



# Utah State Bar

## Office of Professional Conduct

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October 8, 2013

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Maryann Martindale  
P.O. Box 521847  
Salt Lake City, UT 84152

Re: Information Submitted Concerning John E. Swallow  
OPC File No. 13-0034

Dear Ms. Martindale:

I reviewed with the other attorneys in this office your Request for Assistance. Pursuant to Rule 14-510(a)(2) of the Rules of Lawyer Discipline and Disability as amended January 1, 2003, ("RLDD") all "official" complaints must contain a verified statement attesting to the accuracy of the information contained in the complaint, as well as a notarized signature from the person submitting the complaint, before the informal complaint is considered initiated against an attorney. However, although the information this office received is not considered an informal complaint against John E. Swallow, it was thoroughly reviewed pursuant to Rule 14-504(b) of the RLDD. This rule gives the Utah State Bar's Office of Professional Conduct ("OPC") the duty to screen and investigate all information coming to its attention which may relate to misconduct of an attorney, and may be grounds for discipline. Based on the OPC review, we determined the following:

In summary, your allegations against Attorney General John Swallow stem from three separate matters. First, you alleged misconduct based upon Mr. Swallow's alleged involvement with indicted businessman Jeremy Johnson. Your letter does not specifically detail nor provide any documents or information for the basis of your allegations against Mr. Swallow and instead refers to recent news stories. Independent of your allegations, based on the information that has been disseminated through the media, the OPC is generally aware that Mr. Johnson contends Mr. Swallow helped him broker a bribe in order to quash a federal inquiry into Mr. Johnson's conduct.

The second matter that forms the basis of your allegations is information contained in a letter to the Salt Lake Tribune from attorney Allen Young. In his letter Mr. Young indicated that Mr. Swallow was

compensated for approximately 100 hours of time spent consulting with a private client. Again, other than what is printed in the media, you did not provide any documents or information to support your allegations.

The third matter that forms the basis of your allegations is information contained in a City Weekly article. The article indicates that Mr. Swallow and a donor privately discussed Mr. Swallow's ability to set up a meeting with the donor and then-Attorney General Mark Shurtleff as well as Mr. Swallow's intention, if elected as Attorney General, to move the Division of Consumer Protection under the control of the Attorney General's Office. If you have some independent information or documentation to support what you have stated to the OPC, you have not provided this.

It is your position that in the context of the above-referenced matters Mr. Swallow violated many of the Rules of Professional Conduct. For example, you contend that Mr. Swallow's consultation with private clients while the Deputy Attorney General was inappropriate because the interests of his private clients were "necessarily" adverse to those of the State of Utah and its citizens. You alleged further that Mr. Swallow failed to act diligently on behalf of the State because he spent time doing work for private clients. You also alleged that Mr. Swallow may have violated the confidentiality rule if he revealed information relating to his representation of the State to Mr. Johnson. You contend further that Mr. Swallow's conduct gives rise to violation of several state laws; including the Utah Administrative Code and the Utah Public Officers and Employees Ethics Act.

The evidence is insufficient to establish that Mr. Swallow engaged in conduct that violates the Rules of Professional Conduct. Because although you alleged that Mr. Swallow violated ethical rules regarding confidentiality, conflicts of interest and diligence (to name a few), you did not provide a sufficient basis for these claims. In this respect, the general duties of an Attorney General to the public without more do not necessarily implicate the ethical rules of confidentiality, conflicts of interest and diligence. Further, your allegations that Mr. Swallow discussed the ability to arrange a meeting with Mr. Shurtleff and discussed his intent to move the Division of Consumer Protection do not, in and of themselves, rise to the level of ethical violations.

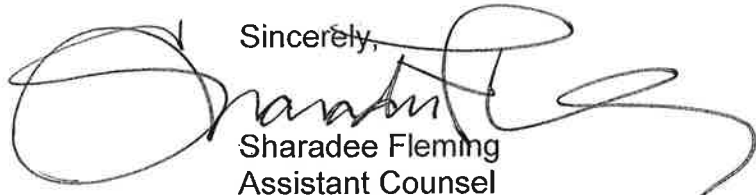
Additionally, the OPC sent you a letter, dated March 1, 2013, asking you to provide information beyond what is readily available in the news to support your allegations. You did not respond to our request. On August 8, 2013 the OPC received a letter from you requesting an update regarding the status of the case. The OPC responded to your letter indicating the matter is still open. We also provided you an additional copy of our March 1, 2013 letter and again requested that you provide specific documentation to support your allegations. To date, you have not responded to our requests. At this point in time these requests are an important component in any investigative trail the OPC would need to take to determine that any of the allegations that you have made would lead to a determination that Mr. Swallow has violated the Rules of Professional Conduct. Without the requested information the OPC is unable to proceed with an investigation of the allegations contained in your letter. Accordingly we must decline to prosecute this matter and the case will be closed.

It should also be noted that as reported in the media, most if not all of your allegations are presently a basis for separate and ongoing investigations in other forums. The OPC has the authority to allow these investigations to reach their respective conclusions and then determine if there is enough information for further investigation outside of what of what you have provided.

Finally, please note, our January 25, 2013 letter advised you that Bar disciplinary proceedings are not intended to be publically investigated. You were advised further that it is the OPC's view that your disclosure of information related to this investigation breached the applicable confidentiality provisions. Nevertheless, you continued to discuss this matter publically through the media. And although this is not the basis for our decision, it is a factor we can consider.

Based on the foregoing, pursuant to Rule 14-504(b)(3)(B), we are declining to prosecute this case. We nevertheless thank you for bringing this matter to our attention. Your concerns aid the OPC in monitoring the professional conduct of attorneys in Utah.

Sincerely,

A handwritten signature in black ink, appearing to read 'Sharadee Fleming', written over the word 'Sincerely,'.

Sharadee Fleming  
Assistant Counsel  
Office of Professional Conduct

SF/jl  
cc: John E. Swallow