

Utah Ethics Opinions

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34. USB EAOO Opinion No. 34

Utah State Bar

Ethics Advisory Opinion No. 34

Approved December 30, 1976

Summary: It is improper for lawyers to hold themselves out as partners where no partnership relationship exists.

A lawyer may not do what his partner, associate or one he shares office space with may not do.

An attorney may not appear before a pro-tem judge with whom office space is shared and may not appear in any criminal matters in that court.

Facts: Three attorneys share office space under an office sharing agreement, using what appears to be a firm name with a single telephone number and address, and with the names of each of the three along the left margin of your letterhead. You describe the relationship as "an office sharing partnership."

Numbered among the three is a deputy county attorney who does criminal prosecutions and practices privately, and an attorney who sits periodically as municipal pro-tem judge.

The questions you have posed are:

1. Are the other two attorneys in the office precluded from doing criminal work entirely, just as to state prosecutions, just as to matters the deputy county attorney may be involved in, or not at all?

2. What, if any, limitation should be placed on the attorney serving as a municipal pro tem judge, and what, if any, restrictions should there be as to his associates appearing before him as a pro tem judge or appearing before that court?

Your inquiries raise some important preliminary questions which must necessarily be explored prior to responding to the specific questions you have asked.

You have indicated in your background information that each of you receives income only from your own clients and not from the work of any other attorney in the office.

Opinion: Rule IV, Canon 2, DR 2-102(C) of the Utah Rules of Professional Conduct indicates:

"A lawyer shall not hold himself out as having a partnership with one or more other lawyers unless they are in fact partners."

The relationship you have delineated in your letter which you describe as "an office sharing partnership" is not in fact a partnership but merely an office sharing arrangement. In this regard, several ABA Ethics Opinions are pertinent.

Formal Opinion 106 cited with approval in the ABA Code of Professional Responsibility under DR 2-102(C) passed directly on the relationship, holding that it was improper for a group of attorneys to hold themselves out as partners where no partnership existed but one was the employer of the others named in the firm name.

Formal Opinion 115 held that two attorneys could not hold themselves out as partners when they were, in fact, attorneys in separate states using a partnership name in both states and where each was responsible for his own office expenses.

Formal Opinion 126 held that it was improper for lawyers sharing office space to hold themselves out as partners under the name A, B and C for the purpose of court appearances and signing pleadings when in fact they were not partners.

Formal Opinion 277 held that it was improper for two attorneys in different cities to hold themselves out as partners under the name of Smith and Jones, Attorneys at Law, when in fact what they had was a referral arrangement only.

In Informal Decision 555, the question was asked whether two attorneys might practice under a firm name where no real partnership in fact exists and when they are in reality associates sharing expenses. The Committee stated unequivocally:

"This Committee has stated on numerous occasions that it is improper for a group of lawyers to hold themselves out as partners when no partnership relation in fact exists." (citing the cases enumerated above)

We think it is incumbent upon the three of you to carefully rethink your relationship, since it appears likely that you are currently at cross purposes with DR 2-102(F).

A determination of partnership status is not, however material to the questions you have raised, i.e., the interrelation of you as associates, having regard to the

county prosecutor duties of one associate and pro-tem judge status of the other. If you were truly partners, you would fall under the interdiction "that which one partner could not do precludes all partners from undertaking to do." (ABA Formal Opinion 177, Informal Decisions C-493, 674, 691 and 855.)

The question then is, are persons sharing an office relationship in a different position than those who are partners or associates of a partnership? Informal Opinion 855 holds that they are not. The opinion holds that:

". . . what a lawyer cannot do, neither his partner, his associate nor one with whom he shares offices may do."

This view is reinforced in Informal Opinion 995 where it is held that two lawyers who share offices, although not partners, bear such a close relation to one another that if one is precluded ethically from representing a client then so also is the other.

With these principles as guidelines, let us examine the specifics. This Committee has held in Utah Opinion 26 that a pro-tem judge may not appear as criminal defense counsel in the same court, stating:

"Working with criminal court personnel and police, in the close circumstances required in the judicial handling of criminal matters, has an effect upon those persons which would make it difficult for a police officer, for example, to regard a pro-tem judge, acting as counsel, as he would any other lawyer contending adversely to the case he is presenting to the court.

We think the appearance of impropriety and the potential for pressure on police personnel makes it inappropriate for an attorney serving as a pro-tem judge in city court criminal cases, on a not infrequent basis to also act as defense counsel in city court criminal cases."

The Committee has also held in Utah Opinion 22 that county attorneys may not represent criminal defendants in other courts. To the same effect is Utah Opinion 16. This interdiction applies equally to a deputy. (Utah Opinions 4 and 7.)

Neither of the remaining two could properly appear before the pro-tem judge since he obviously could not do so. None of you may appear in municipal court criminal matters since the pro-tem judge would be precluded. None of you could properly appear as counsel in any civil matter arising out of a criminal matter in which either the pro-tem judge or the deputy county prosecutor had involvement.

Rule Cited: