

FORMAL OPINION NO. 100

The Professional Ethics Committee has been asked for comments on whether an attorney may, at the same time (1) practice criminal law under his own individual name, and with employed associates, as a public defender, under contract with a county, and (2) practice civil law as a member of a multi-lawyer firm engaged in the general practice of law. The attorney recognizes that he is precluded by the county contract and by statute (§ 19-860, Idaho Code) from engaging in criminal law practice except as public defender and will not accept criminal cases as a member of the private firm. The other members of the firm do not generally practice criminal law.

Assuming that the arrangement described is not violative of any agreement either with the county or the private law firm and that the lawyer in fact does not engage in criminal practice except in fulfillment of his public defender contract, no ethical violation is seen by the Committee.

The Legislature obviously contemplated that public defenders would from time to time engage in the independent practice of non-criminal law. Section 19-860, Idaho Code, specifically provides that a public defender may engage in civil practice unless he is prohibited from doing so by the Board of County Commissioners. The Committee sees no reason why a lawyer may not engage in that civil practice as a member of a firm. That other members of the firm might occasionally accept criminal matters does not appear to create any ethical problem, so long as such matters do not involve representations in conflict with the public defender's representations.

DATED this 30th day of September, 1977.