

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinions

Opinion #183 - 4/13/71 (9-71)

Topic: Disclosure of Client's
Confidences

Digest: When instructed by wife in
divorce action not to disclose
her whereabouts, her lawyer
cannot do so unless required
by law or court order.

Code*: DR 7-102, EC 7-1 and 7-4,
DR 4-101

QUESTION

A lawyer representing a wife in a divorce proceeding has been instructed by the wife not to disclose her whereabouts to her husband or his counsel. The wife was served by publication. The husband's counsel served on the wife's attorney a demand for a verified statement of address. Would it be unethical for the wife's counsel to answer this demand by furnishing the marital residence as the address in order to avoid disclosing the wife's whereabouts?

OPINION

Whether giving the wife's marital residence rather than the wife's actual location as the response to the demand is valid compliance with the demand is a question of law on which this Committee expresses no opinion.

DR 7-102 forbids a lawyer to take action on behalf of a client which is frivolous or merely harassing or injurious to the other party, to conceal or knowingly fail to disclose "that which he is required by law to disclose", knowingly to use false evidence or a false statement, or knowingly to "advance a claim or defense that is unwarranted under existing law, except that he may advance such a claim or defense if it can be supported by good faith argument for an extension, modification, or reversal of existing law." See EC 7-1 and 7-4.

In this case, use of the marital address is not a misrepresentation because the husband and his counsel know that it is the same as the husband's address and they know that it constitutes nothing more than a statement of the wife's lawyer's position. Whether the position is correct or is one for which the wife's counsel can make a good faith argument are questions of law, not of ethics.

The wife's whereabouts in this case is a confidence which her lawyer cannot reveal unless required by law or court order, or with the wife's consent after a full explanation to her of the consequences.
DR 4-101.

On the basis of the foregoing the lawyer himself must decide whether or not it is proper under the circumstances of the case to supply the marital residence as the response to the husband's demand.