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Contracts--Effect of Death

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CONTRACTS—EFFECT OF DEATH—One Ryan was charged with taking the life of the husband of Nellie O'Neal Stapleton. Mrs. Stapleton by mere general retainer hired appellant to assist in the prosecution. Shortly before the trial Mrs. Stapleton died and the appellee was appointed administrator of her estate. Following the trial appellant filed his claim against her estate for his services rendered in the prosecution. Appellant was allowed \$275 which was the value of his services prior to the death of Mrs. Stapleton. *Held*, contract was terminated by the death of Mrs. Stapleton, and appellant could only recover for services rendered by him prior to her death. *Rainey v. Lafayette Loan and Trust Co.*, Appellate Court of Indiana, June 24, 1930, 172 N. E. 128.

Ordinarily the death of either party to a contract does not extinguish it, unless it is of a personal character and not susceptible of performance by the personal representative of such party. *Miller v. Heaby*, 59 Ind. App. 195; *Babcock v. Farwell*, 146 Ill. App. 307; *Ryan v. Litchfield*, 162 Iowa 609. But the weight of authority sustains an exception to the general rule which is that the ordinary relation of attorney and client is terminated by the death of the client. *Homers v. State*, 57 Ind. 1; *Clegg v. Baumberger*, 110 Ind. 536; *Eagleton Mfg. Co. v. West, Bradley and Carey Mfg. Co.*, 2 Fed. 774; *Anderson v. Anderson*, 20 Wend. 585; *Wood v. Hopkins*, 3 N. J. Law (2 Pennig) 689; *Asina v. Beach*, 15 Ohio 300. Just what the distinction is between these two classes of cases the courts do not say. But in the latter group of cases the courts do read in an implied, casual condition subsequent that the death of either party will terminate the contract. There is no doubt but that the death of the attorney in a contract for legal services should terminate the contract. A contract for legal services being personal in its nature, the death of the attorney rendering performance impossible, terminates the contract. *Lane v. Peel*, 79 Ark. 366; *Clyton v. Clark*, 83 Miss. 446; *Carson v. Lewis*, 77 Neb. 446. Contracts for the services of attorneys who are partners entitle the client to the services of each partner and are determined by the death of either partner. *McGill v. McGill*, 59 Ky. 258. These last two rules are undoubtedly in accord with the first rule announced, and the same result would be reached in either case by applying that rule. There does not seem to be any logical reason why there should be a distinction in the case of death in a contract between attorney and client and death in any other contract in which the acts to be performed by the deceased were not personal. Undoubtedly in many contracts of employment the undertaking of the employment is personal in character. But the assumption frequently made in the cases that because the contract of the employee is personal, that of the employer must necessarily be, seems wholly unfounded. There is no necessity, logical or legal, for both the promises in a bilateral contract to be personal in character because one is. In such contracts the nature of the employees undertaking should be considered. If the character of the employment was such that the employer had free power to delegate the oversight of the work to another and no personal cooperation on his part is needed for the proper fulfillment of the contract, there seems no reason why his death should affect the continued obligation of the contract. *Williston on Contracts*, section 1941. There is an Indiana case and a Massachusetts case which tend to bear out this doctrine. The Indiana case holds that the estate of a

decedent is liable for services rendered for his family after his death, under a contract therefor made with him in his lifetime. *Leland v. Wells*, 59 Ind. 485 and 529. The Massachusetts case holds that, when testator employed counsel to defend his brother without control of the proceedings it was not such a relation as attorney and client as would terminate on the principal's death. *Barnett v. Towne*, 196 Mass. 487. The obligation of Mrs. Stapleton was not of such a personal character that her death must have necessarily terminated the contract. Even though the weight of authority upholds the Indiana case there is no reason, logical or legal, why the court could not have held that the death of Mrs. Stapleton did not terminate the contract. The court evidently blithely assumed that because one side was "personal", both were. It is possible to uphold this result on the grounds of agency, holding that the appellant had a power which was terminated by the death of the donor. But even then the result is not rational, and modern authority shows a tendency to reach an opposite result. *American Law Institute, Restatement of Agency*, sections 220 and 235. 31 *Yale Law Journal*, pages 283-290.