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RE: Ethics Opinion 91-20

Dear

You have related a factual situation which I summarize as follows:

FACTS

A lady, a resident of Texas died intestate in 1986, leaving at least a spouse and son surviving her. At the time of her death the only South Dakota property concerned was a joint interest in real estate. Decedent held a safe deposit box in South Dakota which housed a substantial amount of United States savings bonds, all the sole property of the Decedent.

The son hired you to terminate the South Dakota joint tenancy interest, which was completed. Upon the completion of the termination proceedings you turned over the bonds to the son along with the life estate termination documents.

The son retained the services of a Texas law firm in 1986 to commence administration proceedings. The U.S. savings bonds referred to earlier were returned to you by the son, along with others in which he was a surviving joint owner and asked that the bonds be kept in your safe deposit box.

No further action has been taken and you are unable to procure any response from son even though you have apparently exhausted all reasonable means of soliciting a response. Apparently there has been a failure to initiate administration proceedings in the State of Texas which concerns the Texas law firm retained by the son.

In June of this year the spouse contacted you again regarding the matter. In August you provided spouse with a photocopy of the safe deposit box inventory form as well as copies of the bonds in question, retaining the actual bonds in your safety deposit box.

Your question is what are your duties to the son, the spouse, the State of Texas?

OPINION

From the above facts, you have no obligation to the State of Texas.

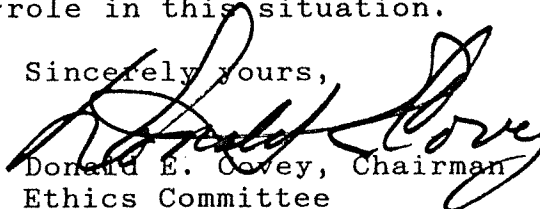
You completed the life estate termination proceedings relating to the real estate in South Dakota at the request of the son. At that time you delivered all the property and the documentation to the son which would constitute the normal closing of the attorney client relationship. However, the son later returned the bonds to you with instructions that you retain the same in your safe deposit box. This constitutes a new or a revival of the attorney client relationship between you and son.

Without question, the son and spouse have an interest in the bonds. Under SDRPC 1.5(b), a lawyer is permitted to retain property or funds of a client or third person until the client requests that the funds or property be delivered, at which time the lawyer must promptly deliver and render a complete accounting of the property. The son has never requested delivery of the property and so long as the relationship continues, you must retain the bonds for safe keeping as directed.

It appears that the total lack of communication from the son may support your withdrawal and termination of the relationship under SDRPC 1.16. Of course, the Rule at 1.16(b) calls for reasonable notice to the client and the surrender of any property to the client. The accounting required by the Rules should be provided to both the Texas law firm and to the spouse under SDRPC 1.15(b) as the spouse is a third person who has an interest in the property and the Texas law firm certainly has an interest in knowing where the estate property is located.

Further, it appears that SDRPC may require you to make certain that spouse understands your role in this situation.

Sincerely yours,



Donald E. Covey, Chairman
Ethics Committee