

Utah Ethics Opinions

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74. USB EAOB Opinion No. 74

Utah State Bar

Ethics Advisory Opinion No. 74

Approved February 13, 1981

Summary: An attorney may give advice to a litigant who is proceeding pro se and may prepare or assist in the preparation of pleadings. But when the attorney gives any additional advice or assistance, he has an obligation to notify the court and opposing counsel of his representation.

Comments: See also, Utah Opinions 47 and 53.

Facts: The following fact situation has been presented to the Ethics Committee: A person comes to an attorney's office and brings with him a copy of a complaint which has been served upon him. The attorney then advises this person that before a formal appearance can be entered in his behalf, it is necessary that a substantial retainer be paid. The individual then indicates that he is not in a financial position to pay such a retainer and wants to proceed with his case pro se. However, he wants to have an answer filed to protect his position.

The questions presented in this situation are two fold:

1. The propriety of an attorney preparing a responsive pleading showing the party to be appearing pro se, giving this pleading to the party and letting him do with it what he chooses, and;
2. Is the attorney obligated to advise a court and opposing counsel of his assistance in the preparation of these pleadings and of any legal advice which he has given.

Opinion: The answer to both questions is determined by the extent of the legal advice the attorney gives to the litigant. There is nothing improper in an attorney giving initial advice to a litigant who is proceeding pro se nor is it improper for an attorney to prepare or assist in the preparation of pleadings.

However, when the attorney gives any additional assistance and the litigant continues to inform the court that he is proceeding pro se, he has engaged in misrepresentation by professing to be without representation. The attorney who engages in this conduct is involved in the litigant's misrepresentation contrary to DR 1-102(A)(4) of the

Revised Rules of Professional Conduct of the Utah State Bar which provides:

"A lawyer shall not: . . .

(4) Engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

A determination of whether or not the attorney's conduct is improper will depend upon the particular facts involved in each situation. The extent of an attorney's participation on behalf of the litigant who appears to the court and other counsel as being without professional representation is the determining factor. Minimal participation by the attorney is not improper. However, extensive undisclosed participation by an attorney that permits the litigant falsely to appear as being without substantial professional assistance is improper for the reasons noted above.

Rule Cited:

DR-1-102(A)(4)