



Committee on Professional Ethics

Opinion #425 - 11/25/75 (101-75)

Topic: Scope of the attorney's
duty in matrimonial proceed-
ings

Digest: Attorney as a minimum must
inform his client that
child custody, support,
alimony and property division
are topics to be considered
in a matrimonial proceeding.

Code: EC 2-2, 6-4, 7-7, 7-8
Canon 6

QUESTION

May an attorney retained to represent a party to a matrimonial proceeding simply draft a separation agreement or a divorce decree and leave collateral matters such as alimony, child support, visitation, property division for subsequent Family Court for resolution?

OPINION

The legal profession owes a general duty to the public to assist them in recognizing legal problems. This duty arises because legal problems are often not self-revealing and may not be timely noticed by the layman. EC 2-2. To his client, each attorney owes a duty to use proper care to safeguard that client's interest. EC 6-4.

Where several options are available to a client, the attorney has a duty to inform his client of the possible courses of action and to give his client an honest evaluation of each. See Canon 6.

The issue here appears to come down to what involves competent representation under Canon 6. Generally, a well-handled matrimonial settlement would include a resolution of matters relating to alimony, support, visitation, custody and jointly owned assets, as well as other collateral matters. Where the lawyer has obtained only a divorce decree without attempting to resolve these other problems, a serious question arises as to whether he has represented his client competently. His client is very likely to face additional legal difficulties which the lawyer could have foreseen and resolved at the time of the divorce. The lawyer has failed to protect his client as well as possible from future trouble. The lawyer should at least be held to a professional obligation to raise such issues with his client, explain their significance, and inform his client that a competently handled matrimonial case ordinarily includes at least a reasonable attempt to resolve them. Only in the event the client specifically instructs the lawyer not to undertake such problems, following full disclosure of the difficulties facing the client or his family should such issues remain unresolved, would it be appropriate for the lawyer to limit the representation to seeking a court decree without at least attempted resolution of clearly apparent collateral issues. See also EC 7-7 and 7-8, which make clear that it is for the client and not the lawyer to decide what legal rights to assert or abandon, as long as

the client's decision is made within the framework of the law. Such decision, however, must be an informed one, and not one imposed by the lawyer on his client by default or ignorance.
