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Committee on Professional Ethics



Opinion # 569 - 2/7/85 (39-84)

Topic: Administration of  
Small Estates

Digest: Lawyer should advise a  
client concerning the  
feasibility of settling  
a "small estate"  
without the expense of  
legal representation.

Code: Canon 5, Canon 6;  
EC 3-7; EC 5-1

QUESTION

Should a lawyer, when consulted by an individual interested in settling a small estate, advise such person that a simplified procedure may be available whereby appointment of an administrator may be obtained directly from the Surrogate's Court and that the services of a lawyer may not be required?

OPINION

It is fundamental in the ethical rendition of legal services that, as Canon 6 states: "A Lawyer Should Represent A Client Competently." It is equally fundamental that, as Canon 5 directs: "A Lawyer Should Exercise Independent Professional Judgment On Behalf Of A Client." This, as EC 5-1 reiterates, should be done solely for the client's benefit "free of compromising influences and loyalties." And, of course, the lawyer must not allow his own personal interests, such as receiving a fee, to affect his professional advice.

What was stated in N.Y. State 425 (1975), although in a different context, concerning a lawyer's duty of disclosure and advice where options exist, is highly pertinent here:

"Where several options are available to a client, the attorney has a duty to inform his client of the possible courses of action and to give his client an honest evaluation."

See also N.Y. County 371 (1945) and commentary concerning it in Drinker, Legal Ethics, at 103 (1953), involving the duty of lawyer to advise a prospective client consulting with respect to a Selective Service matter that free assistance was available from an advisory board created by Selective Service Regulations.

Applying these principles, the Committee is of the opinion that a lawyer consulted by a prospective client interested in a small estate should consider whether that estate qualifies for the simplified method of settling small estates (Article 13 of the Surrogate's Court Procedure Act). He should do so by questioning the prospective client to elicit facts relevant to consideration of the availability of that procedure and, then, the various factors that might make its utilization advisable or inadvisable in the particular situation. In a fair manner he should outline to the prospective client the existence of the simplified procedure, and its advantages and disadvantages. The lawyer should provide the prospective client with an honest evaluation of the various factors militating for or against the use of the simplified procedure, and his recommendation concerning which alternative the prospective client should follow. See EC 3-7. But the final decision is that of the prospective client.

In this Committee's opinion, the lawyer's duty is to advise the prospective client of the available alternative procedures, the relevant factors and the lawyer's evaluation of those factors so that the prospective client, so far as feasible, is able to make an informed decision.

For the reasons stated, the question posed is answered in the affirmative.

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