

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

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annual payment equivalent to 1/2 of 1% of the average net value of the assets in the account? In addition, the client would pay a fee equivalent to 20% of the annual appreciation in the account, based upon both realized and unrealized capital gains, as well as upon income received. Any net loss would be borne exclusively by the client, although it would be applied against appreciation in subsequent years for the purpose of calculating when the additional fee of 20% would be earned. The arrangement would be terminable at any time by either the attorney or his client.

OPINION

It is not unethical for a lawyer to agree to manage a discretionary investment account for a client, assuming that he is qualified to do so. He should keep such activity entirely distinct and apart from his practice of the law, should not use it as a means of attracting legal business, and in rendering the service should continue to observe the standards of conduct required of him as a lawyer. (Canon 27; N.Y. County 273; ABA 57; ABA Unreported Committee Decision 44, quoted in Drinker "Legal Ethics" at page 286.) The compensation charged for such service should not be unconscionable or overreaching, and should be consistent with the charges customarily made by other investment counsel.

Opinion #117 - 10/30/69 (11-69)

Topic: Professional fees paid through intermediary; use of bank credit card plan.

Digest: Improper for lawyer to use bank charge plan subscribed to by both attorney and client for payment of professional fees.

Canon: *Former Canon 35*

QUESTION

Is it ethical for an attorney to join a charge plan arranged by a bank under which bills to clients are turned over to the bank which pays the attorney and collects from the client?

Upon joining the plan, the attorney pays to the bank an initial fee of \$25.00 and a fixed membership fee thereafter of \$20.00 per year. The bank charges the attorney 5% for its services, which percentage and cost is reduced as the dollar volume of the attorney's services increases, so that if fees clearing through the bank exceed \$40,000 per year, the annual net cost to the attorney is 2-1/2%. After the attorney joins, he advises his clients that if the clients also join the plan and receive credit cards, the attorney would be willing to have his fee paid through the plan.

OPINION

Within proper safeguards, bank charges plans may be used for payment of professional fees. (See Legal Service Financing Plan approved by the County Bar Association of Erie County). Any approved financing plan should reserve to the attorney the right in the attorney to