

## Pennsylvania Superior Court Further Clarifies Holdings of Muhammad and McMahon in Recent Legal Malpractice Action

In a recently published opinion, the Pennsylvania Superior Court further clarified the holdings of two leading legal malpractice cases, *Muhammad v. Strassburger, McKenna, Messer, Shilobod & Gutnick*, 587 A.2d 1346 (Pa. 1991), and *McMahon v. Shea*, 688 A.2d 1179 (Pa. 1997), applying the cases to an action arising from a lawyer's negligent estate-planning advice.

In *Kilmer v. Sposito*, 2016 PA Super 141, 2016 Pa. Super. LEXIS 360, the plaintiff's estate attorney advised her to file an election to take against her husband's will under a code provision that would entitle her to one-third of her husband's estate, "when pure operation of law pursuant to [another code provision] would have entitled [her] to one-half of the estate as a surviving spouse who had married the testator after he made his will." The plaintiff followed the attorney's advice which reduced her share of her husband's estate from one-half to one-third. Upon discovering the significance of the attorney's error, the plaintiff hired a new attorney to challenge the validity of her unfavorable election. The uncertain prospects of invalidating her election drove her to accept a settlement which resulted in a partial recovery of what she lost by virtue of the advice of her original attorney. She sued her estate attorney for legal malpractice, but the trial court dismissed it holding that *Muhammad* prevented the claim.

On appeal, the Pennsylvania Superior Court further clarified the distinction between suing a lawyer for his or her "professional judgment in negotiating a settlement," which is *Muhammad*, and for his or her failure to advise a client correctly on the law, which is *McMahon*. In *Kilmer*, the Superior Court held the facts were closer to *McMahon*, primarily because the lawyer incorrectly advised the plaintiff on electing to take against her husband's will resulting in a much lower share of the estate. A settlement was not even an issue at the time the plaintiff's estate attorney gave her the negligent advice, the Superior Court noted.

**Comment:** *Kilmer* serves as an important reminder of the critical distinction between legal malpractice claims based on a lawyer's judgment in negotiating settlements versus providing legal advice. If the client accepts a lawyer's recommendation to take a settlement offer based on the lawyer's analysis of the merits of the client's claim, and the client later regrets the decision, the client must prove the lawyer fraudulently induced the client into accepting the offer, which is the essence of *Muhammad*. In contrast, if a lawyer negligently offers legal advice which detrimentally affects the pecuniary interests of the client, a claim based on *McMahon* may lie depending on whether the lawyer breached the appropriate standard of care. A close inspection of the facts is necessary to determine whether a viable legal malpractice claim exists or whether the claim flows simply from buyer's remorse over a settlement.