

You have advised that a substantial part of your practice consists of employment and discrimination law, often representing employees. You further advised that you have been requested from time to time to provide assistance to certain individuals who are involved in litigation in which they are not represented by counsel and are proceeding *pro se*. In such situations, you indicate that oftentimes the *pro se* litigant encounters discovery requests and other matters with which he is unfamiliar.

You wish to know whether it is ethically permissible for a lawyer to advise and assist the *pro se* litigant in those circumstances providing, in addition to general legal advice, recommendations for courses of action to follow in discovery, legal research, and redrafting of documents prepared by the litigant himself. You specifically inquire as to any ethical restrictions relating to the attorney's preparation of discovery requests, pleadings, or briefs, for signature by the *pro se* litigant.

As defined in Part Six, Section I (A) of the Rules of Court, the relation of attorney and client exists whenever one furnishes to another advice or service under circumstances which imply his possession and use of legal knowledge or skill; and, specifically, whenever one “undertakes, *with or without compensation*, to prepare for another legal instruments of any character, other than notices or contracts incident to the regular course of conducting a licensed business” (emphasis added). Thus, the Committee believes that by providing advice and assistance to the *pro se* litigant as you have described, the attorney-client relationship is established.

The Committee opines that there is no prohibition under the Code of Professional Responsibility against the rendering of the types of advice and assistance you have described for a *pro se* client. However, the Committee directs your attention to DR:7-105(A), which requires that a lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding.

Under DR:7-105(A) and recent indications from the courts that attorneys who draft pleadings for *pro se* clients will be called upon by the court, any disregard by either the attorney or the *pro se* litigant of the court's requirement that the drafter of the pleadings be revealed would be violative of that disciplinary rule. Such failure to disclose would also be violative of DR:7-102(A)(3), which requires that a lawyer shall not conceal or knowingly fail to disclose that which he is required by law to reveal. Under certain circumstances, such failure to disclose that the attorney provided active or substantial assistance, including the drafting of pleadings, may be a misrepresentation to the court and to opposing counsel and therefore violative of DR:1-102(A)(4). In a similar fact situation, the Association of the Bar of the City of New York opined that a lawyer drafting pleadings and providing other substantial assistance to a *pro se* litigant must obtain the client's assurance that the client will disclose that assistance to the court and adverse counsel. Failure to secure that commitment from the client or failure of the client to carry it out would require the attorney to discontinue providing assistance.

The Committee also directs your attention to the requirements of DR:6-102(A), which prohibits a lawyer from limiting his liability to a client for personal malpractice, and to the requirements of DR:2-107 and DR:2-108, regarding the acceptance of employment and termination of representation.

Committee Opinion  
November 21, 1988