

Ethical Issues In Conservatorships

What happens to the matters being handled by a sole practitioner when he or she:

1. becomes incapacitated
2. dies
3. disappears
4. is suspended or disbarred.

Most lawyers advisedly plan for the worst and make arrangements with another lawyer or law firm to take over the files. Many malpractice insurance carriers want the name of that lawyer on your application. Of course, it is obvious that if a lawyer is a member of a firm, the firm will handle the matters.

However, when no prior arrangements have been made, a conservator can be appointed. The Supreme Court of Pennsylvania has established a detailed set of rules for handling this, R. 321 et seq. of Rules of Disciplinary Enforcement.

Although the focus of this article is not on the procedural aspects, suffice it to say that the president judge of the applicable county makes the appointment of a disinterested lawyer upon application, with the involvement of the Office of Disciplinary Counsel (ODC).

The conservator takes possession of the files and bank accounts, but does not handle the cases. The conservator notifies the clients to obtain substitute counsel, but may not make a recommendation or accept representation. To the extent possible, the attorney for whom a conservator is appointed must cooperate.

From an ethics standpoint, the conservator is not regarded as having an attorney-client relationship with the clients of the attorney, has no liability to them (absent intentional, willful, or grossly negligent breach of duties), and is immune from suit by the original attorney. In short, the conservator is not



bound by the Rules of Professional Conduct, except for confidentiality.

The conservator is not expected to review the files for any disciplinary issues. The job of the conservator is to find the clients and turn over the files.

Now the Disciplinary Board is considering suggesting amendments to our Supreme Court. They include:

1. Compensating the conservator at an hourly rate;
2. Requiring concurrence of the ODC in an appointment;
3. Clarifying that if the ODC serves as conservator, they are authorized to review the files for any disciplinary issues and prosecute thereafter;
4. Placing additional duties upon the conservator to notify clients even if the files are inactive, with publication;
5. Creating a stay of proceedings for a time during the conservatorship;
6. Obtaining reimbursement of costs and expenses from the estate of a deceased attorney;
7. Further dealing with the funds or lack of funds in the hands of the attorney.

Your writers perceive a problem in appointing the ODC as conservator and ex-

empting it from conflict of interest rules, which raises a problem of credibility in the disciplinary process.

We also see difficulties in finding a conservator who will understand all kinds of cases being handled by a general practitioner. For example, there are different deadlines relative to statutes of limitations, filings and payments to avoid interest and penalties, etc.

Finally, we are concerned about the convoluted compensation arrangements suggested. We would rather see an independent trained and paid Office of Conservatorship created, wholly separate and apart from the Office of Disciplinary Counsel.

In Philadelphia County, the Senior Lawyers Professional and Public Service Committee Program of Assistance to Lawyers currently stands ready to help.

We note that the graying of the legal profession will undoubtedly have a future impact on this need. Overall, we think the concept of a centralized office is the best way to address the ethical and practical issues raised. ■

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