

Utah Ethics Opinions

1976.

31. USB EAOC Opinion No. 31

Utah State Bar

Ethics Advisory Opinion No. 31

Approved December 10, 1976

Summary: An attorney retained as corporate counsel may not reveal client confidences before a grand jury.

Facts: Your client, a member of the Utah State Bar, has been invited to appear before a grand jury.

You have inquired whether a lawyer who is member of the Utah State Bar may, without the consent of his corporate client, reveal before a grand jury communications made by the president or advice given to the president in the course of his professional employment by attorney.

Your communication indicates that considerable inculpatory evidence of personal activities as legal counsel for the corporation under investigation has been developed during the investigation.

Opinion: Canon 4, DR 4-101(C)(4), of the Rules of Conduct of the Utah State Bar, states:

(C) A lawyer may reveal:

(4) Confidences or secrets necessary to . . . defend himself . . . against an accusation of wrongful conduct."

The basis of this exception to the rule on confidentiality, is that of the action of the client in bringing charges against the attorney or revealing information concerning the attorney. If action on the part of the client requires the attorney to make disclosures in order to protect himself, then the attorney is released from the obligation of secrecy by the actions of his client. The usual operation of the exception would be a malpractice or negligence charge, but might equally involve a criminal charge, or other charge of wrongdoing. A client may not rely on the confidential relationship of the parties to seal the lips of the attorney and so prevent him from disclosing what is essential as a means of obtaining or defending his own rights. It is an accusation of wrongful conduct made by the client, not an accusation made by a third party, which gives rise to the exception.

Canon 37 of the Canons of Ethics, from which the current Canon was taken, and the ABA Opinions decided

thereunder, make the distinction clear. ABA Formal Opinions 19, 202, 250.

In the present circumstances, no information has apparently been disclosed by the corporation adverse to the attorney, nor have any changes been made by the client concerning the attorney.

It is our opinion, that in the circumstances delineated, there has been no waiver of the privilege, and the attorney may not reveal the information above.

Rule Cited:

Canon 4