

## Utah Ethics Opinions

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40. USB EAOB Opinion No. 40

Utah State Bar

Ethics Advisory Opinion No. 40

Approved December 22, 1977

**Summary:** An attorney may not represent a client who seeks to sue a corporation which formerly employed the attorney as general counsel.

You have inquired whether you can represent a client under the following circumstances. You were formerly employed as general counsel for a corporation which sells franchises from February 1976 to June 1977. Subsequent to your termination of employment in June 1977, you were approached by persons seeking redress against that corporation. You state that you did not generally meet with the board of directors of the corporation and met with them on only one or two occasions and that you were not a director or officer of the corporation. You disaffirm knowledge of any secrets or confidences relating to the corporation.

The problem of confidences of a client arises under Canon 4 of the Utah Rules of Professional Conduct DR 4-101(A) which provides:

"Confidence" refers to information protected by the attorney-client privilege under applicable law, and "secret" refers to other information gained in the professional relationship that the client has requested be held inviolate or the disclosure of which would be embarrassing or would be likely to be detrimental to the client."

DR 4-101(B) provides:

"Except when permitted under DR 4-101(C), a lawyer shall not knowingly:

- (1) Reveal a confidence or secret or his client.
- (2) Use a confidence or secret of his client to the disadvantage of the client.
- (3) Use a confidence or secret of his client for the advantage of himself or a third person, unless the client consents after full disclosure."

The connotation of "confidences" of a client is somewhat

broader than "secrets" as used in the rule. The statement that "[a] lawyer may not make use of knowledge or information acquired by him through his professional relations with his client, or in the conduct of his client's business, to his own advantage or profit," is approved and quoted in the footnotes of DR 4-101 as published by the American Bar Association, citing ABA Formal Opinion 250.

As general counsel for a corporation dealing in franchises, obviously you are familiar with all aspects of that franchising, the agreements, the inclusions and exclusions and all policy matters relating at least to the sale of the franchises.

Obviously also, persons coming to you for advice and counsel currently, are motivated by the idea that you are knowledgeable concerning the franchises and franchise contracts. In other words, they approach you seeking to gain the advantage of your expertise concerning the business of your former employer.

The reasons you have cited in your letter why persons representing other counsel, that is, attorney case load, financial costs or lack of confidence in the attorneys, do not appear to us to be valid reasons for the disregard of potential conflicts of interest or the appearance of impropriety.

From the correspondence you have enclosed with your request for an opinion, it is apparent that the problem involved in the instance that brings this matter to our attention is in relation to a franchise, the marketed product of the corporation you formerly represented.

To us the appearance of impropriety and the potential use of expertise in the form of information obtained as in-house counsel for the corporation gives this matter a flavor of conflict of interests which, we feel, colors your representation of potential clients.

We conclude such representation would violate DR 4-101(A) and (B).

Rule Cited:

Canon 4