

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 95-02A 1

Approved January 26, 1996

Issue: May a law partner of a part-time justice court judge represent criminal defendants in the judicial district in which the justice of the peace sits? (fn2)

Opinion: A lawyer may represent criminal defendants in the same judicial district in which a law partner sits as a justice court judge. The lawyer may not appear before that partner, however.

Facts: A and B are partners or associates of law firm X. A sits as a justice court judge on a part-time basis in the town of T. B's practice involves representation of criminal defendants in the town of W (and perhaps several others) but not in the town of T. T and W are in the same Utah judicial district.

Analysis: First, it should be clear that B cannot appear before A. This would constitute "conduct that is prejudicial to the administration of justice" (fn3) and would surely result in A's violation of the Code of Judicial Conduct. (fn4)

Second, an analysis of whether B can represent criminal defendants elsewhere requires an analysis of both ethical and statutory proscriptions.

The justice court is a creation of the Utah Constitution (fn5) with statutory limitations as to territorial and subject matter jurisdiction. (fn6) a By statute, it is not a court of record (fn7) and appeals are taken *de novo* to the circuit court of the county in which the justice court exists. (fn8) Thus the impact of a decision by a justice court judge is limited exclusively to the parties appearing before the court and is subject to independent review by a full-time judge on appeal.

In implementing this system of justice courts, the Legislature imposed certain limitations on the secondary legal employment of part-time justice court judges. These limitations are an exception to the general rule that full-time judges may not practice law. (fn9) The relevant statutory

provision reads as follows:

A justice court judge may not appear as an attorney in any criminal matter in a federal, state, or justice court or appear as an attorney in any justice court or in any juvenile court case involving conduct which would be criminal if committed by an adult. (fn10)

A justice court judge who violates this restriction is subject to removal for willful misconduct in office. (fn11)

This statutory limit applies to the justice court judge, not to partners or associates. It is designed to protect the integrity of the justice court system, by avoiding any appearance of conflict of interest, and thus impropriety, on the part of the judge.

In contrast, the analysis of whether a partner or associate of a justice court judge may represent criminal defendants in the same jurisdiction must begin with the Utah Rules of Professional Conduct. The basic rule governing imputed disqualification is Rule 1.10, which provides that while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rule 1.7, 1.8(c), 1.9 or 2.2. The relevant question here is whether the justice court judge is prohibited by Rule 1.7 from representing criminal defendants; if so, partner or associate would be vicariously disqualified under Rule 1.10.

Rule 1.7(b) prohibits a lawyer from representation that might be materially limited by responsibilities to another client or by the lawyer's own responsibilities, unless the lawyer reasonably believes the representation will not be adversely affected and the client consents after consultation. The rule is designed to insure undivided loyalty on the part of the lawyer to his or her clients. The statutory prohibition of criminal defense work by justice court judges, however, is of a different order; it is designed to protect the justice court system from concerns about partisanship of judges. The barrier to criminal representation by justice court judges, therefore, is a matter of statutory design rather than legal ethics.

Because of the basis for disqualification of the justice court judge is the statute, rather than Rule 1.7, the disqualification is not imputed to the partner or associated by means of Rule 1.10.

This analysis does not, however, preclude the possibility that the partner or associate might be independently disqualified under Rule 1.7. If in the facts of a given case, the association with the justice court judge posed the possibility that the lawyer's representation of the client

might be materially limited, then the representation would be improper.

Finally, the analysis is not inconsistent with our conclusions in Opinion No. 126, which involved a conflicts analysis of a part-time city attorney's representation of criminal defendants under Rule 1.7. That analysis concerned whether the attorney's responsibilities to the city as client precluded the attorney's representation of criminal defendants because of divided loyalties. In the case before us, it is not Rule 1.7, but the statutory scheme, which precludes the justice court judge from the representation.

Footnotes

1. This opinion amends and supersedes Opinion No. 95-02, previously approved on April 28, 1995.

2. The analysis and conclusion in this opinion apply equally to any lawyer practicing in the firm of the part-time justice court judge.

3. Utah rules of Professional Conduct Rule 8.4(d) (1990).

4. *E.g.*, Utah Code of Judicial Conduct Canon 3.E(1)(b) (1994).

5. Utah Const. art. VIII § 1.

6. Utah Code Ann. §§ 78-5-103, -104 (1993).

7. Utah Const. art. VIII § 1; Utah Code Ann. § 78-5-101 (1989).

8. Utah Code Ann. § 78-5-120 (1989).

9. Utah Const. art. VII § 10

10. Utah Code Ann. § 78-5-128(3) (1995).

11. Utah Code Ann § 78-5-128(7) (1995).

Rules Cited:1.71.91.10