

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #68 - 1/8/68 (11-66)

Topic: Private Placement Adoptions.
Conflict of Interest.

Digest: Lawyer may handle private placement adoptions where law is in apparent conflict. Improper for lawyer to represent both natural and adoptive parents.

Canon: Former Canon 6

QUESTION

The following questions relating to "private placement" adoptions have been referred to this Committee:

- (1) May an attorney ethically handle a "private placement" adoption in view of court decisions denying such adoptions on the ground that the infant has not been "placed out" in compliance with Sections 371 and 374 of the Social Welfare Law (see "Re Anonymous", 46 Misc. 2nd; 261 N.Y. Supp. 2nd 439)?
- (2) If so, is it ethical for the same attorney to represent or advise both the natural parent and the adoptive parents?

OPINION

The provisions of Sections 371 and 374 of the Social Welfare Law seemingly prohibit anyone other than certain specified close relatives or an "authorized agency" from placing out a child for adoption. (See also Matter of Miller, 22 App Div 2nd 530, 256 N.Y. Supp. 2nd 962.) While this Committee does not pass upon questions of law, we note that the provisions of Sections 115-116 of the Domestic Relations Law seemingly authorized "private placement" adoptions. It is our understanding that some judges presently entertain petitions for private placement adoptions while others do not.

Assuming that a conflict exists between the provisions of the Social Welfare Law which seemingly prohibit "private placement" adoptions and the provisions of Sections 115-116 of the Domestic Relations Law authorizing same, we do not deem it unethical for an attorney to handle a "private placement" adoption. Attorneys must frequently act where court decisions or statutory provisions conflict. We therefore answer Question (1) in the affirmative.

While it is not necessarily unethical to represent conflicting interests where there is a full disclosure and express consent (Canon 6), it is our opinion that the potential conflict between the natural parent and the adoptive parents is of a kind that in most cases makes it professionally improper for the same lawyer to represent or advise both interests, even after full disclosure and express consent. Exceptions can only be permitted where the adoptive parent is either married or closely related to one of the natural parents in which event there would be little or no chance of potential conflict. We, therefore, answer Question (2) in the negative with the noted exception.

For an analysis of the ethical problems relating to various adoption practices, see the opinion of the Ethics Committee of the Bar Association of Erie County published in the Buffalo Daily Law Journal January 26, 1966.