

## ADVISORY ETHICS OPINION 86-05

### SYNOPSIS:

A lawyer who represents the custodian of children in a custody dispute may continue such representation even though the custodian has left the state to deny visitation to the opposing party in violation of the court order.

### OPINION:

An attorney represents a woman with two children. Apparently under a court order, the woman has custody of the children subject to the right of the father to have supervised visitation. The order gives this right for a year up until a time certain when the court will review the order. Before that date, the woman has taken the children from the state to avoid another hearing with the father. The woman has not disclosed her location to the attorney or the father. The father's visitation rights have been interrupted.

The attorney asks whether she may speak with her client under the circumstances. She further asks whether she has an obligation to bring her back for the hearing.

The Code of Professional Responsibility has no provision that prohibits a lawyer from representing a client who is violating a visitation order of the court.

DRI-I02(a) states that a lawyer

shall not engage in illegal conduct involving moral turpitude; engage in conduct involving dishonesty, fraud, deceit or misrepresentation; or engage in conduct that is prejudicial to the administration of justice.

DR7-102(A)(7) prohibits the lawyer from counseling or assisting a client in conduct known to be illegal or fraudulent. The import of these rules is that the lawyer cannot become an active participant in the misconduct of the client. As long as the lawyer does not misrepresent that the client is within the state, the lawyer can continue to provide representation without violating these rules.

The opinion request raises no question of disclosure of confidential information. The lawyer does not know the whereabouts of the client and thus cannot disclose it. Nothing in the Code requires the lawyer to ask the client for this information.