

LOS ANGELES COUNTY BAR ASSOCIATION PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

Ethics Opinion No. 483

SUMMARY

Limited Representation of In Pro Per Litigants. An attorney may limit the attorney's services by agreement with a pro per litigant to consultation on procedures and preparation of pleadings to be filed by the client in pro per. A litigant may be either self-represented or represented by counsel, but not both at once, unless approved by the court; therefore, in order for the attorney to specially appear on behalf of the litigant before the court for a limited purpose, the attorney should comply with all applicable court rules and procedures of the particular tribunal.

AUTHORITIES CITED

Business and Professions Code §6105;
Business and Professions Code §6068(d);
Business and Professions Code §6068(e);
Anderson v. City R. Co., 9 Cal. App. 2d 205, 206-07 (1935);
Epley v. Califro, 49 Cal. 2d 849 (1958);
Grudger v. Manton, 21 Cal. 2d 537, 549-50 (1943);
Himmel v. City of Burlingame, 169 Cal. App. 2d 97, 100 (1959);
Kelly v. Ning Yng Venev. Asso., 2 Cal. App. 460, 466 (1905);
Nicol v. Davis, 90 Cal. App. 337, 342 (1928);
People v. Bloom, 48 Cal. 3d 1194, 1218-19 (1989);
Rules of Professional Conduct, Rule 1-300(A);
Rules of Professional Conduct, Rule 1-400;
Rules of Professional Conduct, Rule 3-110;
Rules of Professional Conduct, Rule 3-310(C); Rules of Professional Conduct, Rule 3-700(A)(2);
Los Angeles County Bar Association, Formal Opinion No. 432, dated December 17, 1984;
Los Angeles County Bar Association, Formal Opinion No. 449, dated March 1988;
Cal. State Bar Formal Opinion No. 1984-83;
American Bar Association, Model Rules of Professional Conduct, Rule 1.2(c).

FACTS AND ISSUES PRESENTED

An attorney is engaged by individuals representing themselves in litigation in propria persona to give legal advice about various steps in the case. The attorney's written engagement agreement with the in pro per client provides that the attorney will not be the attorney of record in the case, that court appearances, calendaring, filing of papers, meeting of deadlines, and all other responsibilities that counsel of record normally would do, are the client's responsibility. The attorney's engagement is limited to that of a law consultant who will advise the client on matters only as the client requests and to assist in or draft papers that the client will sign and file. The attorney also may keep track of the case and its deadlines. All documents are prepared with the client appearing as a party in pro per. Is the providing of the foregoing limited legal services to the in pro per client improper or unethical, assuming that the client requests it, the limited scope of the attorney's representation is fully explained in writing, and the client agrees thereto?

The attorney additionally desires to make special appearances on motions the in pro per client has filed or responded to, which may or may not have been drafted in whole or in part by the attorney. May the attorney ethically do this?

May the attorney, at the request of the client (i) appear at the status conference as "associate counsel" at which the attorney who will actually try the case must appear, and then (ii) actually try the case, again on an "associated in" basis?

DISCUSSION

I. Provision of consulting advice and preparation of pleadings.

Except where an attorney is assigned by the court, the attorney-client relationship is created by a contract, express or implied, between the attorney and the person who engages him or her. Kelly v. Ning Yng Veney, Asso., 2 Cal. App. 460, 466 (1905). An attorney's authority is limited to the subject matter for which the attorney is retained by the client. Grudger v. Manton, 21 Cal. 2d 537, 549-50 (1943); Nicol v. Davis, 90 Cal. App. 337, 342 (1928).

There is nothing per se unethical in an attorney limiting the professional engagement to the consulting, counseling, and guiding of self-representing lay persons in litigation matters, provided that the client is fully informed and expressly consents to the limited scope of the representation. In Los Angeles County Bar Association Formal Opinion No. 432, this committee opined that the preparation of an answer for an in pro per litigant constituted the providing of professional services and the attendant creation of an attorney-client relationship. The American Bar Association, Model Rules of Professional Conduct, which are not binding on California lawyers but which sometimes provide useful guidance on matters not specifically addressed by the California Rules of Professional Responsibility (cf. Cal. State Bar Formal Opinion 1984-83), provide at Rule 1.2(c) that "[a] lawyer may limit the objectives of the representation if the client consents after consultation."

In Los Angeles County Bar Association Formal Opinion No. 449, this committee opined that there is no ethical proscription with respect to providing legal advice over the telephone in response to a stated set of facts, where charges would be based on the time spent on the telephone and where the attorney would not be otherwise involved in the case to which the alleged facts pertain. The committee is of the opinion that, assuming the attorney's engagement agreement with the client clearly delineates the limited scope of the attorney's services, the attorney may provide consultation and prepare pleadings for filing on behalf of the client.

The performance of such legal services does create an attorney-client relationship and, as the committee pointed out in Los Angeles County Bar Association Formal Opinion No. 449, the attorney would have a duty of confidentiality toward each person using the attorney's services under Business and Professions Code §6068(e). The attorney would also be under a duty to avoid the representation of adverse and conflicting interests prohibited by Rules of Professional Conduct, Rule 3-310, and that this might well involve extensive record keeping. To meet the competency requirements of Rules of Professional Conduct, Rule 3-110, the attorney should take care to elicit sufficient information from the client to enable the attorney to render appropriate advice. Any advertisement of the attorney's services must conform to the requirements of Rules of Professional Conduct, Rule 1-400.

As a matter of custom and practice many individuals use attorneys to assist them in representing themselves in litigation matters to save the costs and legal fees that would otherwise be involved.^[1] An attorney may not assist the unauthorized practice of law by preparing papers for a client other than the party directly involved in the litigation. Rules of Professional Conduct, Rule 1-300(A).

The provision of limited services to a client from time to time raises potential issues of client abandonment under Rules of Professional Conduct, Rule 3-700(A)(2), prohibiting abandonment of clients. Reasonable steps to avoid reasonably foreseeable prejudice, due notice, and opportunity for replacement counsel's engagement and providing client's files are still required.

II. Special appearances on behalf of the client.

A party may appear in his own person or by an attorney, but cannot do both, unless approved by the court. Epley v. Califro, 49 Cal. 2d 849, 854 (1958); People v. Bloom, 48 Cal. 3d 1194 (1989); and Nicol v. Davis, 90 Cal. App. 337, 342 (1928). The attorney in the circumstance proposed in the inquiry of limited representation to argue motions, whether or not prepared by the attorney, should comply with all applicable court rules and procedures of the particular tribunal. As long as the limited nature of the representation is disclosed to the court and approved by the court, the committee is of the opinion that there is no ethical impropriety.

The appearance at the status conference, where trial counsel must appear, where counsel did not intend to become counsel of record, may constitute a violation of Business and Professions Code §6068(d), as misleading the court as to the true status of the attorney and that the attorney is not controlling the case. Appearance at the status conference requiring trial lawyers may be a tacit representation to the court and opposing counsel that prior to the time of trial there will be an appropriate substitution of the attorney for the in pro per client and the attorney is ready, willing, and able to proceed to trial. In such circumstances it is most likely that the court would find that the client has ratified the attorney becoming counsel of record and fully responsible for the case. Anderson v. City R. Co., 9 Cal. App. 2d 205, 206-07 (1935). Thus, it would be advisable for the attorney to make clear to the court the scope of the attorney's representation.

This opinion is advisory only. The committee acts on specific questions submitted ex parte and its opinions are based only on such facts as are set forth in the questions submitted.

¹ Since a corporation can appear only through an attorney, an attorney may not represent a corporation in this manner. Himmel v. City of Burlingame, 169 Cal. App. 2d 97, 100 (1959).