

NEW YORK STATE BAR ASSOCIATION
Professional Ethics Committee Opinion

Opinion #48 - 1/26/67 (16-66) Topic: Fee Settlement by Deceased Lawyer's Estate.

Digest: Lawyer winding up practice of deceased lawyer must have clients' consent to perform work, may receive compensation from estate of deceased for work on which deceased received prepayment, but should not split fees with estate or with lawyer's widow.

Canon: Former Canons 26, 29, 34

QUESTION

The widow of A, a deceased member of the bar, has asked B to wind up his practice. B finds that (i) A had received his fee in many of the cases but the work is still to be performed and (ii) no fees have been paid as yet for other cases.

Two questions are raised -- 1. What standards do the Canons of Ethics impose in this situation and 2. What procedure should be followed where new work is received in the office as a result of inquiry for A?

OPINION

In considering this situation the interests of A's clients are paramount and should be administered to solely with that objective in mind. (See Canons 27 and 29). Clients should be afforded a reasonable opportunity to retain the services of another lawyer if they so desire. Under no circumstance should B attempt to influence a client to retain him.

As regards those cases where work remains to be done although the fee has actually been received prior to A's death, it would seem that B is entitled to compensation from the estate of A for such services as he may render, provided that the legal representatives of A's estate concur in the action of A's widow in asking B to wind up the practice and provided further that B first notifies each client so situated that he has been asked to wind up A's practice by A's widow and his legal representatives and the client assents to B taking care of his particular matter. A mutually satisfactory arrangement should be made with the legal representatives of A's estate as to compensation to be paid to B for his services in closing out such matters.

Turning now to those matters where no fee has been paid as yet, the legal representatives of A's estate would have a claim on a portion of the fees collected by B for matters pending at the time of A's death and followed through to

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completion by B, with the client's knowledge and consent. We should call to your attention, however, the provisions of Canon 34 prohibiting a division of legal fees, except with another lawyer and then only based upon a division of service and responsibility. It would be improper to make payment of any portion of fees collected by B directly to the widow.

Referring now to new matters coming into B based upon inquiry for A, no payment or arrangement for payment to the widow is proper in view of Canon 34 referred to above.

Opinion #49 - 1/26/67 (7-67)

Topic: Advertising.
Announcement of Patent Specialty.

Digest: Patent lawyer may circulate an announcement to other patent lawyers and to members of patent law association who are non-lawyers.

Canon: Former Canons 27, 35, 46, 47

QUESTION

A law firm whose letterhead reads:

A and B
Counselors at Law

Patent Trademark
and Copyright Law

asks our opinion on whether or not it would be proper to circularize a proposed announcement (a) directly among local patent lawyers; or (b) through the mailing service of a local patent law association that admits lawyers only but which, due to a grandfather clause, has a few patent agent members who are non-lawyers. The announcement, among other things, reads:

A and B

specializing in domestic and foreign
patent and trademark causes and offering
legal advice on international licensing
and litigation problems in the field of
industrial property.

The inquiring attorneys call attention to the fact that in New York City there is a handful of New York City firms which are not law firms, consisting of both lawyers and non-lawyers, without so indicating on their letterheads, and who attempt to circumvent the prohibition against the practice of law by non-legal entities by contending that they are dealing with lawyer-clients only, and that large United States corporation entrust their foreign patent and trademark work to these firms.