STATEMENT OF ASSIGNMENT

The aim of this memorandum is to evaluate client’s position and make a recommendation to the senior partner to file a lawsuit. Also, to prepare a defense against a lawsuit. To prepare a defense against criminal charges, or any combination of the above.

STATEMENT OF THE ISSUE

Who will be the legal heir of Frank as he died intestate, and he was in a bigamous marriage? Entering into a new marriage invalidates the first marriage? Is Bob viable, to be Frank’s heir or is it only his adopted child? Should Francine get any portion of Franks’ inheritance or should her unborn child inherit instead? Who is the legal wife of Frank, is it Bob or is it Francine?
FACTS

A coconut tree hits Frank, and he dies. Frank has two wives; Bob, who is in Massachusetts and Francine who is in Florida. Frank had lived with Bob for eight years between 2004 and 2012 before moving to Florida. Bob and Frank had an adopted son Frank Jr. In 2012 Frank left due to a dispute regarding baseball and moved to Florida where he married Francine in January 2013. Francine became pregnant with Franks child in July 2013. Frank died without signing a will. He has two houses one in Massachusetts and another one in Florida and an IRA worth $100,000.

ANALYSIS

Bigamy
Frank is in a bigamous marriage. Bigamy is a situation where a man marries two wives without terminating the first marriage. Bigamy happens when a person marries two or more persons at the same time. However, when a man marries a woman who was previously in a valid marriage, then that does not result into bigamy. If a man gets married to a second wife while he is still married to his first wife, then that is bigamy. In Massachusetts, if a spouse disappears for so many years and he/she never returns is regarded as dead and if the spouse remarries it is not regarded as bigamous. In this case, Franks’ first wife did not disappear, and she is still Frank's wife. In Massachusetts, any marriage subsequent to the first one is invalid only is the first marriage is valid.

Following Massachusetts's law Frank's marriage with Francine is not valid.
In general terms, if the first marriage is void either through divorce, death of total disappearance, then the subsequent marriage is legal. The State does not recognize the second marriage since it was an illegal marriage. The second marriage could only be valid if Frank had divorced the first wife before marrying the second wife. As according to domestic relations laws on marriages chapter 207 section 17 rules that if a marriage is conducted while the first marriage is still valid then the second marriage is null and void. In such a case, the second marriage could only be valid if the wife in the first marriage had died, or the couple had divorced before remarrying.

Validity of a marriage can be doubtful at some points. In Franks’ case, his wife may decide to file a case either to validate their marriage. Also, Bob might file a case nullifying the validity Francine marriage to Frank and vice versa. As according to Section 14 of Massachusetts marital law it is only the judge who can either nullify or affirm a doubted marriage. According to chapter 207 in the marriage section 6, a marriage can be considered legitimate if the marriage happened in good faith and the trust that the prior marriage did not exist. For instance, in this case if Franks second wife did not know the existence of the first wife and the court proves that it is true then her marriage to Frank is valid.

**Children**

All descendants of the deceased have the right to get a share of the inheritance from their parents. In the case of Frank, there are two children who are supposed to get a share of the inheritance. Both biological and adopted children have equal right while sharing inheritance from their parents. Equal rights, of sharing the inheritance, are only void if the parent
left a will stating who should get what.

**Intestate Succession**

Intestate is a case where someone pass on without a will. People die without signing a will due to many reasons. One of the reasons is postponement. Like in Franks’ case he did not know that he would to die and maybe he was going to write his will in the following day. Some other people die without a will because they fear the imagination of dying. Other people are just ignorant and believe that the law will automatically pass their property to their partners. Others just don't care, and they don't mind of what might happen if they die without leaving a will.

It is only the assets that could have been in the will that are passed in intestate succession. It only includes the assets that bear the name if the deceased. Not all assets pass through intestate succession. Such assets include; property in a living trust, IRA accounts, life insurance fund, a property that is joint ownership. The named beneficiary should get such assets or the surviving co-owner. How a property is passed in case of intestate depends on whether the deceased has parents, children, spouse or other relatives. If the deceased died without a spouse but the children are surviving then the children inherits everything. If the deceased has no children but the partner is alive then the partner take over all the properties. If the deceased has both the descendants and the spouse then. Then the descendants get half of the property and the wife/husband also gets half. In a situation where only the spouse and the parents are surviving then, the spouse first takes the first $200,000 plus half of the remainder. Then parents of the deceased gets the remainder. If parents are alive with no spouse or descendants then the parents inherit
everything and if it is only the siblings that a surviving without a
descendant, spouse or parents, then the siblings inherits everything. In the
case of Frank, Massachusetts law only recognizes the first wife and, as a
result, his property should be shared with the wife and the children.

As according to Massachusetts law, one should own children legally for
them to have rights to inherit from him/her. Adopted children receive an
equal share as biological children. In cases of Foster children or
stepchildren, the law does not permit them to inherit anything if the
deceased did not adopt them in an intestate case. Children who were
placed for adoption are also not supposed to inherit intestate property.
However, in the case where biological children are adopted by a spouse,
then, they can get a share of the inheritance. For intestate cases,
posthumous children are supposed get a part of the inheritance.
Posthumous children are children who were conceived, but were unborn
when the deceased passed away. Also, children born outside the marriage
are not supposed to get any inheritance from the deceased if the
deceased did not acknowledge them as his/her children.

Frank had an adopted and a posthumous child. Both children have equal
rights to adopt his property. However, the mother of the unborn child
should prove the paternity of the unborn child for it to get a share of the
inheritance.

Conclusion
The case should be resolved with regards to Massachusetts laws as Bob,
the client, is a citizen of Massachusetts. As according to the law, Bob is the
only legal wife, any other subsequent marriage is void. Also, in Florida
marrying a second wife before ending the first marriage is illegal. For this reason, Francine should not get any inheritance from Frank since the law does not recognize her. However, his unborn child is entitled to part of the inheritance. Both the unborn child and the adopted child have equal rights in sharing of the inheritance. The funds in the IRA account goes to the person stated as the beneficiary with the retirement agency. Half of the remaining property should go to the legal wife, and the remaining half is shared equally between the two children. The court should be able to protect Bob if Francine decides to file a case validating her marriage to Frank. It is important that Francine provides a paternity result verifying that Frank is the biological father of the child she is expecting. If Frank is not the biological father then the inheritance should go to Bob and the adopted son.

**Recommendations**

Before entering into a new marriage, each party should seek to know whether their partners were previously married. If there is an existence of the previous marriage then the partner should check if there were any formalities conducted in dissolving the marriage. If the marriage is not formally dissolved then marrying the person would be a crime and the involved partner is accused of committing bigamy. However, if the previous marriage was dissolved by a process of divorce then marrying that person will not result to bigamy. A person is also allowed to marry if a spouse in a previous has disappeared or was absent for seven years or more.

Bob should have reported the case of bigamy immediately after getting information that Frank had remarried without dissolving his first marriage.
Anyone reporting bigamy should have accurate information and documents certifying his/her claims. The plaintiff should collect as much information as possible. Any other person report a bigamy case should also have enough proof that the defendant has committed bigamy. A plaintiff should report bigamy while the person is still in a double marriage. In the case of bigamy, the victims are the one who suffer more. Some victims are cheated by their spouses, and they fail to realize that they are in a bigamous marriage. Francine should have done investigation to establish whether she was in a bigamous marriage to prevent future problems.

Frank should have written a will before his death to avoid intestacy. The cost, of drafting a will, is far much less than the cost of intestacy. In a will, a person can decide who inherits his/her property, but without a will the law decide on how to divide the property among the heirs. In a case where a person does not have any heirs, the property is owned by the government. It is important for every individual to have a will so as to decide who will succeed his/her property. In cases where the states allocates the property, they do not cater for special needs. For instance, a minor who does not have the knowledge to manage an estate will receive the property without any assistance of how to manage the property.