1974.

*The applicable rule is DR 5-104(A), not DR 5-105(A).
See, I.S.B. Opinion 53 (September 13, 1971) and No. 10
(October 27, 1958).