

Advisory Opinion 1987-6

Issue: whether attorneys participating on a pro bono basis in a pro se divorce clinic sponsored by a legal aid society, who render no legal advice on individual matters to clinic participants, will be deemed to have established an attorney-client relationship with such participants.

Facts: A legal aid society is in the process of developing a "pro se" clinic for eligible clients who are interested in "simple divorces." Each clinic would involve two or three different class sessions in which an overview of the domestic relations court process would be presented, pleadings reviewed and explained, substantive issues relating to domestic relations law outlined and general questions answered. The clinic would be taught by attorneys on a pro bono basis, and no specific legal advice would be given on any individual clinic participant's case. Participants in the clinic would be asked to sign a form agreement wherein the participant would acknowledge that only general information would be given at the seminar, and that the attorney instructors would not be rendering legal advice on his or her particular case, and further that no attorney-client relationship would be established by participation in the clinic.

Opinion: This inquiry does not request an opinion concerning the establishment of the pro se divorce clinic, or the mechanics thereof; it requests an opinion, instead, as to whether an attorney participating in such a clinic could be deemed to have established an attorney-client relationship with any of the participants in the clinic.

The point at which an attorney-client relationship is established is determined primarily by the principles of the law of agency and contract. Recent New Mexico decisions which have discussed this issue include *George v. Caton*, 93 N.M. 370, 600 P.2d 822 (Ct. App.), *cert. quashed*, 93 N.M. 172, 598 P.2d 215 (1979) and *Holland v. Lawless*, 95 N.M. 490, 623 P.2d 1004 (Ct. App.), *cert. denied*, 95 N.M. 593, 624 P.2d 535 (1981). The Advisory Opinions Committee renders opinions on questions of professional responsibility, leaving it to counsel to determine questions of law. Accordingly, the Committee declines to opine on the subject of whether an attorney-client relationship might arise under the facts presented.

While the legal aid society's request did not specifically ask us to address the ethical considerations arising under the proposed pro se clinic, we would nonetheless add the following comments.

Lawyers have a long-standing right, even responsibility, to participate in educational activities designed to improve the legal system and enlighten citizens as to their rights and responsibilities under the law. The preface to Canon 2 of the current Code of Professional Responsibility alludes to the legal profession's educating the public to an awareness of legal needs. Rule 2-104(A)(4) provides that "a lawyer may speak publicly or write for publication on legal topics so long as he ... does not undertake to give individual advice...." Similarly, the Preamble to the new Code of Professional Responsibility, adopted by the New Mexico Supreme Court effective January 1, 1987, admonishes lawyers to seek improvement of the law and the quality of service rendered by the legal profession, to employ legal knowledge to reform the law, and to devote professional time and civic influence on behalf of the poor and those who cannot afford adequate legal assistance. Rule 6.1 of the new rules also permits pro bono public service activities.

We therefore see no objection from an ethical standpoint to the proposed pro se clinic, as we understand its intended functioning. We note, however, that caution should be used to avoid situations where a conflict might arise between the interests of clinic participants (Rule 1.7 of new rules); to exercise appropriate supervisory responsibility over the activities of any non-lawyer assistants (Rule 5.3); and to ensure that no non-lawyer assistant engages in unauthorized practice of law (Rule 5.5).