

16-01

Opinion No. 16-01

Utah Ethics Opinion

Utah State Bar Ethics Advisory Opinion Committee

February 17, 2016

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BACKGROUND

1. Lawyer A, a sole practitioner, was retained to represent Wife in divorce matter. Husband retained Lawyer B at Law Firm B to represent him in the divorce. Husband later discharged Lawyer B and Law Firm B, and Lawyer A continued to represent Wife. Lawyer A later joined Law Firm B, and Husband executed a waiver consenting to Lawyer A's continued representation of Wife, but only for the express purpose of mediation and settlement negotiation. While employed at Law Firm B, Lawyer A obtained no information regarding Husband from Law Firm B. Lawyer A did not access Husband's electronic or hard file maintained by Law Firm B and did not discuss the case with Lawyer B. Instead, all information obtained about the case came from Wife and/or third parties. The case settled and Lawyer A withdrew. Lawyer A later left Law Firm B and joined Law Firm C. Lawyer B remains employed at Law Firm B.

ISSUE

2. May Wife re-hire Lawyer A at Law Firm C to represent Wife against Husband on various post-decree enforcement issues?

OPINION

3. Yes. When Lawyer A left Firm B and joined Firm C, under Rule 1.9 (b) of the Utah Rules of Professional Conduct (the "URPC"), Lawyer A could continue to represent Wife without Husband's consent because Lawyer A did not obtain any information protected by Rules 1.6 and 1.9(c) about Husband.

ANALYSIS

4. When Lawyer A joined Law Firm B, Husband was a former client of Law Firm B. Rule 1.10(a) provides that [w]hile 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 Rules 1.7 and 1.9...." URPC 1.10(a). This means that if Lawyer B and Firm B have a conflict that would prohibit them from representing Wife against Husband, who is Lawyer B's and Firm B's former client, then that conflict would be imputed to Lawyer A now that Lawyer A has joined Firm B, and Lawyer A would not be able to represent Wife, unless an exception applies.

5. Because Husband is a former client of Lawyer B and Law Firm B, the first issue is whether pursuant to Rule 1.9, *Duties to Former Clients*, a conflict exists. Rule 1.9(a) provides that a "lawyer who has formerly represented a client in a matter shall not thereafter represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client *unless the former client gives informed consent, confirmed in writing.*" URPC 1.9(a) (emphasis added). Here, Husband's and Wife's interests are directly adverse in the same matter, the divorce proceedings. However, Lawyer A obtained Husband's consent in writing to Lawyer A's continued representation of Wife in the divorce proceedings for the express purpose of mediation and settlement negotiation.

6. Rule 1.9(c)(1) further provides that a lawyer or firm may not use information relating to the representation of a former client to the disadvantage of the former client. URPC 1.9(c)(1). In addition to obtaining Husband's written consent, Lawyer A did not access Husband's file while at Firm B or speak to Lawyer B about the case involving Husband and Wife. Lawyer A did not obtain any information from Lawyer B or Law Firm B related to their representation of Husband. Because it appears that Lawyer A's representation of Wife while at Law Firm B complied with Rule 1.9, it was proper for Lawyer A to represent Wife while Lawyer A was at Firm B.

7. After the case settled, Lawyer A left Firm B and joined Firm C. Wife then contacted Lawyer A to represent her in connection with post-decree enforcement issues against Husband in the same divorce proceedings. Rule 1.9(b) provides, in pertinent part:

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client

(b)(1) whose interests are materially adverse to that person; and

(b)(2) about whom the lawyer had acquired information protected by Rules 1.6 and 1.9(c) that is material to the

matter; unless the former client gives informed consent, confirmed in writing.

URPC 1.9(b) (emphasis added).

8. Because Lawyer A did not acquire information about Husband protected by Rule 1.6 (pertaining to confidentiality of information related to the representation of a client) and 1.9(c), the elements of Rule 1.9(b)(2) are not met, and Lawyer A does not have a conflict in representing Wife in the post-decree enforcement issues and does not have to get Husband's consent to the representation of Wife pursuant to Rule 1.9(b). *See* URPC 1.6 & 1.9. This result is confirmed by the comments to Rule 1.9, which state:

Paragraph (b) operates to disqualify the lawyer only when the lawyer involved has actual knowledge of information protected by Rules 1.6 and 1.9(c). Thus, if a lawyer while with one firm acquired no knowledge or information relating to a particular client of the firm, and that lawyer later joined another firm, neither the lawyer individually nor the second firm is disqualified from representing another client in the same or a related matter even though the interests of the two clients conflict.

URPC 1.9 cmt. 4.

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