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**ALASKA BAR ASSOCIATION
ETHICS OPINION NO. 93-1**

**Preparation of a Client's Legal Pleadings
in a Civil Action Without Filing An Entry of Appearance**

The Ethics Committee has been asked whether the preparation of legal pleadings in civil litigation for *pro se* litigants constitutes the unethical practice of law. In the committee's opinion, a lawyer may ethically limit the scope of his representation of a client, but the lawyer should notify the client clearly of the limitation of representation and the potential risks the client is taking by not having full representation. When an attorney limits the scope of his representation, an attorney-client relationship is still created between the attorney and the client, with all the attendant duties and responsibilities called out in the Professional Canons.

The attorney requesting the ethics opinion states that he is helping many *pro se* litigants prepare their own child support modification motions.¹ Many of these litigants, he states, are unable to obtain legal counsel due to their poor financial condition. Assistance with their self-help efforts presents one of their few options for access to the courts. EC 2-33 stresses the legal profession's commitment to making high quality legal services available to all. Attorneys are encouraged to cooperate with qualified legal assistance organizations to provide *pro bono* legal services on behalf of the poor. Canon 6 of the Code of Professional Responsibility further provides that a lawyer should represent a client competently and zealously. When an attorney undertakes the representation of any client, that client should receive a high quality of legal service. The Committee is essentially asked to address the interplay between these ethical and professional considerations when a lawyer provides legal services to a *pro se* litigant without entering an appearance in the litigation in question. The Committee concludes that such assistance is not unethical when conducted under the guidelines set forth below.

According to the facts before the committee, the attorney assists in the preparation of pleadings only after fully describing this limited scope of his assistance to the client. With this understanding, the client then proceeds

1 The Committee is aware that attorneys may get involved in preparing pleadings and filings for clients outside the area of domestic relations, and for purposes which are not as worthy. Behind the veil on anonymity, an attorney can assist in "ghostwriting" matters for the client without the apparent threat of sanction. However, if an attorney "ghostwrites" something for a client which the attorney could not ethically sign, either because of constraints of the civil rules or the Professional Canons, he or she has engaged in unethical behavior. DR 1-102(A)(2) prohibits an attorney from circumventing a disciplinary rule "through actions of another." Subsection (A)(4) prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." See also 7-102(A)(1)-(7). If an attorney prepares or assists in the preparation of a pleading to be signed by a *pro se* litigant, they are under the same ethical constraints as if they were to sign the pleading with their own name.

without legal representation into the courtroom for the hearing. The client may then be confronted by more complex matters, such as evidentiary arguments concerning the validity of the child support modification, or new issues such as child custody or visitation to which he may be ill-prepared to respond. The client essentially elects to purchase only limited services from the attorney, and to pay less in fees. In exchange, he assumes the inevitable risks entailed in not being fully represented in court. In the Committee's view, it is not inappropriate to permit such limitations on the scope of an attorney's assistance.

A non-profit legal assistance organization may limit the scope of representation to its clients. For example, non-profit legal assistance organizations that provide free legal services to low income clients may offer, in lieu of representation in court, a class on *pro se* divorce to individuals seeking simple uncontested divorces and may also offer such classes to individuals with more complicated divorce matters provided that all clients are fully advised of risks involved in *pro se* representation. ABA Opinion 90-18 (July 31, 1990).

Also, the Virginia Bar Association has recognized that a lawyer may assist *pro se* litigants in the preparation of discovery requests, pleadings or briefs without entering an appearance.² Opinion 1129 (Virginia 1988). Such assistance creates an attorney-client relationship, however, and the attorney must therefore comply with the Code of Professional Responsibility. The attorney is responsible to the client for the attorney's conduct during the course of the professional relationship, however limited. Within the agreed scope of the representation, the attorney must provide the client with all counseling necessary to make informed decisions.

Amended by the Alaska Bar Association Ethics Committee on March 4, 1993.

Adopted by the Board of Governors on March 19, 1993.

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² Some jurisdictions require an attorney who prepares pleadings or documents for a *pro se* litigant to disclose his or her assistance to opposing counsel and the court on the face of the document. See N.Y. Bar Assoc. Opinion 1987-2 (1987). The requirement is premised on the belief that non-disclosure of such assistance would be misleading because *pro se* litigants may, and often times do, receive preferential treatment from the court. Upon reflection, the Committee is not certain that this belief is well founded. The committee believes that judges are usually able to discern when a *pro se* litigant has received the assistance of counsel in preparing or drafting pleadings. In that event, the Committee believes that any preferential treatment otherwise afforded the litigant will likely be tempered, if not overlooked.