

---

**2/68            Lawyer named as beneficiary in will**

---

The Ethics Committee has considered several inquiries from members of the State Bar following the *State v. Collentine*, 39 Wis. (2d) 325, decision regarding the drafting of wills by attorney-beneficiaries. In its decision of June 8, 1968, the Supreme Court established the rule prospectively that an attorney may be scrivener of a will in which he is a beneficiary only when he stands in relationship to the testator as a natural object of his bounty and in instances in which he will receive no more than he would have received at law in absence of such will. The Court emphatically stated that under any other circumstances in which a lawyer-draftsman received a larger bequest that it would conclude that such activity would constitute unprofessional conduct.

Under the above guidelines, 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 also is of the opinion that a partner or an associate of such lawyer-beneficiary would be foreclosed from drafting such will.

It was the committee's opinion that the Collentine Rule would affect testamentary draftsmanship prospectively. It would not be improper for a lawyer to assist in the preparation of documents by which he is made beneficiary of an insurance policy owned by the wife even though there are living children. Also, a lawyer-husband may prepare a deed by which real estate is taken in joint tenancy with his wife, to the exclusion of the children. (Note: Affirmed in ABA Informal Opinion 1145, November 5, 1970.)