

Estate Planning Lawyer May Not Sell Long-Term Care Insurance

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N.Y. State Bar op. 711 (1999) — Selling long-term care insurance to estate planning clients: May a lawyer who is licensed as an insurance broker sell long-term care insurance to clients whom the lawyer represents in estate planning?

No.

In N.Y. State 619 (1991), the Committee opined that both DR 5-101(A) and DR 5-104(A) prohibited a lawyer engaged in estate planning from recommending life insurance products to the lawyer's clients if the lawyer has a financial interest in the sale. And because the opportunity for overreaching by the lawyer was "too great to be tolerated," the conflict cannot be cured by disclosure and client consent. The same restrictions apply to the sale of long-term care insurance. Thus, "a lawyer is categorically forbidden from selling long-term care insurance to clients whom the lawyer represents in estate planning." The Committee explained its reasoning as follows:

Text Of Explanation

[L]ongterm care insurance has many of the same characteristics as life insurance (e.g., a wide array of insurance products sold by various companies at different prices, and threshold questions of whether long-term care insurance products are the most appropriate or economical way to satisfy the client's needs). Furthermore, when a lawyer advises a client in estate planning matters, central objects of the representation include how best to satisfy the financial needs of the client and of those for whom the client wishes to or is obliged to provide; how to conserve the client's assets in the event of various contingencies; and how to provide for various health-related contingencies (such as by means of a health care proxy or living will). Thus, advice about the purchase of long-term care insurance is not likely to be merely tangential to the representation, but central to it. This conflict cannot be cured by disclosure and client consent.