

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #125 - 1/29/70 (30-69) Topic: Participation in illegal proceeding

Digest: Referring a client to a Mexican attorney for the purpose of obtaining a unilateral Mexican divorce.

Code*: Canon 7
DR 7-102(2)
Former Canon 15

QUESTION

May an attorney refer a New York resident to a Mexican attorney for the purpose of obtaining a unilateral Mexican divorce in which the plaintiff appears in person but the defendant does not appear in person or by an attorney.

OPINION

It is the opinion of this Committee that it would be unethical for an attorney to refer a client under the circumstances mentioned in the question.

The Appellate Division of the Supreme Court in Matter of Anonymous, 274 App.Div.89 (1st.Dept.1948) held that it was unethical for a New York attorney to refer clients to a Mexican attorney to obtain a divorce by mail in which neither party appeared, because such a divorce is clearly illegal in New York. The same is true of a Mexican divorce where the defendant does not appear, Rosenbaum v. Rosenbaum, 309 N.Y.371 (1955).

An attorney is under an obligation not to participate in illegal proceedings. In former Canon 15 it is stated:

"But it is steadfastly to be borne in mind the great trust of the lawyer is to be performed within and not without the bounds of law."

Canon 7 states that, "A lawyer should represent a client zealously within the bounds of the law." In addition, DR 7-102 (A)(2) in defining the application of this Canon states, "A lawyer shall not -- knowingly advance a claim or defense that is unwarranted under existing law," -- and DR 7-102 (A)(7) states that a lawyer shall not "Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent." [See also ABA 248 (1942).]

Opinion #126 - 3/19/70 (3-70) Topic: Usurious documents, preparation of

Digest: Improper to prepare documents known to be usurious

Code*: DR 7-102 (A)
EC 7-4, 9-2

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QUESTION

May an attorney prepare usurious mortgage papers for a client?

OPINION

The preparation of documents that the lawyer knows would aid a client in violating the law is unethical. Usury is illegal. (General Obligations Law, Section 5-501.)

"In his representation of a client, a lawyer shall not:....

- (7) Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent."
DR 7-102 (A)

"When explicit ethical guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession."
EC 9-2

This opinion would not, however, prohibit the preparation of documents designed to seek in good faith an extension, modification or reversal of the law. (See EC 7-4.)

Opinion #127 - 3/19/70 (4-70) Topic: Announcements: Format,
Distribution,
Multi-state
admission

Digest: Format and proposed mailing of
professional announcement
proper

Code*: Canon 2
DR 2-102 (A) (2), (D)
Former Canon 33

QUESTION

A law firm inquires as to the propriety of the following announcement to be released by the firm:

"The law firm of John Henry takes pleasure in announcing that Thomas Harry, a member of the New York and District of Columbia Bars has joined his firm as of November 1, 1969."

OPINION

It is the opinion of this Committee that the proposed announcement card is proper, as being in dignified form (DR 2-102) and may be mailed to the other members of the bar and to clients, former clients, friends and relatives (DR 2-102 (A)(2); Drinker, "Legal Ethics", p. 232-233). There is no objection to indicating the fact that the newly admitted member of the firm is also a member of the bar of another jurisdiction. (DR 2-102-(D); ABA 318 (1967) and 316 (1967); cf. former Canon 33.)