

Attorney Has No Duty to Represent Client Beyond Scope of Contract

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On August 16, 2010, the Indiana Court of Appeals held that an attorney did not commit malpractice because she had no duty to represent her client beyond that described in the representation agreement in *Flatow v. Ingalls*, Case No. 49A02-0910-CV-994.

In this case, Ingalls filed a four-count lawsuit against his former employer, alleging, *inter alia*, defamation. After one claim was dismissed, Ingalls hired Flatow to represent him as to the defamation claim only. Flatow proceeded to move for partial summary judgment on the defamation claim. The former employer filed a brief in opposition and a cross-motion for summary judgment on all three remaining counts of Ingalls's complaint, including the defamation count. Ingalls did not file a reply to the response to his motion for partial summary judgment, nor did he file a response to the cross-motion for summary judgment. The trial court granted judgment to the former employer. Ingalls then sued Flatow for legal malpractice. Flatow's motion for summary judgment was denied and she was granted permission to pursue an interlocutory appeal.

On appeal, the Court turned to Indiana Professional Conduct Rule 1.2(c) to inform it of the scope of the duty that Flatow owed to Ingalls and narrowly construed the duty. The contract provided that Flatow would "draft a motion for summary judgment and a reply brief in the above matter" and that the "representation in this matter includes inception of the matter through the end of trial." The Court held as follows:

[W]e view the contract provision stating the Flatow Defendants will represent Ingalls from "inception of the matter through the end of trial" in light of the more specific provisions and conclude the "matter" is Ingalls's summary judgment motion, and that although the Flatow Defendants may be alongside Ingalls through the entire proceedings, they will be active only on this one limited matter.

Because the representation was so limited, Flatow had no duty to respond to the former employer's motion for summary judgment, even though it addressed the defamation claim.



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Judge Kirsch disagreed with this conclusion, finding that the Flatow's agreement to represent Ingalls in "the matter through the end of trial" was an express agreement to represent Ingalls on his defamation claim and to take all steps required by the applicable standard of care regarding the summary judgment proceedings and, thereafter, through to the end of trial. However, he concurred in the judgment because Ingalls failed to point to any legal argument that should have been made or evidence that should have been designated in reply in support of his own motion or in response to his former employer's motion that would have resulted in a more favorable outcome.

All attorneys should take note of the decision in this case. The Court's decision sends a clear signal that a lawyer's legal duty to represent a client in any particular matter will be narrowly construed to the definition of that matter. Courts should not find that a legal duty to represent a client in exists simply because of the existence of an attorney-client relationship in a very closely related matter. However, attorneys should be cautioned that this decision, while citing Indiana Professional Conduct Rule 1.2(c), does not claim that it is determining the scope of the ethical duties posed by that Rule.

Lessons:

1. Courts will construe the legal duty that an attorney owes to her client narrowly.



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