

You have advised that § 20-99.1:1 of the Code of Virginia, 1950, as amended, provides for an interpretation contrary to the rule applied in prior legal ethics opinions regarding preparing and submitting a waiver of notice to an unrepresented defendant named in a domestic relations lawsuit.

You wish to know whether the recent section of the Code of Virginia changes former legal ethics opinions on this issue.

In the past, the Committee decided that it was ethically improper for the complainant's attorney to prepare or file a waiver of notice, or answer, or both, on behalf of both parties or the unrepresented defendant in a divorce proceeding. Furthermore, it was ethically improper for an attorney knowingly to provide sample forms of such pleadings for the defendant which could be copied and used by the unrepresented party regardless of whether or not the case was a no-fault divorce.

In light of the recent statute, the Committee opines that section 20-99.1:1 of the Code of Virginia, 1950, as amended, would overrule LE Op. 535 and LE Op. 669. In furtherance, an attorney should be mindful not to imply to the unrepresented adversary in a divorce proceeding that he can represent both parties when, in fact, he cannot. The Committee also wishes to emphasize that an attorney should be admonished against any communication by said attorney to an adverse party other than the advice to secure counsel or to correct any misunderstanding of the said attorney's role in the matter. (DR:7-103(A)(2) and (B).)

Committee Opinion  
September 1, 1988