

BOARD OF PROFESSIONAL RESPONSIBILITY
OF THE
SUPREME COURT OF TENNESSEE

FORMAL ETHICS OPINION 2007-F-153

The propriety of lawyers assisting pro se litigants in the preparation of pleadings wherein they fail to identify their assistance on the pleadings.

Pro se litigants often request the assistance of attorneys in the preparation of pleadings. In these circumstances, the attorneys may agree to prepare the pleadings, but decline to further represent the litigants. The issue here is whether these attorneys must disclose on any such pleadings their involvement in the preparation of the pleadings.

In a 1985 Formal Opinion, the Board was confronted with a County Attorney drafting and preparing a pleading on behalf of the County Court Clerk in a lawsuit against the County Executive. The name of the County Attorney did not appear on the pleadings. *Tennessee Formal Ethics Opinion 85-F-83* (1985) the Board therein cited with approval *ABA Informal Ethics Opinion 1414* (1978). This ABA Informal Opinion states: “Extensive undisclosed participation by a lawyer ... that permits the litigant falsely to appear as being without substantial professional assistance is improper.” This ABA Informal Opinion specifically identifies as improper the preparation of jury instructions, memoranda of authorities and other documents submitted to the courts without disclosing the name of the attorney on the pleadings. The basis of the ABA Informal Opinion is DR 1-102(A)(4) which prohibits a lawyer from engaging in dishonesty, fraud, deceit, or misrepresentation. It was deemed as dishonest for a litigant to indicate that he/she is unrepresented when that is not the case. The failure of an attorney to disclose his/her involvement in such circumstances was further considered to be a misrepresentation and therefore, improper.

The Disciplinary Rule cited in the ABA Informal Opinion is no longer applicable in Tennessee. The new Rules of Professional Conduct, however, also bar attorneys from “engag(ing) in conduct involving dishonesty, fraud, deceit, or misrepresentation” [RPC 8.4(c)]. The Rules of Professional Conduct also prohibit attorneys from “assist(ing) a client in conduct the lawyer knows or reasonably should know is criminal or fraudulent ... ” [RPC 1.2(d)]. Thus, an attorney in Tennessee may not engage in extensive undisclosed participation in litigation in behalf of a pro se litigant as doing so permits and enables the false appearance of being without substantial professional assistance. This prohibition does not extend to providing undisclosed assistance to a truly pro se litigant. Thus, an attorney may prepare a leading pleading including, but not limited to, a complaint, or demand for arbitration, request for reconsideration or other document required to toll a statute of limitations, administrative deadline or other proscriptive rule, so long as the attorney does not continue undisclosed assistance of the pro se litigant. The attorney should be allowed, in such circumstances, to elect to have the attorney's assistance disclosed or remain undisclosed. To require

disclosure for such limited, although important, assistance would tend to discourage the assistance of litigants for the protection of the litigants' legal rights. Such limited assistance is not deemed to be in violation of RPC 8.4(c).

In conclusion, an attorney may prepare pleadings for a pro se litigant without disclosing the name of the attorney on the pleading in circumstances where doing so allows the pro se litigant to protect his or her claim or matter from being barred by a statute of limitation, administrative rule or other proscriptive rule where the assisting attorney will not provide further assistance. An attorney may not prepare pleadings and other legal documents to assist a pro se litigant in the conduct of his or her litigation where doing so creates the false impression that the litigant is without substantial legal assistance.

This 23rd day of March, 2007.

ETHICS COMMITTEE:

David L. Mason, Chair

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APPROVED AND ADOPTED BY THE BOARD