
E-88-4 Representation in private adoption proceedings

Facts

An attorney handles adoptions as a part of the attorney's practice. The attorney has had numerous prospective clients contact him or her regarding their desire to adopt. The clients do not have any particular child to adopt at this time. The clients have asked to have the attorney help them find a child for adoption.

The attorney has had the several clients who have made such requests complete a resume. These resumes are held by the attorney with the indication to the client that if an adoptable child is available, the attorney will contact the client.

The attorney solicits prospective birth mothers through phone director advertising, brochures to gynecologists' offices and clinics. The advertisement states that birth mothers who are interested in giving a life for someone to love should contact the attorney's office for information about adoption.

Upon a birth mother's answering such advertising and contacting the attorney, the attorney initially informs the birth mother that he or she cannot represent her or act as her attorney. The attorney then gives basic information about the law of adoption and has the birth mother select a prospective adoptive couple though the list of resumes on file. The attorney introduces the birth mother to the adoptive couple.

Questions

May the attorney ethically:

1. Solicit or advertise for birth mothers whom he or she will not represent as an attorney?
2. Act as an intermediary in working out an agreement between the biological and adoptive parents when the attorney will ultimately represent only the adoptive parents?

3. Provide legal counsel to a birth mother who is not represented by counsel, but who ultimately may be, if all parties consent to the attorney's doing so?

Opinion

1. Whether a lawyer ethically may solicit or advertise for birth mothers whom he or she will not represent as an attorney depends on whether such conduct is legal. *See, e.g.*, section 946.716(b), Wis. Stats. (1985-86), regarding such conduct constituting a felony under some circumstances; SCR 20:8.4(b), regarding a lawyer's commission of a criminal act as constituting unprofessional conduct; and SCR 20:1.2(d), regarding assisting a client in conduct a lawyer knows is criminal.

Therefore, if a lawyer concludes that such solicitation or advertising is legal, the lawyer must then comply with other relevant standards of professional conduct in engaging in the conduct. *See, e.g.*, SCR 20:4.3 (dealings with unrepresented persons); SCR 20:7.1(a) (misleading communications); SCR 20:7.3 (solicitation); and SCR 20:8.4(c) (conduct involving dishonest, fraud, deceit or misrepresentation).

2. In partial response to the second question, this committee adopts in full ABA Committee on Ethics an Professional Responsibility Informal Op. 87-1523 (1/14/87), which holds that a lawyer may not ethically represent or act as an intermediary for both the adoptive and biological parents in a private adoption proceeding because of inherent conflicts that cannot be reconciled.

Furthermore, Question 2's implication that representation of some or one party to a matter after engaging intermediation is proper is in error. SCR 20:2.2(c) requires complete withdrawal from a matter if the conditions of SCR 20:2.2(a) are not satisfied. *See also* Hazard & Hodes, *The Law of Lawyering* (1985, 1987 Supp.) at 317.

3. Question number 3 is answered "no," consistent with this committee's adoption of ABA Informal Op. 87-1523, *supra*.