

You advise that an elderly widow has asked you to draw up a new will which names you as executor and names her son as the primary beneficiary. Your client has virtually no estates, other than personal property, and is living on social security payments. Should your client's son predecease your client, she wishes to give her estate to a charity but is unable to decide what charity to name.

You wish to know whether or not it is proper to include the following provision in your client's will: "If my son \_\_\_\_\_ does not survive me then I give, devise, and bequeath the aforesaid property to Attorney (your name) of \_\_\_\_\_, Virginia, for the sole purpose of disposing of said property by distributing it to the charitable institution of his choice, less any costs of sale and distribution."

DR:5-104(B) states that a lawyer shall not prepare an instrument giving the lawyer or a member of the lawyer's family any gift from a client, including a testamentary gift, except where the client is a relative of the donee.

In order to comply with the disciplinary rule, the Committee opines that the property should be placed in a trust. The Committee does not believe that the language which you have chosen clearly places your client's property in your trust and suggests that the language be revised.

Committee Opinion  
July 11, 1988

**Legal Ethics Committee Notes.** – Under Rule 1.10(a), this disqualification is now imputed to the lawyer's entire firm.