

Utah Ethics Opinions

1976.

25. USB EAOE Opinion No. 25

Utah State Bar

Ethics Advisory Opinion No. 25

Approved May 11, 1976

[Modified or overruled by Opinion No. 126]

Summary: It is improper for members of a law firm to represent criminal defendants in municipal court where the law firm acts as a special city attorney.

Comments: See Utah Opinion 4.

Facts: Your question is whether individual members of a law firm which firm is hired as "city attorney for water law matters" or other specific civil areas of the law, may ethically represent defendants in the city court for violation of city criminal ordinances?

Opinion: This body has heretofore held in Utah Opinion 4, 1971 that a special assistant attorney general whose only duties are those of enforcing support and family obligations on behalf of the state is precluded from handling lawsuits against the state or in which his private client is involved with the state.

The opinion was issued prior to the time that the Code of Professional Responsibility was adopted in Utah, and the Canons of Ethics referred to in the opinion where Canon 6 and 29, the applicable parts of which are listed below:

Canon 6 states:

"It is the duty of a lawyer at the time of retainer to disclose to the client all circumstances of his relations to the parties, and any interest in or connection with the controversy, which might influence the client in the selection of counsel.

It is unprofessional to represent conflicting interests, except by express consent of all concerned given after a full disclosure of the facts. Within the meaning of this canon, a lawyer represents conflicting interests when, in behalf of one client, it is his duty to contend for that which duty to another client requires him to oppose.

The obligation to represent the client with undivided fidelity and not to divulge his secrets or confidences forbids also the subsequent acceptance of retainers or employment

from others in matters adversely affecting any interest of the client with respect to which confidence has been reposed."

The applicable part of Canon 29 is as follows:

"The lawyer . . . should strive at all times to uphold and to maintain the dignity of the profession and to improve not only the law but the administration of justice."

The opinion raised four potential problems:

First, that by reason of his public position he might be able, on behalf of his private client, to obtain an advantageous negotiation with the state, his public client.

Second, that he might, because of his public position, be in a position where his private client might suffer because of his loyalty to his public client.

Third, that he might be able to influence the outcome of the private client's matter by reason of information which he might obtain by virtue of his public position.

Fourth, that he might jeopardize his private client's case by virtue of information which he might divulge to his public employer.

The opinion indicated that though no ethical attorney would be guilty of any of these actions, that in the eyes of the public, laymen might easily conclude that the attorney was guilty of some or all of these acts, because of the apparent conflict of interest.

Canon 9 of the Code of Professional Responsibility embraces the spirit of Canons 6 and 29 of the former Canon of Ethics:

"A lawyer should avoid even the appearance of professional impropriety."

In our opinion the reasons set forth in Utah Opinion 4, apply with equal force to the factual question submitted here.

That opinion was bolstered by ABA Informal Opinion 674 holding that a firm representing a client with a claim against the state could not ethically represent that client where an associate of the firm is a part-time deputy attorney general handling law matters in an area of law foreign to the matter involved in this client's claim against the state, and who would take no part in the litigation, and had not discussed the matter with firm members or with members of the attorney general's staff.

We conclude that it would be improper for individual members of the firm to represent persons charged with criminal acts before the city court in the city in which the firm serves as counsel for specific purposes.

Rule Cited:

Utah Opinion 4