

2002 NC Eth. Op 1
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North Carolina State Bar

2002 Formal Ethics Opinion 1
Approved: April 19, 2002

Opinion rules that a lawyer may participate in a non-profit organization that promotes a cooperative method for resolving family law disputes although the client is required to make full disclosure and the lawyer is required to withdraw before court proceedings commence.

Inquiry # 1:

Several lawyers from different law firms would like to start a non-profit organization (the "CFL Organization") to promote the use of a process called "collaborative family law" to facilitate the resolution of domestic disputes through non-adversarial negotiation. The goal of the collaborative family law process is to avoid the negative economic, social, and emotional consequences of protracted litigation by using cooperative negotiation and problem solving. In the "four-way meetings" to negotiate a settlement, each spouse is represented by a lawyer of his or her choice provided the lawyer is trained in and dedicated to the process of collaborative family law. A spouse who wants the CFL Organization to facilitate a collaborative family law process may be represented by a lawyer who is not a member of the organization provided the lawyer is committed to the process. However, it is anticipated that in the majority of cases, both the husband and the wife will be represented by lawyers who are members of the CFL Organization. Each spouse agrees to pay his or her own legal fees. A lawyer participating in the process, including a member of CFL Organization, receives all compensation for legal representation from his or her client.

May a lawyer who is a member of the CFL Organization represent a spouse in a collaborative family law process if another member of the organization represents the other spouse?

Opinion # 1:

Yes, provided both lawyers determine that their professional judgment on behalf of their

respective clients will not be impaired by their relationship to the other lawyer through the CFL Organization, and both clients consent to the representation after consultation. See Rule 1.7(b).

Inquiry # 2:

To further the goal of avoiding litigation, the lawyers must agree to limit their representation of their respective clients to representation in the collaborative family law process and to withdraw from representation prior to court proceedings. May a lawyer ask a client to agree, in advance, to this limitation on the lawyer's legal services?

Opinion # 2:

Yes. Rule 1.2(c) permits a lawyer to limit the objectives of a representation if the client consents after consultation.

Inquiry # 3:

The CFL Organization wants to publish a brochure describing the process of collaborative family law and its differences from litigation and other methods of resolving disputes. May the brochure include the names of the lawyers who are members of the CFL Organization and provide a description of their training and their commitment to the process?

Opinion # 3:

***2** Yes. As a communication about lawyers and their legal services, the brochure must comply with the Rules of Professional Conduct including the duty to be truthful and not misleading. See Rule 7.1.

Inquiry # 4:

May a lawyer representing a spouse contact the other spouse, if not represented by counsel, to propose the use of the collaborative family law process and, if interested, to recommend contacting another member of the CFL Organization, or another lawyer trained in collaborative family law? May the lawyer send the opposing party a copy of the CFL Organization brochure

and other information about the process?

Opinion # 4:

\f0Yes, provided there is full disclosure of the lawyer's relationship to the CFL Organization and the lawyer complies with the limitations on communications with unrepresented persons set forth in Rule 4.3. This communication is not a prohibited solicitation if the lawyer will receive no financial benefit from the CFL Organization as a result of the other spouse's employment of another CFL lawyer. See Rule 7.3(a). Nevertheless, the lawyer may not give advice to the unrepresented spouse other than the advice to secure counsel. See Rule 4.3(a). Such advice must be general: the lawyer may not refer the unrepresented spouse to a specific lawyer but may provide a list of lawyers who ascribe to the collaborative family law process. Moreover, the lawyer may describe the collaborative family law process in communications with the unrepresented spouse but the lawyer may not give the unrepresented spouse advice about the benefits or risks of the process for the unrepresented spouse.

Inquiry # 5:

The collaborative family law process requires both spouses to agree to disclose voluntarily all assets, income, debts, and other information necessary for both parties to make informed choices. Is it a violation of the lawyer's duty of competent representation to encourage a client to participate in the process and to disclose such information voluntarily?

Opinion # 5:

In order that the client may make an informed decision about participating in the process, the lawyer must use his or her professional judgment to analyze the benefits and risks for the client in participating in the collaborative family law process, taking the disclosure requirements into consideration, and advise the client accordingly. See Rule 1.1 and Rule 1.4(b).

Inquiry # 6:

In a court proceeding, adultery may determine a client's right to alimony. May a lawyer represent a client in the collaborative family law process if the disclosure requirements for the process

permit withholding of information about adultery despite the general policy of full disclosure?

May a lawyer represent a client in the process if the disclosure requirements require the disclosure of information about adultery even if it may be detrimental to the disclosing party?

Opinion # 6:

A lawyer may represent a client in the collaborative family law process if it is in the best interest of the client, the client has made informed decisions about the representation, the disclosure requirements do not involve dishonesty or fraud, and all parties understand and agree to the specific disclosure requirements. Before representing a client in the collaborative family law process, the lawyer must examine the totality of the situation and advise the client of the benefits and risks of participation in the collaborative family law process including the benefits and risks of making and receiving certain disclosures (or not receiving those disclosures). See Rule 1.4(b).

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