

You have advised that you had represented a wife in a no-fault divorce action against her husband in which you prepared a stipulation and property settlement agreement for both to sign. Neither you nor your client knew whether the husband was represented by counsel at the time. Later, you learned from your client that the husband had not signed the agreement in an attempt to delay the divorce proceedings. As there were no children born of the marriage, the wife decided to wait a year and obtain a divorce based on the statutory requirements of living separate and apart for one year. During the course of your representation of the wife, your client brought a joint tax return which her husband's accountant had prepared for your review. After reviewing the tax return, you recommended that the parties file separate returns. At the instruction of your client, who advised you that her husband had no objection to this method of filing, you prepared separate returns in lieu of the joint return.

You wish to know whether the act of generating separate tax returns for your client's husband, the adverse party, created an attorney/client relationship between you and the husband and, further, whether it is proper for you to now represent the wife in a no-fault divorce action.

Under the limited facts presented in your inquiry, the Committee would opine that preparation of tax returns under the circumstances you have described may be construed to constitute the practice of law and may create an attorney/client relationship to the extent that the lawyer is providing advice and service for another which requires his use of legal knowledge or skill. However, assuming that the husband is an unrepresented party, the preparing of the tax return by the wife's attorney with the consent of both parties may be ethically permissible providing that the unrepresented party is advised that the aforementioned attorney represents the interests of the wife whose interests are or may be differing to those of the husband, and that the husband may secure separate counsel. (See DR:7-103(A)(2))

The Committee is of the opinion that even if the preparation of the husband's separate tax return did create an attorney/client relationship, the representation of the wife in the no-fault divorce proceeding is not substantially related to the tax preparation and, therefore, no conflict exists in continuing the divorce representation of the wife. (See DR:5-105(D))

Committee Opinion
January 31, 1989