

Committee Opinion
April 28, 1983

LEGAL ETHICS OPINION 519

DIVORCE MEDIATION/DOMESTIC
RELATIONS/ FAMILY LAW.

Concerning the relationship between an attorney and a mediation service, in many cases it would be improper for an attorney to render legal advice to both parties since often it would be virtually impossible to give such advice in a completely non-partisan way.

However, where an attorney has undertaken to provide "legal information" only, as opposed to "legal advice," the parties understand the distinction between "legal information" and "legal advice," and have given their informed consent for an attorney so to act, it may be appropriate in certain circumstances for the attorney to provide legal information to both parties, particularly, in uncomplicated and straightforward situations where the parties are contemplating getting a non-contested divorce and the marriage has been of short duration with little assets and no children involved. Regardless of the situation, however, attorneys should be advised to use great caution before agreeing to provide legal information or advice to both parties, and should attorneys agree to do so, they should be extremely careful to be as non-partisan as possible.

If the attorneys are paid by the mediation service for their advice to the parties, it would not be a per se ethical violation, but the attorneys by entering into such an employment agreement might in many situations be violating the provisions of Canon 5, which require an attorney to exercise independent professional judgment on behalf of his client, and the provisions of DR:5-107 which require an attorney to avoid the influence by others than the client. Also, the provisions of Canon 9 state that a lawyer should avoid even the appearance of professional impropriety, and if the attorneys are paid by the mediation service for their advice to the parties, such an arrangement might be deemed to violate Canon 9 even if the provisions of Canon 5 are not violated. [DR:5-105, DR:5-107, EC:5-1, EC:5-21, EC:5-22 and EC:5-23, DR:9-101, Virginia Code of Professional Responsibility]

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Legal Ethics Committee Notes. – rule 2.11 deals with lawyers acting as mediators.