

ADVISORY ETHICS OPINION 95-10

SYNOPSIS:

One of two attorneys in a dispute resolution and legal services clinic may properly perform case evaluations for matters which will be mediated by the second attorney. Paralegals employed by the clinic may gather information and prepare such documents as pleadings and affidavits, provided they are subjected to attorney supervision. The clinic should exercise caution in determining whether it is appropriate, in any given case, to draft settlement agreements for the parties, even where the parties have independently arrived at such an agreement. The appropriate course of practice is to recommend that each of the parties secure their own independent legal review of the agreement prior to executing it.

FACTS:

Two attorneys propose to establish a dispute resolution and legal services clinic. The clinic will offer mediation and arbitration services, and will assist parties representing themselves in family law matters by explaining the legal process, assisting in filling out Court documents, providing referrals to other professionals, and furnishing informational materials. They also intend to offer “neutral evaluation” services in which both parties to a dispute will meet with one of them, and be provided with an evaluation of their situation and an overview of possible issues and outcomes if the case should proceed through the litigation process.

The attorneys anticipate employing paralegal assistants who will obtain information from clients for Family Court documents and use the information to prepare documents such as pleadings, financial affidavits, and agreements. The paralegals will not provide legal advice or representation.

The attorneys ask:

- (a) if one of them may perform neutral evaluation of a party’s case and the other provide mediation services,
- (b) if use of paralegals in the clinical service will violate DR 3-101(A) if no legal advice or representation is provided, and
- (c) if the attorneys may properly draft settlement agreements which clients have worked out on their own, provided no legal advice is furnished and no recommendations made in this process.

ANALYSIS:

We see no reason why one of the attorneys may not perform neutral evaluation services and the other provide mediation services. For purposes of this analysis, it is assumed that the “neutral evaluation” services will be performed with both parties present, and that the parties understand the relationship between the attorneys.

Disciplinary Rule 3-101(A) prohibits an attorney from aiding a nonlawyer in the unauthorized practice of law. Provided that the accuracy of any documents prepared in full or part by paralegals is subject to an attorney’s oversight, we believe that paralegal assistants may properly be used for the purposes described.

The dispute resolution clinic should exercise considerable care in determining whether to undertake to formalize any settlement agreement which the parties reach independently. This Committee has previously opined that it is improper for one attorney to represent opposing sides in such matters as real estate transactions (78-4), or in litigation in which the interests of one client are adverse to the interests of another client (89-15). In the domestic relations context, it is not unusual that one of the parties may have exercised a dominating influence over the other, and even an agreement which an attorney believes to have been voluntarily entered by the parties may subsequently be considered unfair by one of them. If the disgruntled party takes the position that the attorney was favoring one of the parties by being silent on one or more aspects of the agreement, the attorney may very well find himself in the midst of controversy. It is the Committee’s sense that the most appropriate practice is to recommend that each of the parties secure their own independent review of such agreements prior to their execution.