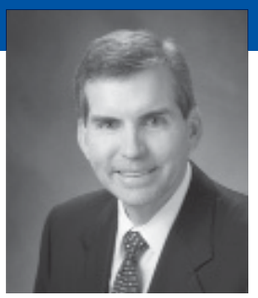
Muhammad Revisited

Avoiding Liability



By Jeffrey P. Lewis

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In *Muhammad v. Strassburger, McKenna, Messer, Shilobod and Gutnick*, 587 A.2d 1346 (Pa. 1991), the Supreme Court of Pennsylvania delivered a landmark decision in professional jurisprudence when it held that absent fraud a client could not assert a legal malpractice claim based on negligent advice concerning the settlement value of a case. This holding was justified by the court "in light of the longstanding public policy which encourages settlements." The court said simply, "[W]e will not permit a suit to be filed by a dissatisfied plaintiff against his attorney following a settlement to which that plaintiff agreed, unless that plaintiff can show he was fraudulently induced to settle the original action. An action should not lie against an attorney for malpractice based on negligence and/or contract principles when that client has agreed to a settlement. Rather, only cases of fraud should be actionable." *Id.* at 1348. In the Supreme Court's view in that 1991 decision, to hold otherwise would result in, among other things, "unfairness to the attorneys who relied on their client's assent and unfairness to the litigants whose cases have not yet been tried." *Id.* at 1351.

The *Muhammad* decision placed Pennsylvania virtually alone nationally in support of the proposition that no cause of action exists to assert a claim for negligent advice concerning the appropriate amount of a settlement. In the dissent, Justice Rolf Larsen, joined by Justice Stephen Zappala Sr., characterized the decision as "a 'LAWYER'S HOLIDAY.' … It's Christmastime for Pennsylvania lawyers." (capitalization in the original). That holding, subsequently referred to by some as the "*Muhammad* Doctrine," has since been clarified by subsequent case law.

For example, in *McMahon v. Shea*, 668 A.2d 1179 (Pa. 1997), in a plurality decision and therefore not binding, the Pennsylvania Supreme Court found that the policy stated in *Muhammad* did not apply in instances where the client agreed to settle based on flawed legal advice as to the potential ramifications of settlement. *McMahon* was a divorce case in which the client had allegedly not been advised that subsequent cohabitation by his ex-wife with a paramour would not terminate his obligation to pay alimony. The six justices involved in the decision were in agreement that *Muhammad* did apply in instances where the claim concerned a "challenge to an attorney's professional judgment regarding an amount to be accepted or paid in settlement of a claim" and not "a challenge to an attorney's failure to correctly advise his client about well-established principles of law in settling a case." The panel was evenly split with respect to whether *Muhammad* should be limited to its facts.

The most recent precedential decision is *Silvagni v. Shorr*, 113 A.2d 810, *reargument denied* (May 27, 2015), *appeal denied*, 128 A.3d 1207 (Pa. 2015). That case involved a legal malpractice claim brought by a client against his attorney for allegedly giving "flawed advice that induced [the client] into settling his workers' compensation claim." The allegedly flawed advice was that the lawyer failed to advise the client that the settlement would terminate his medical coverage and wage benefits. The trial court granted the defendant lawyer summary judgment, however, because the settlement colloquy conducted on the record established that the client did know that he would lose his coverage and benefits. Accordingly, the Superior Court affirmed.

Last month, the Superior Court revisited the "*Muhammad* Doctrine" in *Kilmer v. Sposito*, 2016 WL 3135263, a nonprecedential decision. In *Kilmer*, the defendant lawyer allegedly advised his widow client to elect under 20 Pa.C.S.A. §2203 a one-third interest in her husband's estate. The problem with this advice was that, by pure operation of law, the client was entitled to a one-half interest pursuant to 20 Pa.C.S.A. §§2507 and 2102 as "a surviving spouse who had married the testator after he made his will."

After recognizing the error that she had committed, the client fired the defendant lawyer and retained new counsel to "challenge the validity of her election." On her behalf, the new counsel filed objections in orphans' court to the final account proposed by the executors, which listed her as entitled to one-third and not one-half of the estate. The client and the executors settled the dispute, agreeing that she would receive a 41.5 percent share in the estate.

In the subsequent legal-malpractice action, the defendant lawyer argued in preliminary objections to the complaint that the "*Muhammad* Doctrine" barred the client's malpractice claim because of the settlement "with which [the client] had agreed" that resolved the probate in orphans' court. The defendant lawyer further argued that the client could not show an "actual loss given her acquisition of a 41.5 percent share in the estate by virtue of her decision to settle."

The trial court sustained the preliminary objections, finding that the client had "voluntarily settled her claim against the estate. Had she permitted the court to rule on her objections and not prevailed, then, perhaps, she might have a cognizable claim of negligence. But as it stands, she has suffered no damages. Both the ruling and rationale of *Muhammad* are applicable to this matter."

A unanimous three-judge panel of the Superior Court disagreed. The claim against the defendant lawyer concerned his incorrect advice "on the law pertaining to her interest in her late husband's estate." The court noted that the defendant lawyer was not even the lawyer who advised the client to settle the probate dispute. Therefore the court found the holding in *Muhammad* "inapposite" to the case before it. It excused the client's replacement lawyer from recommending that his client compromise the claim when it was theoretically possible that she might have prevailed in her objections because "the prospects of prevailing in that matter were uncertain at best, driving them to the reasonable position of accepting a settlement that allowed her to make what was, indisputably, only a partial recovery of what she lost by virtue of the advice rendered by [the lawyer defendant]."

The court was particularly persuaded by the Supreme Court's holding in *McMahon*, notwithstanding its status as nonprecedential. After all, the court there refused to apply the "*Muhammad* Doctrine" in an instance where the negligence in question involved misadvice with respect to the applicable law in settling a claim. The court drew a distinction between this and a claim that questions the lawyer's "professional judgment regarding an amount to be accepted or paid in settlement of a claim." It noted that "all six members of the [*McMahon*] Court … drew a distinction between 'holding an attorney accountable to inform a client about the ramifications of existing law and allowing the second-guessing of an attorney's professional judgment in an attempt to obtain monies, once a settlement agreement has been reached.' "

Notwithstanding the absence of binding precedence, *Kilmer* reinforces the proposition that the "*Muhammad* Doctrine" is limited to instances where the negligence involves the amount of the settlement recommended by the lawyer, absent fraud. It cannot be applied where the negligence involves a failure of the lawyer to give accurate advice with respect to the law applicable to the settlement, such as the potential or actual ramifications of the settlement to the client or where the lawyer's negligence has compromised the underlying case.