

## Utah Ethics Opinions

1994.

125. USB EAOE Opinion No. 125

Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 125

Approved October 28, 1994

**Issue:** May an elected county attorney share and rent office space to another attorney who may represent interests adverse to the county?

**Opinion:** The Utah Rules of Professional Conduct do not prohibit one attorney from renting office space to another, provided that the arrangement does not create a conflict of interest prohibited by the Rules, does not jeopardize confidential client information, does not mislead clients about the relationship between the attorneys, and is otherwise consistent with the Rules.

**Analysis:** A county attorney maintains a private office in a different city from the main county offices. The office is used for county business and for a small private law practice of the county attorney. The attorney shares the office with another attorney, in exchange for rent and building maintenance. The two attorneys have separate signs and letterhead, separate client files (not accessible to the other attorney), and separate billing practices. The two attorneys do, however, share a secretary, common space, and telephone services. The renting attorney does not perform criminal defense work, but does represent a city within the county and other clients who may have interests in conflict with the interests of the county.

Under the Utah Rules of Professional Conduct, if a lawyer is prohibited from undertaking representation because of a current conflict of interest, other lawyers associated in a firm with that lawyer are also prohibited from undertaking the representation.<sup>1</sup> The county attorney is prohibited from representing private clients with interests adverse to the county.<sup>2</sup> Thus, if the lawyers were "associated in a firm" by virtue of the rental agreement, the disqualification of the county attorney would be imputed to the renting attorney.

The Comment to Rule 1.10 indicates that lawyers who share office space ordinarily are not regarded as constituting a firm simply as a result of the sharing arrangement. The inquiry is fact-specific, however, and if the details of the sharing arrangement indicate that the two

lawyers are acting as a firm, they will be regarded as a firm for purposes of the conflicts rules.<sup>3</sup> For example, if the lawyers in any way present themselves to the public as a firm, they will be regarded as a firm under the conflict rules.

The comment to Rule 1.10 also indicates that lawyers sharing office space may be regarded as a firm if they have mutual access to confidential information. The lawyers in this situation describe themselves as maintaining separate files, with separate access to those files. However, they share common secretarial and telephone services, and the county attorney uses the office for county business. Several state bar associations have concluded that shared secretarial services present an unacceptable risk to confidential information when attorneys represent clients with adverse interests.<sup>4</sup> Other jurisdictions either strongly advise against shared secretarial services<sup>5</sup> or require the attorneys involved to institute procedures to ensure that the secretary will not divulge clients' secrets.<sup>6</sup>

At a minimum, therefore, there is agreement among all bar opinions considering the question that the rental arrangement described by the two attorneys must include mechanisms to insure that the shared secretary does not divulge confidential information, or the attorneys will be regarded as a firm for purposes of the disqualification rules. Although it is not a *per se* violation of the Rules of Professional Conduct, the Committee finds it difficult to see how it would be possible for shared secretarial arrangements not to put confidential information at risk. We, therefore, strongly caution attorneys who represent clients with conflicting interests not to share a secretary with respect to the representations.

## Footnotes

1. Rules of Professional Conduct 1.10.

2. *Id.* Rule 1.7; see also Utah State Bar Ethics Advisory Op. No. 126, ABA/BNA Lawyers' Manual on Professional Conduct 1001:8502 (1994).

3. See Utah State Bar Ethics Advisory Op. No. 34 (1976).

4. Indiana State Bar Assoc. Ethics Op. U4, ABA/BNA Lawyers' Manual on Professional Conduct 901:3305 (1990); Maine Op. 41, ABA/BNA Lawyers' Manual on Professional Conduct 801:9207 (Aug. 23, 1983).

5. Virginia State Bar Op. 943, ABA/BNA Lawyers' Manual on Professional Conduct 901:8722 (June 24, 1987).

6. Pennsylvania Bar Assoc. Op. 88-55, ABA/BNA

Lawyers' Manual on Professional Conduct 901:7312  
(1988). *See also* Arthur Garwin, *Suite Harmony*, A.B.A. J.,  
March 1992, at 88.

Rule Cited:

1.10