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37. USB EAOC Opinion No. 37

Utah State Bar

Ethics Advisory Opinion No. 37

Approved May 3, 1977

Summary: An attorney may not represent a client before a county commission or defend a client in an alleged misdemeanor violation of county ordinance when the attorney's partner is a deputy county attorney.

Comments: See Utah Opinions 4, 34 and 35.

Facts: You have inquired as to the propriety of your handling a zoning matter before the county commission and the defense of a misdemeanor violation of the county ordinances on behalf of your client when your partner is a deputy county attorney of county. You state further that there may be no attorney in the county who would be without a similar conflict.

Opinion: The decision on this matter is clear. You cannot do what your partners cannot do by way of representation of a client. Since, obviously, he could not ethically represent the client in either of the matters set forth, you are likewise precluded from handling either of them. This is a clear and well-enunciated position of the Utah State Bar Ethics Committee, having been reaffirmed as recently as Utah Opinion 34, December 30, 1976, wherein ABA Informal Opinion 855 was quoted with approval holding that:

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

The fact that there is not an attorney in the county who would not have a similar conflict problem is not persuasive that an exception upon such a clearly established ethical policy should be engrafted. There are ample lawyers in adjoining counties who can undertake the representation, and 25-30 miles does not seem unreasonable as a distance for one to travel to engage counsel.

Rules Cited:

Utah Opinion 4