

Utah Ethics Opinions

1979.

65. USB EAOC Opinion No. 65

Utah State Bar

Ethics Advisory Opinion No. 65

Approved September 21, 1979

Summary: An attorney may act as both executor and attorney for the executor in probate proceedings.

Facts: The Ethics and Discipline Committee of the Utah State Bar has been asked whether or not it is ethically permissible for an attorney to act as both executor and attorney for the executor of an estate.

Opinion: This question has been addressed only once in 1946 by the American Bar Association. In Formal Opinion 271, the ABA Committee was presented primarily with the question of whether or not a trustee in bankruptcy could be represented by a law firm of which he was a member. The question was raised of whether or not this would pose a conflict of interest. The committee noted that any fees paid to an attorney or the trustee had to be court approved. Also, it was recognized that it was a general practice in federal court bankruptcy proceedings for this arrangement to be made. The Committee's opinion on the subject summarized as follows:

It is believed to be general practice where a lawyer is appointed executor, to have his firm represent him and, so far as we know, no question has been raised as to the propriety of this. The fees of counsel for all fiduciaries could in any case be questioned by an interested person and be subject to the approval of the court in which the accounting was rendered. The Committee is of the opinion that there is no ethical impropriety in a trustee in bankruptcy being represented by the firm of which he is a member and that the same principle applies to executors, administrators, guardians, etc. and other similar fiduciaries." ABA Formal Opinion 271 (1946).

No subsequent opinions have vitiated this holding. Since an attorney is held to the same restrictions as any one of his partners or associates, and concomitantly has the same latitude, it is therefore permissible for an attorney to act as both executor and attorney for the executor in probate proceedings.

Rule Cited: