

FINAL

ETHICS ADVISORY PANEL
OPINION # 96-22, - REQUEST # 662
Issued - September 12, 1996

FACTS:

The inquiring attorney represents a woman in an uncontested limited asset divorce. The couple reached an amicable agreement regarding child support and the marital house. The husband, acting pro se, contacted the inquiring attorney to firm up that agreement. The inquiring attorney instructed the husband regarding court procedure such as filing answers and counter claims. The husband then asked for assistance. The inquiring attorney informed him that he/she could not offer legal advice to both parties to a divorce action.

ISSUES PRESENTED:

The inquiring attorney asks whether he/she may assist the husband in the divorce proceeding by (1) providing the husband with a sample answer and counterclaim prepared by the inquiring attorney; (2) providing the husband with a financial statement form (DR-6A) obtained from the Family Court clerk's office; (3) drafting a property settlement agreement reflecting the consensus of the parties; (4) negotiating the portion of the wife's legal fees to be paid by the husband; and (5) assisting the husband in court regarding his testimony.

OPINION:

The inquiring attorney may provide the husband with the DR-6A form and may draft a property settlement agreement on behalf of his client, but may not otherwise assist the husband in the divorce proceeding.

REASONING:

Rule 1.7 entitled "Conflict of Interest: General Rule" applies when an attorney attempts to represent one client against another who has adverse interests. The Rule states in part:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client;
and

(2) each client consents after consultation.

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In this situation, the wife's interests are directly adverse to the husband's interests. The Panel finds that the attorney could not reasonably believe that the representation of the husband will not adversely affect the attorney-client relationship with the wife. The inquiring attorney may not represent both parties and must so notify the husband.

The inquiring attorney may provide the husband with the required DR-6A form that is also available through the Family Court clerk's office, and the attorney may prepare a property settlement as long as he/she does not render any legal advice to the husband. However, the Panel cautions the inquiring attorney against "assisting" the husband with other aspects of the divorce because such assistance might constitute legal representation.