

**DELAWARE STATE BAR ASSOCIATION
COMMITTEE ON PROFESSIONAL ETHICS OPINION**

OPINION 1999-1

September 21, 1999

THIS OPINION IS MERELY ADVISORY AND IS NOT BINDING ON THE
INQUIRING ATTORNEY OR THE COURTS OR ANY OTHER TRIBUNAL

I. QUESTION PRESENTED

Attorney has inquired whether there is an obligation to inform the adult children of a decedent of their potential rights under Delaware's "Action For Wrongful Death," 10 Del. C. §3724, where Attorney already represents decedent's second wife in a pending wrongful death action and where the statute provides that only one wrongful death action is permitted per death.

II. BACKGROUND FACTS

Attorney represents the second wife of the decedent in a pending wrongful death action under 10 Del. C. §3724. Attorney has become aware that decedent had children from a prior marriage from whom Attorney's client is estranged. The client has indicated that she does not want the children included as plaintiffs in the wrongful death action, although they would be proper plaintiffs under §3724(a). Section (e) of §3724 provides: "Only one action under the subchapter lies in respect to the death of a person." Thus, Attorney believes that if the decedent's adult children are not given the opportunity to join in the pending wrongful death

action, their right to bring such an action may be barred as a result of the already pending action brought by Attorney's client.

III. CONCLUSION

There is no ethical obligation for Attorney to inform the decedent's children of their potential rights.¹ Rule 1.2 of the Delaware Lawyers' Rules of Professional Conduct addresses the scope of representation between a lawyer and her client. That Rule provides that a lawyer "shall abide by a client's decisions concerning the objectives of representation" with certain defined limitations.

Where the client, as in this case, has instructed her lawyer to limit the plaintiff parties to an action, and where the lawyer has no prior relationship with other potential parties, the lawyer is bound by Rule 1.2 to abide by the client's decisions limiting the scope of the pending lawsuit.

IV. DISCUSSION

The critical facts and assumptions underlying this discussion are that Attorney represents only the decedent's second wife in the pending wrongful death action. Further, while Attorney is aware that the decedent had children by a prior marriage, and that those children would be proper plaintiffs in the pending wrongful action, Attorney has not been consulted by those adult children as to possible causes of action, and has no other relationship with those adult children. Thus, and critically to this analysis, Attorney's only client relationship is with the

¹ This opinion considers only Attorney's ethical duties. It does not opine on what obligations, legal or otherwise, the client may have to decedent's children.

decedent's wife, who has requested specifically that the wrongful death action be brought in her name alone.

Under this set of facts, there is no conflict of interest under Rules 1.7, 1.8 or 1.9. Attorney does not currently represent, and has not in the past represented, any party whose interests conflict or, indeed, are coincident with, the interests of Attorney's current client.

Further, the demand by Attorney's current client that the wrongful death action be brought in her name alone does not require Attorney to engage or aid in the commission of any fraud, unethical conduct, or other unprofessional or illegal acts, thereby implicating Rule 1.16.

Consequently, this matter is controlled by Rule 1.2, which provides:

- (a) A lawyer shall abide by a client's decisions concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.
- (b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.
- (c) A lawyer may limit the objectives of the representation if the client consents after consultation.
- (d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to

make a good faith effort to determine the validity, scope, meaning or application of the law.

* * * *

None of the limitations on a lawyer's obligation to abide by a client's decisions concerning the objectives of a representation are applicable to this case.

The language of Rule 1.2 does not specifically address a client's choice as to who may be parties to an action brought by the client. Further, opinions and decisional law in Delaware and elsewhere have not addressed the question posed here. However, the Comment to Rule 1.2 states the "client has unlimited authority to determine the purpose to be served by legal representation," assuming no unethical or illegal objectives are demanded. It is no stretch of that principle to conclude that a client has the right to limit an action brought on the client's behalf to the client alone, notwithstanding the fact that other parties might also have legitimate claims under the same theory.

Furthermore, Subsection (b) of Rule 1.2 specifically states that "(a) lawyer's representation of a client . . . does not constitute an endorsement of the client's political, economic, social or moral views or activities." Therefore, even though Attorney might disagree in this case with the client's decision not to include the children in the wrongful death action, that is a decision that falls within social or moral concerns, but does not raise legal or ethical issues for Attorney.

In conclusion, Rule 1.2 controls this situation. Attorney has no independent legal or ethical obligation or right to inform the adult children, who are not current clients, of their potential cause of action, particularly when such action would violate the specific instructions of Attorney's current client.

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