

Utah Ethics Opinions

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51. USB EAOC Opinion No. 51

Utah State Bar

Ethics Advisory Opinion No. 51

Approved December 8, 1978

Summary: An attorney who is also a city councilman may not ethically represent those charged with crimes in that city's courts or in cases where city-employed law enforcement officers are prosecution witnesses.

Facts: The inquiry here posed is whether or not it is ethically permissible for an attorney who is a city councilman to appear as defense counsel in that same city's courts, representing those charged therein with criminal violations. As city councilman, the attorney has direct authority for hiring, firing and setting pay rates and other terms of employment for law enforcement officers employed by the city to enforce its laws. These same officers are prosecution witnesses in those cases where the attorney acts as defense counsel.

Opinion: The provisions of Canon 5 alone, make it clear that the representation contemplated poses a blatant conflict of interest and is impermissible. EC 5-1 of Canon 5 provides as follows:

"The professional judgement of a lawyer should be exercised, within the bounds of the law, solely for the benefit of his client and free of compromising influences and loyalties. Neither his personal interest, the interests of other clients, nor the desires of third persons should be permitted to dilute his loyalty to his client."

Further portions of Canon 5 are also instructive, to wit:

EC 5-2. "A lawyer should not accept proffered employment if his personal interest or desires will, or there is a reasonable probability that they will, affect adversely the advice to be given or services to be rendered the prospective client."

DR 5-101(A). "Except with the consent of his client after full disclosure, a lawyer shall not accept employment if the exercise of his professional judgment on behalf of his client will be or reasonably may be affected by his own financial, business, property, or personal interests."

Additionally, Canon 8 advises in DR 8-101(A)(2), that "A

lawyer who holds public office shall not . . . use his public position to influence, or attempt to influence, a tribunal to act in favor of himself or of a client." In the instant situation, the mere possibility that the attorney might be able to influence the prosecution of a criminal case is enough to justify application of Canon 9's prohibition of "even the appearance of impropriety." EC 9-2 states as follows:

"Public confidence in law and lawyers may be eroded by irresponsible or improper conduct of a lawyer. On occasion, ethical conduct of a lawyer may appear to laymen to be unethical. In order to avoid misunderstanding and hence to maintain confidence, a lawyer should fully and promptly inform his client of material developments in the matters being handled for the client When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."

The dual roles of the attorney contemplated are not only inimical in terms of conflict of interest but also reflect poorly on the public image of the legal profession.

Committee refers those with further questions regarding the obligations of a legislator-lawyer to Informal Opinion 1182 of the ABA.

Rule Cited:

Canon 5