

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #125 - 1/29/70 (30-69) Topic: Participation in illegal proceeding

Digest: Referring a client to a Mexican attorney for the purpose of obtaining a unilateral Mexican divorce.

Code*: Canon 7
DR 7-102(2)
Former Canon 15

QUESTION

May an attorney refer a New York resident to a Mexican attorney for the purpose of obtaining a unilateral Mexican divorce in which the plaintiff appears in person but the defendant does not appear in person or by an attorney.

OPINION

It is the opinion of this Committee that it would be unethical for an attorney to refer a client under the circumstances mentioned in the question.

The Appellate Division of the Supreme Court in Matter of Anonymous, 274 App.Div.89 (1st Dept.1948) held that it was unethical for a New York attorney to refer clients to a Mexican attorney to obtain a divorce by mail in which neither party appeared, because such a divorce is clearly illegal in New York. The same is true of a Mexican divorce where the defendant does not appear, Rosenbaum v. Rosenbaum, 309 N.Y.371 (1955).

An attorney is under an obligation not to participate in illegal proceedings. In former Canon 15 it is stated:

"But it is steadfastly to be borne in mind the great trust of the lawyer is to be performed within and not without the bounds of law."

Canon 7 states that, "A lawyer should represent a client zealously within the bounds of the law." In addition, DR 7-102 (A)(2) in defining the application of this Canon states, "A lawyer shall not -- knowingly advance a claim or defense that is unwarranted under existing law," -- and DR 7-102 (A)(7) states that a lawyer shall not "Counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent." [See also ABA 248 (1942).]

Opinion #126 - 3/19/70 (3-70) Topic: Usurious documents, preparation of

Digest: Improper to prepare documents known to be usurious

Code*: DR 7-102 (A)
EC 7-4, 9-2