



## Alerts

### Lawyer Avoids Malpractice Liability by Expressly Limiting Scope of Representation

September 7, 2010

*Lawyers for the Profession® Alert*

*Flatow v. Ingalls*, \_\_\_N.E.2d\_\_\_, 2010 WL 3218519 (Ind. App. 2010)

#### Brief Summary

The Indiana Court of Appeals held that a lawyer was not liable for malpractice, despite failing to respond to a motion for summary judgment, because the attorney's engagement agreement limited the scope of representation to tasks that did not include such a response.

#### Complete Summary

The issue in this legal malpractice action was the effect of an underlying agreement limiting the scope of the relationship between the parties. The lawyer and client specifically agreed that the attorney would draft a motion for summary judgment and a reply brief, and nothing more. The lawyer then filed a motion for partial summary judgment. The opposing party filed both a brief in opposition to the motion as well as a cross-motion for summary judgment. The lawyer failed to respond to both filings, and the court granted the opposing party's motion. The client then brought this legal malpractice action based on the attorney's failure to respond.

The Indiana Court of Appeals affirmed summary judgment for the lawyer because the client failed to establish the duty and proximate cause elements of legal malpractice. The court began by noting that Indiana RPC 1.2(c) allows agreements limiting the scope of representation, provided they are reasonable and the client gives informed consent. Regarding the attorney's failure to respond to the opposing party's motion for summary judgment, the court held that the lawyer had no duty to respond given the limited scope of representation. The engagement agreement, the court noted, called for the attorney to perform two specific tasks, neither of which involved responding to a motion for summary judgment. Regarding the lawyer's failure to reply to the opposing party's response — a task which the attorney had agreed to undertake — the court held that the client did not establish any harm from the lawyer's breach because the client had not alleged any supplemental evidence that could have been included in the reply and altered the outcome.

#### Significance of Opinion

#### Service Areas

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This opinion demonstrates that lawyers can narrowly limit the scope of representation and therefore limit the scope of potential malpractice liability. But such limitations must be reasonable and clearly articulated—both for purposes of obtaining informed client consent and of ensuring proper contract interpretation by the court.

*This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.*