

## Utah Ethics Opinions

1979.

53. USB EAOOC Opinion No. 53

Utah State Bar

Ethics Advisory Opinion No. 53

Approved April 12, 1979

**Summary:** An attorney may provide limited legal services to persons wishing to handle their own divorces.

**Comments:** See Utah Opinion 74.

**Facts:** The question presented is whether or not an attorney can ethically provide legal assistance for persons desiring to handle their own divorces. The attorney provides each client with a manual including instructions and all necessary steps, with appropriate forms. An individual seeking instruction is interviewed by the attorney and the manual forms are discussed as well as the necessary procedures. A determination is made by the attorney in the interview of whether or not a prose proceeding is appropriate, the Committee assumes that all contact ends at that point.

**Opinion:** A somewhat similar situation was presented to the American Bar Association Ethics Committee in Informal Opinion 1414 (1978). A lawyer had counseled and advised a litigant appearing prose. The lawyer assisted in the preparation of jury instructions, memorandum of authorities and other documents filed with the court. Also, the attorney attended the trial and advised the litigant on "procedural matters." Neither the court nor the other party or parties concerned, nor their attorneys, knew of the previous participation by the attorney or the extent of that participation. The Committee found that the litigant was not, in fact, proceeding prose. The conduct of the attorney constituted a misrepresentation as to the involvement of undisclosed counsel. The Committee found that the conduct was contrary to Canon 1, DR 1-102(A)(4) which states that "[a] lawyer shall not: (4) engage in conduct involving dishonesty", fraud, deceit, or misrepresentation." The instant situation is distinguishable from that in the above cited opinion because the involvement by the attorney is more limited. There is no court appearance or actual preparation of documents by the attorney. Also, the procedure involved in the default divorce is much less complicated than that in a jury trial. This problem was addressed to some extent in Utah Opinion 47, where an attorney was retained by the State of Utah to provide

limited legal services to inmates of the Utah State Prison. The attorney was to prepare certain pleadings for the inmates who would the proceed prose. The Committee in that case commented as follows:

"Lastly, the proposed legal representation presents the question of whether or not the attorney may ethically limit his services as proposed and decline to carry through and complete the matters which are presented to him by the inmates. Canon 7, DR 7-101(A)(2) provides that 'a lawyer shall not intentionally fail to carry out a contract of employment entered into with a client for professional services, . . .' The attorney in this situation is protected somewhat, because he will never become an attorney of record. However, he is aiding the inmates and possibly initiating legal action within the court system. Again, this is an area in which the situation must be fully and clearly explained to the inmate at the outset so that he will be aware of the limits of services offered . . . the inmate should be fully informed of all the pitfalls of so proceeding [ prose]. "

Therefore, it appears that the conduct contemplated herein is proper so long as the exact nature of the services offered is clearly explained to each client.

The Committee was provided with a copy of the manual and forms provided to each client by the attorney. The Committee declines to comment on the legal sufficiency of the manual and/or forms, as this is outside the jurisdiction of said Committee.

Rule Cited:

Canon 7