

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 98-14

Approved December 4, 1998

Issue: Is it unethical for a lawyer in a divorce case to advise a client that she may obtain a protective order *pro se* or to allow the client to appear *pro se* in the protective-order case, while the lawyer continues to represent the client in the divorce proceeding?

Opinion: Because a protective-order proceeding is a separate legal action from a divorce proceeding and is clearly delineated as such by state statute, an attorney who represents a client in a divorce proceeding is not automatically counsel for that client within the protective-order proceeding. Further, an attorney representing a client in a divorce proceeding is not ethically bound to represent the same client in a protective-order proceeding filed between the same parties. The lawyer may advise the client of her right to obtain a protective order and to do so *pro se*.

Analysis: Chapter 3 of Title 30 of the Utah Code governs divorce proceedings, (fn1) and Chapter 6 of Title 30 establishes a procedure for obtaining a "protective order" in a protective order or "cohabitant abuse" proceeding. (fn2) Sometimes, the relief sought in a protective-order action will overlap with or will be identical to relief sought in a divorce proceeding. The Ethics Advisory Opinion Committee has been asked whether an attorney who is representing a client in a divorce proceeding is required to represent the same client in a protective-order proceeding involving the same opposing party as the divorce proceeding. The request notes that, because the relief sought in the protective-order action may duplicate the relief sought in the divorce action, it may cause difficulty for one or both litigants to the actions, or to the court, if a party appears *pro se* seeking the issuance of relief pursuant to a protective order.

A lawyer has an obligation to advise a client of all lawful options to resolve a legal problem. (fn3) If an attorney believes that a protective order is appropriate in a case, the Rules of Professional Conduct may, therefore, require the attorney to advise the client of the option of obtaining a

protective order. Because the protective-order system in Utah allows *pro se* litigants to obtain protective orders at no cost through the assistance of the court and without incurring attorney's fees, an attorney may properly advise a client that she has the option not only of obtaining a protective order, but of obtaining one either through counsel or *pro se*. If an attorney advises a client of the availability of the protective-order system and of the possibility of obtaining a protective order without counsel, the attorney is not breaching any of the Rules of Professional Conduct.

It goes without saying that a lawyer cannot accept representation in a case, promise to represent a client in a protective-order proceeding, and then fail to do so. This would clearly be a violation of Rules 1.1, 1.2 and 1.4. Conversely, however, if the lawyer advises the client of the option of obtaining a protective order, and the client specifically elects to do so *pro se*, the attorney is ethically prohibited from interfering in the client's decision, since this would violate the specific instructions from the client as to the scope and direction of the representation. (fn4) Once an attorney has advised a client of all her options in any case, it is exclusively the client's right to determine whether to pursue one course of action or another, and whether to pursue relief *pro se* or with counsel. Under Rule 1.2(a), the lawyer is bound by the client's determinations in this regard and may not act adversely to the client's specific instructions. Indeed, it might violate a lawyer's ethical obligations to insist upon appearing for a client in a protective-order case, if the client specifically instructed the attorney not to do so.

Practitioners should continue to bear in mind that it is a violation of the Rules of Professional Conduct for an attorney to approach a court to seek relief on behalf of a client when the relief is not sought in good faith. (fn5) It is likewise a breach of an attorney's ethical obligations to suggest to a client that she advance a claim for relief in court *pro se*, when such an action is not brought in good faith. Obviously, it is a breach of an attorney's ethical obligations to suborn perjury in seeking any relief from any court, and it is a breach of an attorney's ethical obligations to suggest to a client that she make false statements to a court in seeking any relief, including *pro se* actions.

Footnotes

1. Utah Code Ann. §§ 30-3-1 to -38 (1998).
2. *Id.* §§ 30-6-1 to -14.
3. Utah Rules of Professional Conduct 1.1, 1.2(c), 1.4(a), 1.4(b) and 2.1.

4. *Id.* 1.2(a).

5. *Id.* 1.2(c), 1.16(b)(1), 1.16(b)(2), 3.1, 3.2 and 3.3.

Rules Cited:

1.11.21.4