
E-80-1 Drafting will for partner's spouse

Question

May one member of a law firm (Lawyer A) draw a will for the spouse of another member of that law firm (Lawyer B) when the will distributes the entire estate of the spouse to said Lawyer B to the exclusion of their children?

Opinion

The Supreme Court of Wisconsin in *State v. Collentine*, 35 Wis. 2d 325, *State v. Beaudry*, 53 Wis. 2d 148, and *State v. Gulbankian*, 54 Wis. 2d 599 stated that a lawyer may be the scrivener of a will in which he is a beneficiary *only* when he stands in relationship to the testator as the natural object of the testator's bounty and where under the will he receives no more than would be received by law in the absence of a will. Under any other circumstances in which the lawyer-draftsman is a beneficiary, this Court will conclude that the preparation of such a will constitutes unprofessional conduct.

Thus, it readily appears that Lawyer B may not draw a will for his or her spouse in which he or she would receive the entire estate to the exclusion of the testator's children. Although the question was not directly presented in *State v. Beaudry*, a reading of the Court's opinion at page 154 compels the conclusion that a member of Lawyer B's law firm would not meet the test as an independent legal attorney as is required thereby.

The American Bar Association Committee on Ethics and Personal Responsibility in footnote 2 to Formal Opinion 342 states:

"It has long been recognized that the disqualification of one lawyer in an organization generally constituted disqualification of all affiliated lawyers." (citing cases)

In the year 1968 (prior to *Beaudry* and *Gulbankian*), this committee dealt with the same question. See Informal Opinion 2-68, Wis. Bar Bull. June, 1979, Supplement at p. 75, which states:

Under the above guidelines (referring to *State v. Collentine*), this committee is of the opinion that the Court's language would prohibit a lawyer from drafting

a will for his wife making him the sole beneficiary to the exclusion of the children. It would likewise be improper for a lawyer to draft a will for his wife in which she would leave him a bequest equal to the maximum marital deduction (assuming one or more children). The committee is also of the opinion that a partner or an associate of such lawyer-beneficiary would be foreclosed from drafting such a will.

The foregoing is reaffirmed as the opinion of this committee. Thus, Lawyer A may not draw a will for Lawyer B's spouse in those cases in which Lawyer B would receive a larger share of the estate than he or she would if the spouse died intestate.