

FORMAL OPINION NO. 89\*

The Professional Ethics Committee has been asked to advise whether or not it is ethically proper for an attorney to post bail for his client in a criminal case.

This is more properly a question of law than of ethics, though it should be noted that most jurisdictions either by legislative enactment or by rules of court have disqualified practicing attorneys to be surety for their clients in criminal cases or other judicial proceedings. To our knowledge, neither the courts nor the legislature in Idaho has seen fit to adopt such rule or statute, and though there are practical considerations that should discourage it, we do not believe the attorney is precluded, as a matter of ethics, from acting as surety or from advancing costs for a bail bond as a matter of convenience, provided such costs are subject to reimbursement.

It would be unethical for an attorney to use the furnishing of bail to induce or solicit business, and it would also be unethical for an attorney who does furnish cash bail or bond costs for a client, to make a specific charge therefor.

CAVEAT: Under the common law, practicing attorneys could not furnish bail for those accused of crime, and though the common law rule of champerty has been abolished in Idaho, § 73-116, Idaho Code, does provide that the common law of England, so far as it is not inconsistent with the laws of the United States, still obtains in the courts of this State.

Notwithstanding the possible application of the common law in Idaho, the committee feels that the question cannot be answered in the negative upon any reference to, application or interpretation of, the Code of Professional Responsibility.

DATED August, 1975.

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\*See DR 5-103(B), Idaho Code of Professional Responsibility.