

Utah Ethics Opinions

appearance of impropriety.

1974.

20. USB EAOB Opinion No. 20

Ethics Advisory Opinion No. 20

Approved April 12, 1974

Summary: An attorney who is a justice of the peace may appear in city court, district court, juvenile court and federal court matters, absent any conflict of interest, but should not appear in criminal matters and must exercise great caution and circumspection to avoid even the appearance of impropriety.

Facts: You have inquired as to the extent an attorney may be involved in the private practice of the law while also serving as a precinct justice of the peace.

Opinion: There are several considerations involved in answering your inquiry.

First, it appears that there is no statutory interdiction against a justice of the peace also practicing law.

Second, the Code of Judicial Conduct recently adopted by the Utah Supreme Court, Canon 5, E, indicates that a judge should not practice law. However, this Canon must be read in connection with the factual situation and we do not read it as forbidding the practice of law by a justice of the peace engaged in at most, a part-time judicial capacity.

Third, there have been no opinions issued by the ABA Committee on Professional Ethics since the adoption of that Code. However, there are several ABA ethics opinions dealing with part-time judges which are illuminating.

Formal Opinion 55 holds, in substance, that a part-time judge not otherwise restricted by law, may practice in district and juvenile court matters. Formal Opinion 110 holds that such a judge may appear in domestic relation matters in other courts. Formal Opinion 138 holds that such a judge may appear in federal court matters. Formal Opinion 242 holds that such a judge may not appear in criminal matters.

It is the opinion of this body that a justice of the peace such as you have inquired about could appear in city court matters, district court matters, juvenile court matters and in federal court matters, absent any conflict of interest, but should not appear in criminal matters, but that he must exercise great caution and circumspection to avoid even the