

## Utah Ethics Opinions

1974.

19. USB EAOO Opinion No. 19

Ethics Advisory Opinion No. 19

Approved April 12, 1974

**Summary:** Except for consent after full disclosure by both parties, an attorney may not represent a client in a law suit brought by another of the attorney's clients, even though the second client has not sought the attorney's advice in the instant matter. If the client bringing the action agrees to dismissal of the claim of the other client without a prior appearance by the attorney, the attorney can then represent the second client in a cross-complaint brought by the co-defendant.

**Facts:** You have inquired whether it would be proper for you to represent your client, a savings and loan association, under the following circumstances

Plaintiff in the suit, J. & J. Co., is a company for which you have done some legal work in the past, and in fact, you have three matters pending in which you represent them. You do not, however, represent J. & J. Co. in the present suit which is against one K, and the savings and loan association which is your regular retainer client.

The actions by J. & J. Co. is to foreclose a mechanic's and materialman's lien.

You indicate that it may be possible for you to obtain a dismissal of plaintiff's action against your client without entry of an appearance by you, but that K, the co-defendant, has cross-complained against your client, and your inquiry specifically is whether you can properly represent your client, savings and loan association, in defense of the cross-complaint.

**Opinion:** If you are able to obtain a dismissal by J. & J. Co., then it would not appear that there is any reason why you could not appear in the matter to defend your client in the cross-complaint. However, you should make a full disclosure to both J. & J. Co. and to your client of your position in the matter.

If you are unable to obtain permission of J. & J. Co. to appear in the matter without obtaining a dismissal of the complaint against the savings and loan association then you could not appear in the matter, including the filing of a responsive pleading to the J. & J. Co. complaint. Canon 5,

DR 5-107(A) would appear to authorize such action.

If neither of these courses are available to you, then it would appear that you should not represent the savings and loan association by a responsive pleading to the J. & J. Co. complaint, since it would be difficult to explain to either client the appearance of professional impropriety deplored in Canon 9.