# ATTORNEY SELF-DEALING

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A dominant theme in 1984 Minnesota Supreme Court disciplinary orders has been condemnation of several forms of attorney self-dealing in client instruments and assets.

*In re Prueter,* No. C1-82-1663, slip op. (Minn. Dec. 21, 1984) involved an attorney who drafted a will devising his client's estate equally to the attorney, the attorney's wife, an accountant, and the accountant's son. The attorney did not insist that the client seek independent counsel. Although the attorney had a long professional and personal relationship with the client, he was not related by blood or marriage. Shortly after the will was executed, the client committed suicide. The client's wife, her children, and the client's children from a former marriage contested the will. After extensive litigation the devises to the attorney and his wife were invalidated.

The case is significant in three respects. First, the Court clearly stated in the context of disciplinary law that an attorney should be disciplined when he or she drafts a client's will making the attorney or a member of the attorney's family a beneficiary under the will. In several probate cases the Court had "unequivocally condemned" the practice of the scrivener being a beneficiary. Other jurisdictions had disciplined attorneys for similar actions. Second, the Court explicitly approved the holding of the Hennepin County Probate Court, which on public policy grounds had invalidated the devises to attorney Prueter and his wife. The Court stated,

> We feel compelled to clarify our attitude on this point [of an attorney drafting a will in which the attorney or attorney's family benefits] for the benefit of the practicing bar. We do not condone such practice. Should an attorney draft a will in which he or a member of his family is to become a beneficiary, that portion of the will should be stricken. *Id.* at 5.

Third, the Court imposed a reprimand without explicitly finding that a disciplinary rule had been violated. The Court's referee found that Ethical Consideration 5-5 had been violated, and the Court echoed the Oregon Supreme Court's statement,

> Any lawyer should know, without being told, that when a client wants to make a testamentary provision for the benefit of the lawyer, that lawyer should withdraw from any participation in the preparation or execution of the will. *In re Jones,* 254 Or. 617, 462 P.2d 680 (1969).

In another case, decided earlier in 1984, the Court had found that an attorney's drafting a will for a conservatee, which beneficially named an officer of a corporation owned by the attorney, involved self-dealing in violation of Disciplinary Rules DR 5-104 and DR 7-102(A)(3). *In re Franke* 345 N.W.2d 244 (Minn. 1984).

Rule 1.8 of the proposed new Rules of Professional Conduct would make explicit certain attorney-client dealings which are prohibited. For example, Rule 1.8(c) states,

> A lawyer shall not prepare an instrument giving the lawyer or a person related to the lawyer as parent, child, sibling, or spouse any substantial gift from a client, including a testamentary gift, except where the client is related to the donee.

On January 4, 1985, the Court heard a petition for adoption of the new rules. Prueter's client was a long-time friend and client, but not a family member. The current Ethical Consideration 5-5 does not create a family member exception. ABA Informal Opinion 1145 (1970) suggests that independent counsel should be recommended even when the lawyer's spouse is having a will drawn.

In other recent cases, the Court disbarred two attorneys for egregious misconduct, including self-dealing in probate estates. *In re Olson,* No. CO-84-251, slip op. (Minn. Dec 7, 1984) involved an attorney who used a power of attorney signed by his sister-in-law, shortly before she became comatose, to transfer her assets into his name, collect her funds, and execute a trust agreement distributing her estate to the attorney and his sister. *Franke* involved an attorney whose misconduct included buying assets from guardianship estates he represented, using his wife's corporation to conduct sales, selling a ward's home to his law partner, and charging realty commissions without performing any substantial services.

Outside the probate context, the Court also severely disciplined an attorney who borrowed money from a vulnerable client. *In re Pearson,* 352 N.W.2d 415 (Minn. 1984). Pearson was indefinitely suspended for borrowing $15,000, purportedly for investment in the attorney's meat business, from a client who was disabled and mentally ill. Pearson made no disclosures and used the loan proceeds for his own benefit.

The Director's Office will follow the Court's opinions and carefully scrutinize attorneys who deal with clients to their own benefit. We will continue to seek public discipline, including suspension or disbarment when appropriate, of attorneys who violate the disciplinary rules in these regards.