

Committee Opinion
June 14, 1988

LEGAL ETHICS OPINION 1084

REPRESENTING A CLIENT WITHIN
THE BOUNDS OF LAW.

You advise that you represent the husband in a divorce proceeding. The wife is mentally competent, but is severely handicapped physically and is in a nursing home. It is expected that she will spend the remainder of her years in the nursing facility. The husband is employed at present, but will retire shortly. Between the two of them, there are very limited funds. Through the efforts of members of her family, the wife is now receiving Medicare and Medicaid as well as some county supplemental support. These funds were arranged for her prior to the divorce action.

You and opposing counsel have agreed that maintaining federal, state and/or county support for the wife in this instance is of crucial importance to both parties. You have sought guidance from the federal agencies administering the aid programs, but have been unable to get any clear direction as to how and when such funding could be withdrawn or reduced.

Hearings in the matter have been heard before a commissioner in chancery and at this point, a final decree may be entered. Counsel for the wife will seek to have a reservation of support put in the final decree as a necessary protection for his client and you, as counsel for the husband, do not intend to contest that she is entitled to such a reservation. However, a recipient of federal aid is required to notify the appropriate authority when their marital status changes, which of course, could prompt the authorities to review the provisions of such a decree for support and maintenance, if any. The concern then arises that the wife will face the choice of proceeding against the husband for support as a condition for keeping any Medicare and/or Medicaid assistance.

It has been suggested that two decrees be prepared. The first would be a decree of divorce which sets out all of the operative clauses, findings, etc., that a divorce decree generally has, except there would be no provision for a reservation of support. A second decree, containing that reservation, would be submitted to the court thereafter, but within the 21-day period. In the latter, the reservation would be provided for but the decree itself would not contain any language concerning that reservation.

You wish to know if there is anything improper with this proposed course of action. It is apparent that the purpose of having these two decrees entered is to induce the federal authorities to conclude incorrectly that no reservation of support was decreed. Even if the federal authorities reached this false conclusion through no other action on the part of you, opposing counsel or your clients, the filing of the two decrees in itself would have been the intended as well as the actual cause that they were misled. Thus, such action would violate DR:1-102(A)(4) and DR:7-102(A)(7). Furthermore, if the client has a legal duty to provide full information to the federal authorities, then there may also be a violation of DR:7-102(A)(3) on the part of the attorney representing that client.

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