

PROFESSIONAL LIABILITY UPDATE

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ATTORNEY-CLIENT RELATIONSHIP

California Law

By Anna Kapetanakos and Jennifer A. Becker

An attorney has no duty to persons who have claims related to his or her client's, but who have not sought the attorney's advice.

Howard H. Hall v. Superior Court 03 C.D.O.S. 4000

In May 1999, Brent Lindrow's daughter drowned in his mother's pool. Prior to her separation from Brent, Estella Lindrow contacted Howard Hall to discuss legal claims arising from her daughter's death. Hall filed a wrongful death action on behalf of Estella but never consulted with Brent about the wrongful death case.

After the wrongful death case settled Brent filed a lawsuit against Hall for legal malpractice and breach of fiduciary duty. Brent asserted Hall had a duty to advise him of his rights in connection with the wrongful death action, to suggest he consult another attorney about those rights, or to name him as a nominal defendant in the wrongful death action.

The trial court concluded that Hall would have had a potential or actual conflict of interest if he had represented Brent or advised him in any way due to the circumstances of the child's death because Brent was present during the accident and Estella was not.

Nonetheless, the court questioned

whether Hall had a professional duty to join Brent as a nominal defendant. Under the "single action rule" all known heirs should be joined in one wrongful death action. The trial court denied Hall's motion for summary judgment.

The Court of Appeal reversed holding that an attorney is not required to contact a non-client and advise him of his legal rights or suggest that he contact another lawyer. Such a rule would extend an attorney's duty to persons who have not come to the attorney seeking legal advice and who have never met the attorney. Further, the court questioned whether Hall could have engaged in any discussion with Brent in light of the potential conflict of interest.

Brent relied on *Meighan v Shore* (1995) 34 Cal.App.4th 1025, which holds that an attorney owes a duty to a client's spouse to inform her of her right to pursue a claim for loss of consortium or the need to consult with another attorney.

Meighan pertains to the particular tort of loss of consortium in circumstances where both spouses consult an attorney with respect to a personal injury suffered by one and the attorney can readily ascertain that the other spouse has a potential claim. Estella and Brent never met together with Hall to seek advice about their potential claims and Brent did not contact Hall. Neither Estella nor Brent had any expectation Brent would benefit from or rely on Hall's legal services. Under these circumstances, Hall owed no legal duty to Brent as a matter of law.

Comment: Hall is welcome direction concerning an attorney's duties to a non-client with claims related to those of his or her client's.

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