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Informal Legal Advice

by Keith A. Call

Have you ever been in a social setting when a friend or family member approaches you and says, “Hey, I’ve got a quick legal question for you. Gotta second?” If you have been a lawyer (or even a law student) for more than a minute, I can guarantee you have. I heard of one lawyer who even felt like she had been designated as the “ward lawyer” because she often gets approached with this type of question at church.

This is a tough one. I’m not aware of any published Utah cases or ethics opinions that directly address this issue. But there are several potential ethical and liability pitfalls whenever your brother-in-law hits you up with a “quick legal question.” Here are just a few of them.

Attorney-Client Relationship

By giving informal legal advice, you may be unwittingly creating an attorney-client relationship, with all of its attendant duties and responsibilities. An implied attorney-client relationship can result when the “client” seeks and receives the advice of the “lawyer” in matters pertinent to the lawyer’s profession. *Breuer-Harrison, Inc. v. Combe*, 799 P.2d 716, 727 (Utah Ct. App. 1990). For an implied attorney-client relationship to exist, the “client” must actually and reasonably believe that the attorney represents the client’s interests. *Roderick v. Ricks*, 2002 UT 84, ¶ 41, 54 P.3d 1119. Courts will examine the totality of the circumstances surrounding the alleged representation. *Norman v. Arnold*, 2002 UT 81, ¶ 17, 57 P.3d 997. Under the rules of ethics, an attorney-client relationship “can arise from brief informal conversations, in person or by telephone, even though no fee is ever discussed or charged and no contract of employment is signed.” Utah State Bar Ethics Advisory Op. 97-02 (Jan. 24, 1997).

Competence

The first rule of ethics requires a lawyer provide competent representation and advice. Utah R. Pro. Cond. 1.1 This requires appropriate legal knowledge, skill, thoroughness, and preparation. That’s hard to do when Soccer Dad or Mom starts asking questions about unfamiliar areas of the law on the sideline.

Conflicts of Interest

Handing out informal legal advice usually does not give you the opportunity to screen for potential conflicts of interest. Indeed, you may not even know who the relevant parties are. This can inadvertently lead to forced withdrawal by you or a partner or, worse, violating the ethical rules relating to conflicts of interest.

Confidentiality of Information

Informal advice is by definition, well, informal. Due to its informality, there may be a temptation to ignore rules regarding confidentiality and inadvertently share confidential information with other family members or friends. Lawyers have an obligation to keep the confidences of prospective clients, even if they never actually become a client. Utah State Bar Ethics Advisory Op. 05-04 (Sept. 8, 2005).

Unauthorized Practice of Law

It’s even possible that the informal legal advice will violate other states’ rules regarding the unauthorized practice of law. Suppose you are at a family reunion in Colorado (or maybe even Utah) and your cousin asks you about a ski accident he had at a Colorado ski resort. Unless you are licensed to practice law in Colorado, any advice you give him might run afoul of Colo. R. Pro. Conduct 5.5.

So What Should You Do?

For those of you who want a way out of advising Uncle Bob about his water rights, Sister Davis about her divorce, or Neighbor Alison about her bad car repairs, read these two short articles: *Attorneys Beware: Do Not Provide Informal Legal Advice to Friends or Relatives*, PARAGON UNDERWRITERS (March 1, 2019), <https://www.paragonunderwriters.com/attorneys-beware-do-not-provide-informal-legal-advice-to-friends-or-relatives/>;

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Jennifer Anderson, *How to Stop Your Family and Friends from Asking You for Legal Advice*, INFOTRACK.COM (Nov. 24, 2021), <https://www.infotrack.com/blog/how-to-stop-your-family-and-friends-from-asking-you-for-legal-advice/>. Those articles will give you some great tools for just saying “no.”

My personal view, however, is different. In most of my articles, I have advised you to take the conservative approach, doing whatever it takes to keep yourself out of trouble. But in this case, I believe the law is a *service* profession and lawyers have at least a moral obligation to lend a hand where they can. Lawyers should not shy away from helping people unless we get paid a fee and set up a formal attorney-client relationship. If we are so afraid of lawsuits and ethics complaints that we can’t informally advise our neighbor, then we have messed up our profession and we need to fix it. Heaven knows I do that all the time with my next-door-neighbor-doctor!

If you do decide to engage in informal advice to your neighbor, adopt the following practices to minimize your risks:

- Stay in your lane. Don’t try to look smart (or appear helpful) by giving legal advice on topics you are unfamiliar with. After all, you are not really helping anyone if you try to give legal advice in areas where you are not competent.
- Keep your advice general, show empathy, and suggest additional resources. Don’t feel compelled to solve your friend’s problem on the fly.
- Keep things professional, including by keeping confidences. Don’t let the informality of the situation draw you into making professional or ethical mistakes.
- Depending on how far your conversation goes, you may want to follow up in writing to clarify that you are not their attorney. That may feel awkward, but there are ways to do it tactfully. For example, you could write a text or email offering an attorney referral or other resource, and casually clarify you are not their lawyer.

Being asked for informal legal advice can sometimes be annoying or even weird. On the other hand, it may be an opportunity to use your years of legal training and experience to help someone in need. It’s completely understandable if you want to simply avoid doing so, and there are usually ways to do so gracefully. For those who don’t want to miss an opportunity to help, I hope this article helps you do so safely.

Every case is different. This article should not be construed to state enforceable legal standards or to provide guidance for any particular case. The views expressed in this article are solely those of the author.

Need Ethics Help?



The Utah State Bar General Counsel’s office can help you identify applicable disciplinary rules, provide relevant formal ethics opinions and other resource material, and offer you guidance about your ethics question.

Utah attorneys and LPPs with questions regarding their professional responsibilities can contact the Utah State Bar General Counsel’s office for informal guidance during any business day by sending inquiries to ethics hotline@utahbar.org.

The Ethics Hotline advises only on the inquiring lawyer’s or LPP’s own prospective conduct and cannot address issues of law, past conduct, or advice about the conduct of anyone other than the inquiring lawyer or LPP. The Ethics Hotline cannot convey advice through a paralegal or other assistant. No attorney-client relationship is established between lawyers or LPPs seeking ethics advice and the lawyers employed by the Utah State Bar.



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