

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 596**

April 2010

QUESTION PRESENTED

Is it permissible under the Texas Disciplinary Rules of Professional Conduct for a lawyer to accept an assignment of the proceeds of an insurance policy in payment of legal fees and expenses?

STATEMENT OF FACTS

A lawyer proposes to enter into an employment agreement with a client who is the beneficiary of a life insurance policy on a decedent. The client will assign to the lawyer a specific dollar amount of the proceeds from the policy in payment of the lawyer's fees agreed upon by the lawyer and client. Under the assignment, the assigned portion of the proceeds will be paid by the insurance company directly to the lawyer.

DISCUSSION

In general, under Texas law, causes of action may be freely assigned absent a statutory bar. *State Farm Fire and Casualty Company v. Gandy*, 925 S.W.2d 696, 707 (Tex. 1996). However certain types of assignments have been held invalid based on considerations of public policy. See e.g. *PPG Industries, Inc. v. JMB/Houston Centers Partners Limited Partnership*, 146 S.W.3d 79 (Tex. 2004) (assignments of claims under the Texas Deceptive Trade Practices-Consumer Protection Act invalid); *State Farm Fire and Casualty Company v. Gandy*, 925 S.W.2d 696 (Tex. 1996) (holding invalid defendant's assignment to plaintiff of defendant's claim against liability insurer as part of a settlement arrangement involving an agreed judgment and agreement not to collect judgment from defendant). The Committee is aware of no public policy or other grounds that would under Texas law generally require invalidating an assignment of life insurance policy proceeds to pay for services.

If legal services have been completed before an assignment of insurance proceeds in payment of legal fees, such an assignment will be subject only to the generally applicable requirements concerning legal fees of Rule 1.04 of the Texas Disciplinary Rules of Professional Conduct. The fact that payment is made by an assignment of insurance proceeds rather than by payment of money will not be significant under the Texas Disciplinary Rules.

In the circumstances here considered, the employment agreement is entered into and the insurance policy proceeds are assigned before the legal services have been completed. If the fee arrangement complies with the requirements of Rule 1.04 and the insurance policy is not the

subject of the litigation for which the lawyer has been retained, such a fee arrangement will be permissible provided that the assignment and any payment relating thereto when received by the lawyer are held and accounted for separately in compliance with Rule 1.14 until the completion of the legal services for which the assignment is compensation. See Professional Ethics Committee Opinion 391 (February 1978).

However, the proposed assignment will be prohibited if the insurance policy in question is also the subject of litigation for which the lawyer will be compensated by means of the assignment. Rule 1.08(h) provides in pertinent part as follows:

“A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client, except that the lawyer may:

...

(2) contract in a civil case with a client for a contingent fee that is permissible under Rule 1.04.”

The exception in subparagraph (2) of Rule 1.08(h) for contingent fees would apply if the insurance policy were the subject of the litigation and the amount payable to the lawyer was dependent on the outcome of the litigation. However, in the circumstances presented, the proposed assignment is for an amount that does not depend on the litigation outcome. Hence the proposed assignment, if it were in payment for the lawyer’s services in litigation concerning a claim under the insurance policy, would be prohibited as a lawyer’s acquisition of a proprietary interest in a claim where the proprietary interest is not a permitted contingent fee.

CONCLUSION

Under the Texas Disciplinary Rule of Professional Conduct, a lawyer may receive an assignment of insurance proceeds as compensation for legal services already completed at the time of the assignment, subject only to the generally applicable requirements concerning legal fees as set forth in Rule 1.04. If a proposed assignment of insurance proceeds to a lawyer is compensation for legal services that have not been completed at the time of the assignment, the lawyer may receive such assignment provided the insurance recovery is not the subject of the legal services and provided the assignment and any payment relating thereto are held and accounted for in compliance with Rule 1.14 until the completion of the services. A lawyer may not receive an assignment of proceeds of an insurance policy if the assignment is compensation for legal services in litigation that has not been completed with respect to a claim on the insurance policy and the assignment to the lawyer is not a permissible contingent fee for the representation.