

New York State Bar Association

Committee on Professional Ethics

Opinion 796 – 4/24/06

Topic: Obligation to inform third parties of potential claims.

Digest: A lawyer who represents the administrator of an estate has no ethical obligation to contact creditors holding claims who have failed to file claims in the estate proceeding to advise them that they should do so.

Code: DR 7-102(A)(5).

QUESTION

1. If a lawyer who represents the administrator of an estate has advised the attorney for a creditor of the decedent's death, and the creditor's attorney subsequently withdraws a court action on the claim in the apparent but erroneous belief that the estate has no assets, must the lawyer for the administrator contact the creditor's attorney to advise the creditor's attorney that the estate has assets and that the creditor should file a claim?

OPINION

2. An attorney who represents the administrator of an estate discovered shortly after having been retained that the decedent was the defendant in a litigated matter in which the decedent had defaulted, leading to a default judgment on the merits with a hearing still to be held on damages. As soon as the attorney for the administrator became aware of this litigation, the attorney notified the plaintiff's attorney by letter that the decedent had died, and that the matter was therefore stayed. The attorney for the administrator received no response to his letter or any other inquiry from the plaintiff's attorney.

3. About one year later, when the administrator's attorney was prepared to distribute the proceeds from the sale of the estate's assets, the administrator's attorney checked on the litigation. In so doing, the administrator's attorney discovered that approximately three months after the letters of administration were issued and at least six months after the petition for appointment of the administrator in Surrogate's Court, the attorney for the plaintiff in the litigation sent a letter to the court where the litigation

was pending, stating that the plaintiff's attorney was closing the file and that the court could close its file as well. The plaintiff's attorney also advised that the defendant had died and, wrongly, that there was no estate proceeding pending.

4. At the time the attorney sent the court this letter, a search of the Surrogate's Court records would have revealed that a petition had been filed for letters of administration, which petition noted the value of the estate and that the letters had been issued.

5. Assuming that the law imposes no affirmative obligation on the attorney for the administrator to notify potential creditors, where no misrepresentation has been made regarding the assets of a pending estate and the information is properly on file with the Surrogate's Court, the attorney for the estate has no ethical obligation to notify an attorney in a litigation involving the decedent of the fact that the letters of administration have been issued in the estate and/or that the estate does have some assets.

6. Statements made by lawyers to third parties can become a matter of ethical concern. A lawyer may not "[k]nowingly make a false statement of law or fact." DR 7-102(A)(5). The conduct of the attorney for the administrator here does not approach violation of this standard. At no time, whether directly or by implication, did the administrator's attorney indicate that the estate was insolvent. In fact, the implication of the insistence that the lawsuit be stayed pending issuance of letters of administration is to the contrary, that is, it implied that the estate did have assets that would be affected by this claim. The attorney representing the plaintiff did not make further inquiry, and apparently did not check the public record, which would have disclosed the existence of assets in the estate, nor did that attorney file a claim in the estate proceeding.

CONCLUSION

7. The Committee finds that absent representation to the contrary, an attorney for the administrator of an estate has no ethical obligation to notify the creditor of an estate that the estate has assets and that the creditor should therefore file a claim. We do not opine on whether the administrator's attorney *could* reveal this to the plaintiff's attorney.

(3-06)