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NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Advisory Opinion

Relationship with Both parties in Uncontested Divorce Based on Irreconcilable Differences

May 10, 1978

INFORMAL OPINION

ADOPTED BY COMMITTEE: MAY 10, 1978
(Reissued March 13, 1979)

Relationship With Both Parties in Uncontested Divorce Based On Irreconcilable Differences. Mr. Millimet submitted his draft to the Committee for its consideration. Following minor amendments, draft was approved for publication, and the Executive Director was directed to have it published in New Hampshire Law Weekly. The opinion is as follows:

It is the opinion of the Ethics Committee of the New Hampshire Bar Association that it would be improper for a lawyer to represent both the husband and wife in a marital dispute regardless of the legal basis for the proposed separation or divorce. It is to be hoped that under the Pro Bono Referral System, whereby members of the bar make their services available to person who are unable to pay, it would be possible to obtain an attorney to represent each side of a divorce case, even where the parties are on welfare.

In the course of the discussion of the problem, and recognizing the practicalities of the situation where in fact both parties are agreed on the disposition of such assets as are available, and on the custody of the children, a subsidiary question was presented as to whether it was permissible for the attorney to interview both parties, and thereafter to permit one party or the other to be represented pro se. This too was considered improper by the committee, for the simple reason that the non-client layman might not understand the explanation and might later claim that the matter was misrepresented by the attorney.

As a maximum permissible relationship between one attorney and two spouses, the following was suggested. After obtaining the information from the client as to his or her spouse's willingness to proceed with the divorce and to execute a stipulation, the attorney might legitimately write to the opposing spouse, advise him or her to obtain counsel, but enclose a proposed stipulation to be shown to counsel. The letter might also legitimately state, "If you are perfectly satisfied with the enclosed stipulation, you understand its full significance, and you still do not wish to obtain counsel, you may, if you wish, execute it and return it to the clerk of the court in the envelope addressed to the clerk which is enclosed. If you decide to follow this procedure, it will also be necessary to execute a pro se appearance card, which means that you are electing to act as your own attorney and are filing the necessary formal appearance card with the clerk. For your convenience, such a card is enclosed, and you may execute and return it with the stipulation if you desire to do so. You will understand that if you do so, and the court grants a divorce, the respective rights of yourself and your spouse will be governed by the terms of the enclosed stipulation."