
**E-75-24 Ethical responsibility of attorney for
estate to potential claimants**

The committee has received an inquiry concerning the ethical responsibility of an attorney for the estate of a decedent who received a letter from a potential claimant against the estate announcing his desire to file a claim in the estate for care, medical services, and hospitalization for the decedent provided at his own expense upon the assurance by the decedent that he would “be taken care of.”

Apparently at that time the personal representative had not been appointed.

There was no response to the above inquiry by the attorney until six days after the expiration of time for filing claims (and three months following the inquiry), at which time the lawyer stated that he was attorney for the personal representative of the estate and could not represent creditors of the decedent or persons with claims against the estate. There was a further suggestion that this claimant prepare his own claim or retain a different lawyer. This delayed response effectively defeated this possible claim.

The claimant states that he had no prior oral or written communication from the lawyer. The claimant had learned the attorney’s identity from a relative of the decedent.

Upon inquiry by the committee concerning these facts, the attorney stated that he “threw the letter aside” until a personal representative was appointed and then advised that personal representative of the claim matter, but nothing further was done.

It is true that no attorney-client relationship was contemplated nor did one develop in this instance. The claimant was looking to the attorney as a representative or agent for the estate to protect his claim.

Under these facts, it is the opinion of the committee that the lawyer had a duty to advise this claimant promptly that he had a possible legal claim and that he should either seek other legal counsel or contact the register in probate to perfect such claim, pursuant to Ethical Considerations 2-2, 2-3, and 7-10. EC 7-10 states that the duty of a lawyer to represent his client zealously does not

militate against his concurrent obligation to treat with consideration all persons involved in the legal process and to avoid infliction of needless harm.

Further, DR 7-104(A)(2) requires that a lawyer not give advice to one not represented by counsel except to secure counsel if the interests of such persons have a reasonable possibility of being in conflict with the client's interest. The committee underscores its position that there was an obligation to so advise the inquirer promptly so as not to do potential harm to his right.

A further question concerned whether such delay in informing the claimant involved deception or misrepresentation, with regard to DR 1-102(A)(4). The committee believes that such inquiry would involve a question of fact based upon the evidence adduced from the parties. The committee is not equipped to render decisions on such questions of fact.

However, it is the opinion that the obligations set forth in the provisions of Canons 2 and 7, as expressed above, are positive and pertinent to his inquiry.