

FORMAL OPINION NO. 87*

The Ethics Committee of the Idaho State Bar has been solicited for an opinion concerning the propriety of the following relationship:

An attorney is "house counsel" for an association on a set retainer and provides general legal counsel to the board of directors and to the staff of the association. Additionally, the association agrees to provide its members individual assistance relating to job grievances and matters before a public commission. Neither the individual member or the association pays any additional fees for any services, nor does the association counsel receive any fee in addition to his retainer for the representation of the individual in connection with the job-related grievance representation before the public commission. No legal matters other than those related to the members' employment are handled by counsel pursuant to the arrangement. The board of directors exercises no control in the performance of counsel's representation of the individual member.

Canon 35 of the Canons of Professional Ethics adopted by the American Bar Association states as follows:

"A lawyer may accept employment from any organization such as an association, club, or trade organization to render legal services in any matter in which the organization as an entity is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs."

The aforesaid canon has not been expressly carried over into the Code of Professional Responsibility as

adopted by the Idaho State Bar. A similar canon, however, is found at DR 2-104 (2) and (3) and is quoted as follows:

"A lawyer may accept employment that results from his participation in activities designed to educate laymen: to recognize legal problems, to make intelligent selection of counsel, or to utilize available legal services if such activities are conducted or sponsored by any of the offices or organizations enumerated in DR 2-103(D) (1) through (3), to the extent and under the conditions prescribed therein.

"A lawyer who is furnished or paid by any of the offices or organizations enumerated in DR 2-103(D) (1) and (2) may represent a member or beneficiary thereof, to the extent and under the conditions prescribed therein."

The organization referred to in the ethical canons mentioned above are limited to legal aid offices, military assistance offices, or public defenders offices, approved and constituted by the bar, and lawyer referral services approved by the bar. These rules have been interpreted further to include:

"Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or beneficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met:

"(a) The primary purposes of such organization do not include the rendition of legal services.

"(b) The recommending, furnishing, or paying for legal services to its members

is incidental and reasonably related to the primary purposes of such organization.

"(c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer.

"(d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter."

United Mine Workers v. Ill. State Bar Ass'n., 389 U.S. 217, 19 L.Ed.2d 426, 88 S.Ct. 353 (1967); Brotherhood of R. R. Trainmen vs. Virginia, 371 U.S. 1, 12 L.Ed.2d 89, 84 S. Ct. 1113 (1964); NAACP vs. Button, 371 U.S. 415, 9 L.Ed.2d 405, 83 S.Ct. 328 (1963).

The criteria of the question seem therefore to fall within the ambit of ethical conduct.

DATED July, 1975.

*The controlling provision of the current Code is DR 2-104.