

Utah Ethics Opinions

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76. USB EAOB Opinion No. 76

Utah State Bar

Ethics Advisory Opinion No. 76

Approved April 11, 1985.

Facts: Corporation X, a non-profit organization, is funded by the Federal Government to provide legal services to low-income people. The corporation's Board of Directors consists of lawyers and non-lawyers. The corporation employs licensed attorneys to perform legal services.

The corporation's attorneys sign pleadings and other court documents individually and appear in court for their individual clients. To facilitate the handling of cases, the attorneys would like to sign pleadings with their corporate name, followed by the name of individual attorneys. Also, the corporation's attorneys would like to appear for one another and transfer cases intra-office, as is done in partnerships and professional law corporations.

The issues presented are:

1. Is it ethical for the corporate name to be shown on pleadings and other legal documents followed by the signature of one of the corporation's attorneys?

2. Is it ethical for the corporation's staff attorneys to appear in court for one another and to transfer cases intra-office in order to facilitate handling of cases?

Opinion: DR 2-103(D)(1)(c) of the Revised Rules of professional Conduct of the Utah State Bar clearly allows legal aid offices which are operated or sponsored by a governmental agency. In this case, Corporation X is a legal aid agency funded by the federal government and is therefore permitted under DR 7-103(D)(1)(c).

DR 5-107(B) states that "a lawyer shall not allow a person who recommends, employs or pays him to render legal services for another to direct or regulate his professional judgment in rendering such legal services." Further, DR 5-107(C) states that:

"(C) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:

(2) A non-lawyer is a corporate director or officer thereof;

or

(3) A non-lawyer has the right to direct or control the professional judgment of a lawyer."

Because Corporation X is a non-profit corporation, DR 5-107(C) does not apply. However, the policies behind the rule which are stated in EC 5-1, 5-71, 5-23 and C-24 are applicable to Corporation X's inquiry. EC 5-1, 5-21 and 5-23 state that a lawyer should not allow outside influences, including employers, to interfere with his independent professional judgment. EC 5-24 states that a lawyer should not accept employment from legal aid offices which are administered by both lawyers and non-lawyers unless the Board sets only broad policies and there is no interference, in the lawyer's relationship to his clients. It is clear that Corporation X's activities are ethical so long as the board of directors sets broad policies which do not interfere with the staff attorney's independent professional judgment.

A related issue is whether placing the corporate name on legal documents followed by the individual attorney's signature is ethical. ABA Informal Opinion 1218 dealt with a similar question and concluded that placing the corporate name of a legal aid corporation on pleadings and legal documents is not unethical. Indeed, such usage may more completely identify counsel. The corporate name, however, cannot be used by an attorney to avoid personal responsibility. Further, ABA Formal Opinion 1218 states that:

"If the legal aid corporation has non-lawyers on its board . . . the name of the legal aid corporation should not be used in a manner that would indicate it is practicing law."

Accordingly to ABA Informal Opinion 1218, Corporation X may sign pleadings and documents in the corporate name followed by the individual attorney's name. Such use may more clearly identify the attorney. However, the staff attorney must not use the corporate name to avoid personal responsibility. In addition, by having the individual attorney sign under the corporate name, the corporation will avoid appearing as though it is practicing law.

Another issue involves whether staff attorneys may appear in court for one another and transfer cases intra-office. The potential problem with this arrangement is that a non-lawyer may interfere with the staff attorney's independent professional judgment. It seems unlikely, however, that this would actually present a problem. The non-lawyer directors are only involved in setting the broad policies of the corporation, not in the daily occurrences of the corporation. Substitute court appearances and intra-office transfer of cases are daily occurrences and the

directors would have no influence over such specific decisions.

Additionally, allowing the staff attorneys to appear for each other and reassign cases where necessary may result in better service to the corporation's clients. Such practices may allow the attorney's expertise to be used effectively and may result in better representation of the corporation's clients. There is no reason why a legal aid corporation may not benefit itself and its clients by implementing policies which create more efficient and effective office procedures.

In conclusion, it is clear that Corporation X may use the corporate name on pleadings and other court documents followed by the individual attorneys' name. Further, the corporation may allow its attorneys to appear for one another and to transfer cases intra-office.

Rule Cited: