

NEW YORK STATE BAR ASSOCIATION  
Professional Ethics Committee Opinion

Opinion #115-9/18/69 (23-69)

Topic: Disregard of client's instruction  
Digest: Improper for attorney, contrary to client's request after court hearing, to obtain and file divorce decree in favor of client.  
Canons: Former Canons 6, 15, 24, 44

QUESTION

In an action for divorce plaintiff-wife was present in Court at the time the proof was put in and the Judge granted the divorce. Before the decree was signed, the plaintiff sent a registered letter to her attorney requesting that nothing further be done. Meanwhile, the husband's attorney contacted plaintiff's attorney insisting that plaintiff's attorney have the decree signed and that it be filed. Inquirer asks if it is proper for plaintiff's attorney thereafter to have the decree signed by the Judge and filed in the County Clerk's Office.

OPINION

The plaintiff's request that "nothing further be done" must be construed to include the withholding of the decree, if possible, and the request must be deemed to be an instruction to that effect. A lawyer has an "obligation to represent the client with undivided fidelity" (Canon 6) and owes his "entire devotion to the interest of the client" (Canon 15). There is no indication that plaintiff's request involved any "violation of law or any manner of fraud or chicanery" such as might justify her lawyer's disregarding her wishes (Canon 15) nor were the making and filing of the divorce decree "incidental matters pending the trial" over which the lawyer had the right to exercise control (Canon 24). On the contrary, the making and filing of the decree would substantially affect plaintiff's rights. If for any reason the lawyer believed that his client's interests would best be served by yielding to his adversary's insistence, then it would be his duty to advise his client to that effect, explaining her legal status and also that her husband's attorney could submit a proposed decree. If his client refused to accept his recommendation, the lawyer should inform her of his desire to withdraw from the case, apprise the Court of what had transpired and request a delay in signing a decree pending the substitution of other counsel. (Canon 44; A.B.A. Inf. 807; N.Y. City 364; N.Y. County 146.) It would be improper for the lawyer, in violation of his client's instruction and without informing the Court of the situation, to have the decree signed and filed.

Opinion #116-10/6/69 (16-69)

Topic: Investment Services;  
Compensation.  
Digest: Management of investment account for client proper.  
Canon: Former Canon 27

QUESTION

May a lawyer properly agree, at the request of a client to manage an investment account for his client, with full trading privileges, in consideration of which the lawyer would receive as compensation an