

KENTUCKY BAR ASSOCIATION
Ethics Opinion KBA E-3
Issued: March 1962

Question: May an attorney-administrator settle a wrongful death claim and continue as attorney and fiduciary where he feels a case cannot be proven, but heirs reject settlement?

Answer: No.

References: Canon 6

OPINION

A nonresident of Kentucky was killed in a fall from a passenger train while passing through the state in 1957. He had no heirs or property within Kentucky. His brother employed a Kentucky law firm, on a contingent fee basis, to see to the appointment of a personal representative and the prosecution of a suit to recover for the wrongful death. A member of the firm qualified as Administrator, suit was timely filed, and the case is now pending. The attorneys and the Administrator have concluded that they cannot prove a case, but have persuaded the defendant to make an offer in full settlement of the claim. This offer was communicated to the heirs-at-law, but they disapproved the proposed settlement. The attorneys then requested the heirs to pay them a fee based upon the offer, and employ other counsel to try the case, but the heirs have failed to comply with either request. The attorneys believe the offer is the best that can be obtained.

The question is: Is it proper under these facts for the attorneys and the Administrator to settle the claim?

This is only one of several embarrassing situations that may arise when an attorney undertakes to act as a fiduciary. It is our opinion that, after due notice to the heirs, the Administrator should resign and the attorneys should then withdraw from the action.

Note to Reader

This ethics opinion has been formally adopted by the Board of Governors of the Kentucky Bar Association under the provisions of Kentucky Supreme Court Rule 3.530 (or its predecessor rule). Note that the Rule provides: "Both informal and formal opinions shall be advisory only; however, no attorney shall be disciplined for any professional act on his part performed in compliance with an opinion furnished to him on his petition, provided his petition clearly, fairly, accurately and completely states his contemplated professional act."