THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS

Proposed Opinion PO 2026-2

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QUESTION PRESENTED

What ethical issues arise when a lawyer asks a client to provide a power of attorney to execute legal instruments for the client?

STATEMENT OF FACTS

A client hires a lawyer to represent him in a lawsuit against his insurance company over damage to a boat. The engagement letter between the lawyer and client grants the lawyer a power of attorney that gives the lawyer authority to, among other things, sign the client's name to documents without first notifying the client.

Litigation ensues between the policyholder client and his insurance company. During depositions it comes to light that his lawyer signed the client's name to a proof of loss form and sent it to the insurance company that insured the boat. The lawyer subsequently received a check for the undisputed portion of insurance proceeds, endorsed the client's name on the back of the check, and deposited the check into the lawyer's operating account. The lawyer did not inform his client of any of these actions.

DISCUSSION

A lawyer's duties to keep a client reasonably informed and follow the client's instructions.

Rule 1.02(a)(1) of the Texas Disciplinary Rules of Professional Conduct states that "a lawyer shall abide by a client's decisions concerning the objectives and general methods of representation," subject to other provisions in Rule 1.02. The comments to Rule 1.02 remind lawyers that while both a client and a lawyer have "authority and responsibility in the objectives and means of representation," the "client has ultimate authority to determine the objectives to be served by the legal representation," which includes "a right to consult with the lawyer about the general methods to be used in pursuing those objectives." Comment 1 to Rule 1.02. This right of the client imposes a responsibility on the lawyer to carry out the "means by which the client's objectives are best achieved." *Id*. While a lawyer "has very broad discretion to determine technical and legal tactics," this broad discretion is "subject to the client's wishes" regarding "expense" and "concern for third persons." *Id*.

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The client-lawyer relationship depends on communication. Rule 1.03(a) provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." The comments to Rule 1.03 elaborate that the "client should have sufficient information to participate intelligently in decisions concerning the objectives of the representation and the means by which they are to be pursued . . . ." Comment 1 to Rule 1.03. "The guiding principle is that the lawyer should reasonably fulfill client expectations for information consistent with the duty to act in the client's best interests, and the client's overall requirements as to the character of representation." Comment 2 to Rule 1.03. Of course, in some situations, "a lawyer may be justified in delaying transmission of information when the lawyer reasonably believes the client would be likely to react imprudently to an immediate communication." Comment 4 to Rule 1.03. But a lawyer "may not . . . withhold information to serve the lawyer's own interest or convenience." Comment 4 to Rule 1.03.

Under the facts of this opinion, the lawyer violated Rules 1.02 and 1.03 by using a power of attorney to execute legal instruments on behalf of the client without informing and consulting with the client in advance.

Although the use of a power of attorney is not per se unethical, a lawyer may not use a power of attorney in a way that circumvents the requirements of Rules 1.02 and 1.03. *See, e.g.*, *Sanes v. Clark*, 25 S.W.3d 800, 805 (Tex. App.—Waco 2000, pet. denied) (holding lawyer's use of engagement letter that allowed him to settle a case without further consultation with client violated Rule 1.02). Under the facts of this opinion, the lawyer violated Rules 1.02 and 1.03 by failing to keep the client reasonably informed and depriving the client of rightful authority to decide the objectives of the case. Specifically, the lawyer prepared a proof of loss form, submitted the form to the client's insurer, and accepted the insurance proceeds, all without notifying or involving the client.

Generally, a proof of loss form is a written statement by an insured—here, the client—detailing the damage suffered and the amount being claimed from an insurance company. A lawyer has a duty to explain this form and its implications to a client and to request the client's instruction as to how to handle the form. Moreover, these forms typically require the client to detail the reasons for the loss, which will affect the insurance company's decision to cover the loss.

If the lawyer received factual information from the client sufficient to prepare and submit the proof of loss form and communicated with the client about the implications of submitting the form, then the lawyer's use of the power of attorney to prepare, sign and submit the proof of loss form would not necessarily have violated Rules 1.02 and 1.03. Under the assumed facts, however, the client was unaware that

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the lawyer had prepared, signed, or submitted a proof of loss form. By failing to inform and communicate with the client, the lawyer violated Rules 1.02 and 1.03.

A lawyer may use a client's power of attorney if the lawyer has informed the client of the relevant circumstances and the client approves the use. For example, if a client was going into surgery or going on a trip that might prevent the lawyer from communicating with the client for an extended period, the client might authorize the lawyer to use a power of attorney to sign instruments like those in this opinion. But the lawyer must update the client on the matter promptly after communication is restored.

A lawyer must notify a client about the receipt of funds and safeguard those funds.

When a lawyer receives funds for a client, several duties arise. First, the lawyer must notify the client. Rule 1.15(b) states that "[u]pon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person." Second, the lawyer must also "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive," except as otherwise stated in the Rules, permitted by law, or by agreement with the client. Rule 1.15(b). Third, until the lawyer delivers those funds to the client or a third party, the lawyer must keep the funds in a trust or escrow account. Rule 1.15(a) states that a "lawyer shall hold funds and other property belonging in whole or in part to clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property." The lawyer must keep the funds in a "separate account, designated as a 'trust' or 'escrow' account." *Id*. A lawyer should hold client funds with the care required of a professional fiduciary. Comment 1 to Rule 1.15.

Here, the lawyer used a power of attorney to sign an insurance proceeds check payable to the client and deposited the checks into his operating account, without ever notifying the client. This violated the lawyer's duties under Rules 1.02, 1.03, and 1.15. First, the lawyer did not inform the client about the check, which failed to keep the client reasonably informed and lacked client approval on disposition of the funds. Rules 1.02(a) & 1.03(a). Second, a lawyer may not use a power of attorney to sign a check payable to a client unless the lawyer notifies the client of the receipt and amount of the check and the client consents. Rule 1.15(b). Third, because the funds belonged to the client the lawyer was required to deposit the funds into the lawyer's trust account—not the lawyer's operating account. Rule 1.15(a), (b). If a client owes the lawyer a fee for the lawyer's services, the lawyer may not withdraw client funds from the trust account to pay the fee unless the client consents. Rule 1.15(c) and Comment 2.

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CONCLUSION

Although client powers of attorney are not per se unethical, lawyers may not use them to circumvent ethical obligations. When a lawyer uses a power of attorney to prepare instruments for a client, the lawyer may violate the Rules if the lawyer does not communicate with the client about the transactions in question or if the use of a power of attorney prevents the client from making informed decisions about the representation. A lawyer may not use a power of attorney to sign a check payable to the client unless the lawyer first notifies the client of the receipt and amount of the check and obtains the client's approval. A lawyer must deposit the proceeds of such a check into the lawyer's trust account.

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