

# Public Policy Prohibits Involuntary Assignment of Legal Malpractice Claim Among Litigation Adversaries

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## *Background*

A civil lawsuit resulted in a \$127,000,000 judgment. The defendant (“Hohenshell”) obtained new counsel and filed an appeal. While the appeal was pending, the plaintiffs/judgment creditors (hereinafter “plaintiffs” or “Gray”) initiated execution proceedings and levied Hohenshell’s potential legal malpractice cause of action against his lawyer (“Oliver”) in the same case that resulted in the \$127 million judgment. At the time of this involuntary assignment, the case resulting in the \$127 million judgment was still on appeal and Hohenshell had not asserted his legal malpractice claim against Oliver.

The Grays subsequently filed the legal malpractice claim as Hohenshell’s successor in interest. Since the appeal was still pending, this required the Grays to take alternate positions in the appeal than in the legal malpractice suit. In the legal malpractice suit Oliver sought and was granted summary judgment, with the district court finding that, as a matter of law, public policy in Iowa prevented the assignment of a legal malpractice claim to an adversarial party in the same lawsuit. The case was appealed to the Supreme Court of Iowa.

## *Court’s Holding*

The Iowa Supreme Court affirmed and engaged in a step-by-step analysis of why public policy prohibited the involuntary assignment. The Court first noted that, in general, causes of action are subject to levy and execution proceedings by a judgment creditor against a judgment debtor. Thus, plaintiffs’ acquiring of the legal malpractice claim in this manner constituted an involuntary assignment. Hence, the Grays stepped into the shoes of Hohenshell and were subject to any defenses in the legal malpractice suit he would have been, including any additional limitations on the legal malpractice claim that might render the involuntary assignment void, voidable, or otherwise not enforceable. *Id.* at 623.

The Court next noted it was a matter of first impression whether a legal malpractice claim is assignable, though it recognized that in *dicta* in a prior case it had noted other jurisdictions find such assignments a violation of public policy. The Court further noted the overwhelming majority rule is that legal malpractice claims are not assignable. Rationale for this rule is that allowing such an assignment would divest from the attorney's client the decision to sue, it imperils the sanctity of the attorney-client relationship, it erodes the attorney-client privilege, it compromises zealous advocacy and a duty of loyalty, it degrades the legal profession by sanctioning abrupt, shameless shifting of positions, it restricts access to legal services by the poor and indigent, and it creates a commercial market for legal malpractice claims. After endorsing these reasons for prohibiting assignment, the Court concluded they apply with even greater force where, as here, an *involuntary* assignment is involved. Allowing an involuntary assignment of a legal malpractice claim drives a wedge between a defense attorney and his client by creating a conflict of interest and violating the necessary trust in the attorney-client relationship if the attorney perceives the future threat of assignment to a litigation adversary. Because the client has not waived the attorney-client privilege, an involuntary assignment also puts the attorney in the impossible position of preserving the attorney-client privilege while also trying to show the representation was not negligent. Finally, the Court made particular note of the fact that the appeal of the \$127 million judgment was still pending, which highlighted the conflict of interest and the abrupt, shameless shifting of positions present in cases involving an involuntary assignment to a litigation adversary.

#### *Takeaway*

In choosing to address this issue for the first time in the context of an involuntary assignment among litigation adversaries, the Iowa Supreme Court was able to highlight, by applying relatively extreme facts, the public policy reasons why assignment of a legal malpractice claim is impermissible. In doing so, the Court made clear the importance of preserving the sanctity of the attorney-client relationship and the attorney-client privilege and further reinforced the significance of trust and the duty of loyalty between an attorney and client.

Case Citation: Gray v. Oliver 943 N.W.3D 617 (Ia. 2020)