

**ETHICS OPINION NUMBER 114
OF THE MISSISSIPPI BAR
RENDERED JANUARY 29, 1986
AMENDED APRIL 6, 2013**

CLIENT FILES OF DECEASED ATTORNEY - Attorney for estate of deceased lawyer, or executor where same is an attorney, has a duty to inform clients and court of the decedent's death and may examine client files to carry out this responsibility.

The Ethics Committee of the Mississippi Bar has been asked to render an opinion on the following inquiry:

What are the responsibilities of an attorney's wife upon his death? This is conditioned upon 1) He is a sole practitioner and 2) Wife is appointed Executrix in his will.

- 1) What specifically should be done with his case load?
- 2) Does the wife contact clients on open cases?
- 3) Does she contact clients on closed cases?
- 4) Do all clients, past and present, need to be notified?
- 5) Does the wife have the right to recommend another attorney?
- 6) Does the wife have the right to charge for work product not already paid for?
- 7) Should another attorney be called in?
- 8) Will a newspaper notice suffice as notice to clients?
- 9) How long do files need to be maintained?
- 10) Should they be maintained by the wife or turned over to another attorney?
- 11) Is the wife privy to confidentiality?

The answer to this inquiry is not limited to the responsibilities of the deceased attorney's spouse, but extends to those of the administrator or executor of his or her estate. The issue arises in one of two settings; in the first the fiduciary is not an attorney and in the second he or she is.

If the fiduciary is not an attorney neither the Mississippi Rules of Professional Conduct nor the other laws governing lawyers apply. Thus, this individual does not come under our jurisdiction and we have no advice that we can offer. We hope that the fiduciary would promptly employ an attorney and turn the files over to him or her.

Of course the client files and case load are assets of the estate and must be treated accordingly. The attorney for the fiduciary is subject to the Mississippi Rules of Professional Conduct and the inquiry has relevance to him or her. The inquiry is also relevant to the fiduciary who is an attorney.

There is a paucity of authority on this subject. It is not dealt with as such by the Mississippi Rules of Professional Conduct. However, common sense can provide a fairly clear route to pursue.

Questions (1) through (5), (7), (8) and (10) are covered by the following general discussion. This opinion applies to the fiduciary where he or she is an attorney and to the fiduciary's attorney. Hereafter these will be referred to as the "representative."

As soon after the death of the lawyer as is practicable the representative shall give notice of the death to all clients whose files are active, and all courts where suit had been filed. This notice must be given by letter or other form of individual communication. A newspaper notice is insufficient because the client may not see it. While it is possible that the client will not receive a letter, this is far less likely than failure to see a newspaper notice.

In this communication the client should be informed of the death and reminded of the representation by the deceased. The representative should then advise the client that he or she may seek another attorney. It is permissible for the representative to offer to continue on with the matter or to recommend another attorney, provided it is made clear to the client that he or she is free to employ counsel of his or her choice. Thus another attorney should not, at this point, be called in by the representative.

If the representative had been engaged in the practice of law with the deceased at the time of the latter's death, the representative is, in a sense, an attorney for the deceased's clients, and thus has full access to their files for the purpose of gaining such information as will be necessary in carrying out the above stated duties. If the

representative had not been so engaged in the practice of law with the deceased then caution must be exercised in examining the client files. Care must be exercised to limit the examination to those matters necessary to ensure compliance with the responsibilities imposed by this opinion. *See* our opinion No. 98, rendered October 5, 1984.

In regard to question 6, the deceased attorney's estate is entitled to be paid for work that he or she did prior to his or her death.

There is no precise answer to question 9. Certainly the files must be maintained by someone so long as there is some unfinished business relating to the representation. Beyond that there is a balancing between the client's expectations that valuable and potentially useful materials in the file will not be destroyed, and the costs that storage impose on the lawyer. Again, see our Opinion No. 98, rendered October 5, 1984.

As to question 11, we hold that unless the spouse practiced law with the decedent as discussed above, he or she is not privy to confidentiality