

Westchester Bar Moves To Wind-Up Affairs of Deceased Lawyer

BY LAZAR EMANUEL

What happens when a solo practitioner dies leaving no immediate family and no personal estate requiring administration? What if his landlord is threatening to destroy his files? Who is supposed to step into the breach and provide for his clients?

Marie Anne Manley, President of the Westchester County Bar Association, was forced to resolve these very issues last May. She acted by appointing a special committee headed by A. Robert Giordano, a vice president of the Association. Other members of the committee were Frank M. Headley, Jr., Treasurer, New York State Bar Association; Richard M. Gardella, past-president of the Westchester Bar; John A. Geoghegan, a WCBA vice-president; Joseph M. Accetta, Court Attorney, Westchester Surrogate's Court; and Gary L. Casella, Chief Counsel, 9th Judicial District Grievance Committee.

The District Grievance Committee's first concern was to protect the clients' files. The files were moved to a safe location. At the request of the Committee, the Appellate Division appointed an attorney to review the files and notify clients. The special attorney opened incoming mail and dealt with problems in the management of the practice as they arose and proceeded to wind up the practice.

Permanent Committee Proposed

Recognizing that there might be other circumstances in which a lawyer would need assistance in winding up his practice, the special committee proposed that it be reconstituted as a permanent standing committee whose purpose would be to provide "practical advice and training in the closing of law practices" (*From the President's Desk, WCBA NEWSLETTER, February 2000*).

The committee also proposed an amendment to WCBA By-laws which would read as follows:

Section 29. *Committee on Practice Aid.* It shall be the duty of this Committee to provide guidance and assistance to attorneys in winding up or closing a law practice, and in the case of a deceased attorney, assisting the personal representative of the deceased attorney's estate in the orderly termination of a law practice. In providing assistance to the bar, the committee is cognizant of the ethical considerations = involved, including confidentiality, to assure protection to the practitioner's clients and the proper disposition of client files and records. The Committee may carry out its mission by compiling reference materials and educating the bar through continuing legal education programs.

The proposed amendment was to be placed before the general membership of the Association at its annual meeting on March 23.

Clients' Interests Paramount

In her report on the special committee's work following the lawyer's death, President Manley wrote:

...the committee reviewed... a 103-page booklet published by the Nassau County Bar Association, which contains guidelines, forms and ethics opinions related to the practice-end problem... (and) a handbook published by the Oregon State Bar... entitled "*Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death.*" These materials, as well as the ethical principles involved, emphasize the central focus of the winding up process, namely clients' interests. The conclusion is inescapable that every practitioner, solo or otherwise, has the responsibility to plan for the termination or orderly transition of his or her practice. Obviously, the responsibility is greater when an attorney practices alone and not in partnership.

So far as NYPRR has been able to learn, the action of the Westchester County Bar in response to the death of a practitioner is the first instance in which any New York bar association has organized a concerted approach to these issues. Obviously, similar issues would arise in the physical or mental incapacity of an attorney or under any other circumstances which would prevent a practitioner from performing his daily activities over a sustained period.

NYPRR will report in the May issue on the action taken by the Westchester Bar membership on the committee's proposed amendment and on the handling of similar problems in other jurisdictions.