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**E-87-9      Responsibilities of employee/associate  
lawyer upon death of employer/solo  
practitioner**

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**Questions**

Assuming that a lawyer remains as an associate working as an employee for a solo practitioner and the solo practitioner dies prior to retirement, what are the associate's duties and obligations to clients with matters pending in the solo practitioner's office? For example, what if the personal representative of the estate of the solo practitioner refused to compensate the lawyer for any future services, significantly reduced the compensation or discharged the associate? What duties would the lawyer owe his or her clients at that point? And, assuming the lawyer does owe a duty to them, how should it be discharged?

**Opinion**

Although Wisconsin Supreme Court Rules relating to protection of client interests in attorney medical incapacity (SCR 22.27) and disbarment and suspension (SCR 22.26) circumstances exist, none expressly cover procedures for closing the practice of a deceased solo practitioner.

General guidance relating to termination of a law practice may be found in: Committee on Professional Ethics Formal Opinion E-87-6 and Informal Opinion 1/63; McCarthy, J.B., "Termination of a Law Practice," 54 Wis. Bar Bull. 51 (July 1981); and Kaap, K.J., *Ethics and Professional Responsibility: A Handbook for Wisconsin Lawyers*, section 2.108-2.120 (ATS-CLE 1986). However, none of these resources specifically discuss the responsibilities of a lawyer employee (hereinafter "associate") of a deceased solo practitioner.

We would summarize our perception of an associate's responsibilities under these circumstances as follows:

a. Immediately following the solo practitioner's death and prior to formal clarification of the associate's role in winding up the deceased's practice, the associate should take such action "as may be necessary for the sole purpose of protecting his clients' rights, the clients' files and the clients' property . . ." SCR

22.26(3). We believe this responsibility may be deemed an “other responsible party capable of conducting the attorney’s affairs” under that rule, but also from other rules of professional conduct of general applicability. *See, e.g.*, code: SCR 20.32(3) [neglect], SCR 20.35(1)(b) [failure to carry out employment—withdrawal]; SCR 20.35(1)(c) [prejudice or damage to client]; and SCR 20.48(2) [conduct consistent with integrity of legal system and profession]. Rules: SCR 20:5.2 [responsibilities of a subordinate lawyer]; and SCR 20.5.4(c) [exercise of independent professional judgment].

b. As soon as practicable, the associate should communicate with the deceased attorney’s surviving spouse, personal representative and/or judge responsible for the probate proceeding regarding the associate’s emergency and extended services to the estate in assisting in winding up the law practice. The committee recommends that the associate’s (or other counsel’s) authority and responsibility for assisting in winding up the deceased’s law practice be clarified and confirmed as soon as possible by court order, which confirmation would be consistent with equivalent procedure under SCR 22.26(3). *See also generally* Kaap, *supra*, at section 2.116 (winding up another lawyer’s practice).

c. Upon confirmation of his or her authority to assume responsibility for winding up the deceased lawyer’s practice, the associate or other lawyer appointed by the court presumably would be directed or otherwise obligated to promptly communicate with all clients with matters pending with the practice regarding the statutes of the matters (including the ability and willingness of the lawyer to complete the representation) and seeking direction from the clients regarding their wishes on completion or transfer of their files to other counsel. *See, e.g.*, code provisions SCR 20.16(1), 20.21(6) and SCR 20.32; and rules provisions SCR 20:1.1, 1.4 and 1.16(d). *See also* Committee on Professional Ethics Formal Opinion E-18-18.

d. In addition, the committee would concur that:

[T]he responsibilities of a lawyer involved in winding up another’s law practice normally are limited to the following:

1. notifying past and present clients about the termination of the practice and telling them how they can obtain their files;
2. examining files and financial records to render an accounting of monies owing to the lawyer whose practice is being terminated, or to the lawyer’s estate;

3. retaining copies of files involving potential grievance, malpractice or fee dispute exposure;
4. cooperating in representation relating to proceedings under (3), above;
5. providing emergency legal services to avoid prejudice to immediate client rights;
6. cooperating in substitution of counsel; and
7. storing or destroying files no longer needed and not requested by clients, all in strict accordance with court authorization and clients' rights.

Kaap, *supra*, at section 2.116. *See also* Committee on Professional Ethics Formal Opinions E-82-7 (copying client's files) and E-84-5 (disposition of closed client files).

Regarding the questions presented relating to the possibility that the personal representative or special administrator might either refuse to adequately compensate the associate for services rendered or even discharge the associate or otherwise deny him or her access to the law office, the committee believes that these issues ordinarily would be resolved in the context of a court order appointing the associate or another lawyer to wind up the law practice. Referring again to SCR 22.26(3), we observe that, in the case of winding up the practice of a disbarred or suspended lawyer, provision is made for compensation of the appointed attorney from the assets of the estate in an amount approved by a judge. We assume that the same would occur in the probate situation. *See* Wis. Stat. section 857.25 (regarding continuation of the business of a decedent) and SCR 20:5,4(a)(2) (regarding compensation of a lawyer who assists in completing unfinished legal business of a deceased lawyer).

However, pending appointment of a lawyer to wind up the practice and assuming a circumstance in which client rights needed immediate protection but access to the law office was denied the associate by someone other than a judge by order, the committee recommends that the associate promptly inform the appropriate judge and the Board of Attorneys Professional Responsibility of this circumstance. Again, SCR 22.26 (3) outlines an appropriate for resolving this kind of problem.