

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

41 SOUTH HIGH STREET-SUITE 3370, COLUMBUS, OH 43215-6105
(614) 644-5800 FAX: (614) 644-5804

OFFICE OF SECRETARY

OPINION 89-014

Issued May 30, 1989

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: A lawyer preparing a will for a client may not attempt to influence or encourage the client to name the lawyer as executor. If the client insists on naming the lawyer preparing the will as executor, the lawyer should explain to the client the potential for conflicts. If the lawyer serves as executor, the lawyer should make every attempt to avoid even the appearance of impropriety.

OPINION: We have before us your request for an advisory opinion regarding EC 5-6 of the Code of Professional Responsibility and will preparations. According to your request, a few of your clients have requested that you be named executor of their estate. You also indicate that you have never suggested this to your clients. Ethical Consideration 5-6 states that:

[a] lawyer should not consciously influence a client to name him as executor, trustee, or lawyer in an instrument. In those cases where a client wishes to name his lawyer as such, care should be taken by the lawyer to avoid even the appearance of impropriety.

Potential conflicts which the client should consider include: 1) the potentially lucrative practice of probating wills may impair a lawyer's best judgment when advising a client in the preparation of his or her individual will; and 2) if the lawyer is called to testify in a proceeding involving her client's estate, she may have to withdraw as counsel under DR 5-102. In each instance, the lawyer must disclose the potential conflict and balance any potential conflict against her client's right to freely choose an executor.

A lawyer may not consciously influence a client to name the lawyer as executor of an estate. If the client insists on naming the lawyer who prepares the will as executor, the lawyer must advise the client of the potential for conflict pursuant to DR 5-102. Philadelphia Bar Assn. Op. 80-2 (1980). It has also been suggested that a lawyer may serve as executor providing she reveals her dual role to both the court and the beneficiaries of the will. Alabama Bar Assn. Op. 86-82 (1986). The Alabama opinion further recommends that the lawyer make a good faith determination that any legal work she performs as executor is necessary and will benefit the estate. Id.

In conclusion, an attorney may draft a will naming the attorney executor without violating the Code of Professional Responsibility. However, such a decision should be made by the client, free of any influence or suggestion by the attorney preparing the will.

This is an informal, non-binding advisory opinion based upon the facts presented and limited to questions arising under the Code of Professional Responsibility.