

Kentucky Bar Association
Ethics Opinion KBA E-405
Issued: June 1998

The Rules of Professional Conduct are amended periodically. Lawyers should consult the current version of the rules and comments, SCR 3.130 (available at <http://www.kybar.org>), before relying on this opinion.

Question: A “sole practitioner” - for purposes of this opinion a lawyer who has no law partners or persons with similar rights and powers - dies. A “sole practitioner” employed associates or salaried lawyers who have no proprietary interest in the business of the deceased lawyer’s firm, no or extremely limited managerial responsibilities, and no or very limited rights in the attorney-client fee contracts and files. Upon the death of the “sole practitioner,” the formerly employed lawyers find themselves unemployed, unpaid, and technically unable to act as agents for the deceased lawyer, the “firm,” or the estate. What *ethical* duties do these lawyers owe to clients with whom they dealt personally and to courts in which they are appearing on behalf of clients of the “firm”?

Answer: See Opinion.

References: KRPC 1.1, 1.3, 1.15; ABA Formal Op. 92-369 (1992); Del O’Roark, Post Mortem Professional Responsibility, 57 *Bench & Bar* 2, Spring 1993 (pg. 41).

OPINION

This question has come up several times in recent months. Of course, a law partner in a partnership would have the ability and authority to pick up the pieces. In the absence of a law partner, it is assumed that the deceased lawyer’s personal representative would step into the deceased lawyer’s shoes, not for the purpose of practicing law, but for the purpose of notifying clients, arranging for the disposition of files, and winding up the deceased lawyer’s affairs. See SCR 3.395. While SCR 3.395 provides for the appointment of a Special Commissioner to protect client interests in limited circumstances, the KBA will understandably be reluctant to assume the burdens and expenses associated with SCR 3.395 if there is a surviving partner or a personal representative available to do the winding up.

To fulfill his or her obligation to protect client files and property, a sole practitioner should prepare a future plan providing for the maintenance and protection of client interests in the event of the lawyer’s death. Such a plan should, at a minimum, include the designation of another lawyer who would have the authority to review client files and make determinations as to which files need immediate attention, and who would notify the clients of their lawyer’s death. For further guidance see ABA Formal Op. 92-369 (1992).

Unfortunately not all sole practitioners will have made such plans. If the lawyers left behind were employees with no proprietary interest in the firm, it may be possible for them to protect the interests of all of the sole practitioner's clients, and we encourage them to attempt to do this. However, this would require the timely cooperation and support of the deceased lawyer's personal representative. The now unemployed lawyers should not be expected to work for the benefit of the estate or the deceased sole practitioner without compensation. Furthermore, the lawyers may have no knowledge of matters involving clients whom they have not personally served, may have no access to client files, and may have no authority to write checks or deal with accounts of the decedent.

The Committee is of the opinion that the formerly employed lawyers continue to have the limited obligations set forth in the KRPC - e.g., KRPC 1.1, 1.3, 1.4, and 1.15 - e.g., to notify clients for whom they have been providing services, so that those clients may provide them with instructions that will protect the clients' interests; and move to withdraw from representation in any matter pending before a tribunal if the lawyer is no longer authorized to act for the client. Obviously, those clients may obtain other counsel or employ the lawyer contacting them, subject to any interest of the estate arising from any pre-existing contract. These contacts are not prohibited solicitation given the lawyer's prior professional relationship with the client.

However, in matters where there exists no attorney-client relationship between the associated lawyers and the client, the associated lawyers have no obligation to the clients or the estate of the responsible attorney to provide continuing professional services.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). The Rule provides that formal opinions are advisory only.