

Committee Opinion
May 8, 1989

LEGAL ETHICS OPINION 1227

COMMUNICATION WITH ADVERSE
PARTY – CONTRACTS –
REPRESENTING A CLIENT WITHIN
THE BOUNDS OF THE LAW:
PROPRIETY OF ATTORNEY ASSISTING
IN A DIRECT PLACEMENT ADOPTION.

You have asked the Committee to consider the following situations involving an attorney's assistance in a direct placement, nonstep-parent adoption. The Committee will address each in the order in which it was presented in the inquiry.

I. An attorney is employed by prospective adoptive parents who wish to place an advertisement in a periodical which would read "stable, loving couple with good moral values wishes to adopt a baby. Call X." The publishing company requires that the advertising request be made by the parents' attorney on the attorney's letterhead. Is there any ethical reason for the attorney declining to request placement of the advertisement where neither the name nor the telephone number of the attorney will be used in the advertisement?

The Committee is of the view that the question you have raised regarding the attorney assisting his client in locating or effecting the placement of a child by way of advertisement by individuals not duly authorized for child placing is a legal question, and as such is beyond the purview of this Committee. The Committee opines that if the activity described is determined to be legal, nothing in the Virginia Code of Professional Responsibility would render it ethically improper. If, however, the attorney determines that the contemplated advertisement by a private citizen is illegal, then the attorney's participation in or assistance to such activity would be violative of DR:7-102(A)(7) and (8), which state that a lawyer shall not counsel or assist his client in conduct the lawyer knows to be illegal or fraudulent, nor should an attorney knowingly engage in other illegal conduct or conduct contrary to a disciplinary rule.

II. May an attorney ethically draft a contract providing for the payment of biological mother's medical and legal fees in consideration for her consent to the adoption by the attorney's client/prospective adoptive parents?

The Committee is of the opinion that the second question you have raised similarly turns on whether such a contract would be an agreement for an activity which is either illegal or against public policy. If not, or if a good faith argument can be made for an extension, modification, or reversal of any existing law, there is no inherent ethical impropriety in drafting such a contract.

III. If the aforementioned contract in question no. II is executed, may the attorney handle the payment of the pregnant woman's medical and legal bills if she is not represented by independent counsel?

Committee Opinion

May 8, 1989

In the view of the Committee, if the aforementioned contract executed by the unrepresented biological mother is legal, valid and binding in Virginia, the attorney may handle the payment of the pregnant woman's medical and legal bills as the agent of the prospective adoptive parents. If and when an action matures and the biological mother's interests become adverse to the adoptive parents, the lawyer also should be mindful of the requirements of DR:7-103. (See also LE Op. 741)

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