## OPINION

This opinion represents a modification of Opinion 107 (1969) relating to referral fees received by lawyers from investment agents for placing clients funds in certificates of deposit with financial institutions. In that opinion the last sentence of the first paragraph stated:

> "In the event that the client desires that any commission paid to the attorney be remitted to the client, the attorney must do so, and disclosure of this fact should be made to the company granting the fee, since this fact may affect its willingness to grant such fee."

It is the Committee's view that this sentence should be modified by deleting therefrom the words, "and disclosure of this fact should be made to the company granting the fee, since this fact may affect its willingness to grant such fee" as unnecessary.

Opinion #108 - 6/10/69 (12-69)

Topic: Participation in foreign litigation without admission to foreign bar.

Digest: The drafting and filing of an answer by a New York attorney in an uncontested Florida divorce action without admission to the Florida bar

## QUESTION

The client of a New York attorney is a defendant in a Florida divorce action. The defendant has agreed to file an answer in order to give the Florida court valid jurisdiction, but not to appear at the trial or otherwise contest the action.

Is it proper for the New York attorney, who is not admitted to the Florida bar: (1) to participate in such an arrangement; (2) to draw and mail an answer to the Florida court based on a form he has obtained from the plaintiff's attorney; and (3) to charge his client for such services?

## OPINION

This Committee does not pass on questions of law, or the meaning and effect of Canons of Ethics of jurisdictions other than New York. With this in mind, it is the opinion of the Committee that:

1. It is not improper for an attorney to participate in an agreement for a defendant not to defend a divorce action if there is no misrepresentation of facts or fraud on the Court, and his client's best interests will be served thereby. It is assumed that the agreement is not unlawful in Florida. If the action is commenced on valid grounds, facilitation of the decree by a defendant is not improper, and a New York attorney is not subject to criticism for participating in the lawful dissolution in another jurisdiction of the marriage of a New York citizen (N.Y.City 96; N.Y.City 179; N.Y.City 241; N.Y.City 593; N.Y.County 100; N.Y.County 289; Drinker, Legal Ethics, pp. 122-126).

2. Assuming that no Florida law or provision of the Florida Canons of Ethics is violated thereby, a New York attorney can properly draw an answer on behalf of a New York defendant and mail it to the Florida court, so long as it contains no false allegations or misrepresentation of facts, and is not collusive.

3. Under these conditions, a New York attorney may charge his client a fee for such services.

In reaching these conclusions, the Committee is of the opinion that the decisions reached in Spivak vs. Sachs, 16 N.Y. 2d 163 (1965), and Spanos vs. Skouras Theatres Corp., 364 Fed 2d 161 (1966), are distinguishable.

Opinion #109 - 6/10/69 (14-69)

Topic: Conflict of Interests
Intermediaries
House Counsel
Digest: House counsel defending assureds.
Canons: *Former Canons 6, 35*

QUESTION

An attorney asks the following two questions:

1. May an attorney be retained or employed as "house counsel" for an insurance company either on a retainer or salary basis to defend assureds in negligence actions?

2. Is the insurance company practicing law if it retains the attorney under the conditions as outlined in question 1?

OPINION

It is the opinion of the Committee that it is proper for an insurance carrier to hire an attorney as house counsel to defend its assureds.

The American Bar Association Committee on Professional Ethics states in its Opinion No. 282 that an attorney employed by an insurance company exclusively, upon a salary basis, may defend lawsuits against assureds on behalf of the company without making any charge to the assured, and without the request or the approval of the assured. The reason for this position is that the insurance contract specifically gives the company control over the defense of any action brought against the assured. The main purpose of a liability insurance policy is to relieve the insured from the responsibility of the defense of the action and the payment of litigation expenses or judgments which might result. It is also to the interest of the company that the lawyer defeat claims which the company may be required to pay and there is a community of interest between the company and the insured. The lawyer employed by the company cannot be said to be violating either the spirit or the letter of the provisions of Canons 6 and 35 concerning conflicting interests and intermediaries.