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Pennsylvania Court Prohibits Commercial Assignments of Legal Malpractice Claims

July 18, 2012

Lawyers for the Profession® Alert

Frank v. TeWinkle, ___ A.3d ___, 2012 WL 1851008 (Pa. 2012)

Brief Summary

The Superior Court of Pennsylvania held that agreements under which assignors assigned their legal malpractice claims against their former attorneys were champertous and thus invalid.

Complete Summary

This case arose from two separate lawsuits filed by plaintiff, a former Pennsylvania attorney whose license had been suspended since 1988. Through an advertisement for a company, plaintiff lawyer solicited the assignment of the claims of two men against their former personal injury attorneys. Defendants claimed that plaintiff attorney was engaged in the unauthorized practice of law, as evidenced by the advertisement and the “Assignment of Claims and Choses in Action” in which plaintiff lawyer agreed to pay the assignors a percentage of the net proceeds recovered in the legal malpractice actions. The trial court dismissed plaintiff attorney’s complaints on the basis that the claims were champertous and void as against public policy. The trial court explained that the common law doctrine of champerty remains a viable defense in Pennsylvania. Applying that doctrine to the assignments in these cases, the trial court dismissed plaintiff client’s claims on the basis that the claims were champertous.

The appellate court noted that long considered repugnant to public policy against profiteering and speculating in litigation, champerty is defined by Black’s Law Dictionary (8th ed.) as:

[a]n agreement between an officious intermeddler in a lawsuit and a litigant by which the intermeddler helps pursue the litigant’s claim as consideration for receiving part of any judgment proceeds; . . . an agreement to divide litigation proceeds between the owner of the litigated claim and a party unrelated to the lawsuit who supports or helps enforce the claim.

In *Hedlund Mfg. v. Weiser, Stapler & Spivak*, 517 Pa. 522, 539 A.2d 357 (1988), the Pennsylvania Supreme Court approved the assignment of legal malpractice claims, holding that “[w]e will not allow the concept of the attorney client relationship to be used as a shield by an attorney to protect him or her from the

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consequence of legal malpractice.” In *Hedlund*, however, the assignee was not a stranger to the litigation, and it held a legitimate interest in the lawsuit.

Here, the court held that plaintiff lawyer had no legitimate interest in the underlying personal injury actions. Plaintiff lawyer was and still remained a “stranger” to those lawsuits, whose only interest in the underlying cases arose well after the cases were complete. Afterward, upon solicitation, plaintiff lawyer purchased assignments with the exclusive intent to institute claims against the assignors’ attorneys in consideration of which plaintiff lawyer agreed to share in a percentage of the recovery. The court thus concluded that while claims against attorneys may be assigned under Pennsylvania law under certain circumstances, champerty is still a viable defense to those claims.

Significance of Opinion

This decision is noteworthy for the fact that although assignments of legal malpractice actions are allowed under certain circumstances in Pennsylvania, champerty is still a valid defense to an assignment in a case filed by an intermeddler and stranger to the attorney-client relationship.

For further information, please contact [Terrence P. McAvoy](#).

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