

# Opinion No. 2 of 2003

*Editor's Note: The opinions of the Legal Ethics Committee of the Indiana State Bar Association are issued solely for the education of those requesting opinions and the general public. The Committee's opinions are based solely upon hypothetical facts related to the Committee. The opinions are advisory only. The opinions have no force of law.*

The Legal Ethics Committee of the Indiana State Bar Association ("Committee") has been requested to provide an advisory opinion with respect to issues raised by the following hypothetical facts:

## Facts

Mother is an 80-year-old widow who has resided in a nursing home since shortly after the death of her husband eight years ago. She became eligible for Medicaid after spending down her assets, which happened two years ago. Since that time, Medicaid has provided about \$25,000 in benefits to her. Mother's brother just passed away, though, and she inherited \$110,000 from his estate, rendering her ineligible for further Medicaid until her assets are again spent down. She opened two bank accounts with her inheritance, one which she owned individually and a savings account which she opened with her son, an adult and her only child, as joint tenants with right of survivorship. Each account began with \$55,000. One year later, Mother died. At that time, the individually owned account balance was \$40,000, and the joint account, which had remained untouched, had grown to \$58,000. Mother had no other property.

Son, as Mother's sole heir, retained Lawyer to open an intestate estate with Son as personal representative. Lawyer did so and arranged to have notice of administration published in the newspaper, also asking Son to give him a list of Mother's creditors so he could arrange for notice by mail to them. Son made the list, and Lawyer had the clerk send notice to all of the creditors on the list.

Lawyer further helped Son fill out an Application for Consent to Transfer for the joint account, and submitted the application to the assessor's office. The assessor, noting that the property transfers to Son would not exceed his \$100,000 inheritance tax exemption, consented to the transfer of the joint account to Son.

Since Son had helped Mother with her finances following the death of her husband, he knew that Mother had been on Medicaid prior to receiving the inheritance. Lawyer, on the other hand, had no actual notice that Mother had ever been on Medicaid. Under **Scenario 1**, Son inadvertently left off the list of Mother's creditors given to Lawyer the Office of Family & Children ("OFC"), the state agency responsible for Medicaid. Under **Scenario 2**, Son knew OFC should be on the list, but deliberately left it off, knowing his inheritance from the estate would be larger if OFC did not get notice and file a claim. Under **Scenario 3**, Son told Lawyer that OFC was a creditor, but instructed Lawyer not to give OFC notice. Under **Scenario 4**, Son instructed Lawyer not to give OFC notice, and Lawyer thereafter terminated his representation of Son. Under **Scenario 5**, Mother lived long enough that there was only \$20,000 left in her individually titled bank account at the time of her death; in effect, Mother left only a small estate capable of being transferred without opening an estate administration through the court. Assume for Scenario 5 that Son tells Lawyer that Mother at one time received Medicaid.

## Issues

May or must Lawyer give notice to OFC that Mother is deceased or that an estate has been opened for Mother?  
May or must Lawyer inform a tribunal that OFC is a creditor or that Son has failed to give OFC proper notice?

## **Applicable statutes, regulations**

I.C. 6-4.1-8-8 provides that without a consent to transfer, property held jointly may not be transferred to the survivor, except where the survivor is a spouse or the property is a joint checking account.

145 IAC 4.1-8-3 provides that except for transfers to a spouse or transfers of a checking account, a consent to transfer must be obtained before property held jointly by a resident decedent and another may be transferred to the survivor, and further provides that to ensure that the transfer will not jeopardize the collection of inheritance tax, the consent shall not exceed 80 percent of the property until the inheritance tax is paid.

I.C. 12-15-9-1 provides that upon the death of a Medicaid recipient, the amount of Medicaid paid after the recipient became age 55 must be allowed as a preferred claim in the recipient's estate, that the affidavit of a person designated by the Indiana Secretary of Human Services is evidence of the amount of the claim, and that the claim is payable in accordance with I.C. 29-1-14-9 after funeral expenses for the recipient and the recipient's spouse, expenses of last illness of the recipient and the recipient's spouse, and the expenses of administration of the estate, including attorney fees.

I.C. 29-1-7-7 provides in pertinent part that notice of the issuance of letters upon the opening of an estate shall be published, that notice shall be served by mail on all heirs, devisees and known creditors, and that the personal representative shall serve notice on creditors who are known or reasonably ascertainable within one month of first publication or as soon as possible after one month. It further provides that if the personal representative fails to give notice to a known or reasonably ascertainable creditor within the one month period, the creditor may submit a claim within an additional two months after the date notice is given, though a claim will be barred if not filed within nine months of death.

I.C. 29-1-8-1 provides in pertinent part that a small estate affidavit may be used to claim property of a decedent without a court order or proceeding where the property consists of personal property not exceeding \$25,000.

I.C. 29-1-14-1 provides in pertinent part that except as provided in I.C. 29-1-7-7, claims against a decedent's estate, other than claims for costs of administration and claims of the United States or the state or any subdivision are forever barred unless filed within three months of the date of first published notice, and further provides that all claims barrable after the three-month time-bar are forever barred if not filed within nine months after death.

I.C. 29-1-14-9 provides that claims shall be classified and paid in the following order: 1) costs of administration; 2) funeral expenses; 3) survivor's allowance under I.C. 29-1-4-1; 4) debts and taxes of the United States; 5) medical expenses of the last illness; 6) debts and taxes of the state of Indiana; and 7) all other claims.

I.C. 32-4-1.5-7 provides that multi-party accounts are liable for claims, taxes and expenses of administration

including survivor's allowance if estate assets are insufficient; provides that a written demand to assert the liability must be made upon a personal representative; and provides that sums recovered by the personal representative under the statute shall be administered as a part of the decedent's estate.

## **Applicable Rules of Professional Conduct**

R.P.C. Rule 1.2 provides in pertinent part that a lawyer shall abide by a client's decision concerning the objectives of representation, although a lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent. Further, when a lawyer knows the client expects assistance not permitted to the lawyer, the lawyer shall consult with the client regarding the limitations on the lawyer's conduct.

R.P.C. Rule 1.6 provides in pertinent part that a lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, though a lawyer may reveal such information to the extent the lawyer reasonably believes necessary to prevent the client from committing any criminal act.

R.P.C. Rule 1.9 provides in pertinent part that a lawyer who has formerly represented a client in a matter shall not thereafter use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require or when the information has become generally known.

R.P.C. Rule 1.16 provides in pertinent part that a lawyer shall withdraw from representing a client where the representation will result in a violation of the rules of professional conduct or other law, and that a lawyer may withdraw if it can be accomplished without material adverse effect on the client's interests where the client persists in a course of conduct the lawyer believes is criminal or fraudulent or where the client insists upon pursuing an objective the lawyer considers imprudent.

R.P.C. Rule 3.3 provides in pertinent part that a lawyer shall not knowingly fail to disclose a material fact to a tribunal when disclosure is necessary to avoid a client's criminal or fraudulent act, and further provides that this duty applies even if disclosure is of information otherwise protected by Rule 1.6.

R.P.C. Rule 4.1 provides in pertinent part that a lawyer shall not knowingly fail to disclose that which the law requires to be revealed.

## **Analysis**

### ***Who is the client under all scenarios***

Who is the client in an estate administration was addressed in ISBA Legal Ethics Committee Opinion No. 4 of 1997. There, it was concluded that a lawyer represents not "the estate" or interested persons such as creditors, taxing authorities and distributees, but represents instead the personal representative in his fiduciary capacity. Lawyer's ethical obligations to a client runs to Son and not to OFC, though Lawyer has ethical obligations to OFC as a third party, as discussed hereinbelow.

The Comment to Rule 1.2 raises a concern. It states that “[w]here the client is a fiduciary, a lawyer may be charged with special obligations in dealing with a beneficiary.” The term beneficiary is not defined in the Rules of Professional Conduct, but *Black’s Law Dictionary, Abridged Fifth Edition*, defines “beneficiary” as “one who benefits from act of another,” and also mentions the context of a trust, where a beneficiary is “a person who has any present or future interest, vested or contingent . . . Person for whose benefit property is held in trust.” With a trust, a trust creditor would not be within the meaning of the term beneficiary, so a lawyer representing a trustee would not owe a trust creditor any Rule 1.2 special obligation. With an estate, the Probate Code speaks in terms not of beneficiaries but of interested persons: “Interested persons’ means heirs, devisees, spouses, creditors, or any others having a property right in or claim against the estate of a decedent being administered. This meaning may vary at different stages and in different parts of a proceeding and must be determined according to the particular purpose and matter involved.” (I.C. 29-1-1-3) Although it is potentially problematic that a beneficiary owed the special obligations by a lawyer representing a fiduciary under the R.P.C. might be equivalent to an interested person for Probate Code purposes including a creditor, the distinction does not alter the analysis under any of the scenarios analyzed. It can be assumed *arguendo* that the R.P.C.’s “beneficiary” and the Probate Code’s “interested person” are equivalent for present purposes, though such equivalence is by no means clear.

### *Consent to transfer under all scenarios*

The purpose of the statutes and regulations regarding the Consent to Transfer mechanism is to ensure payment of Indiana Inheritance Tax, which is imposed upon property transfers which take place because of death. While the Multi-Party Account law at I.C. 32-4-1.5-7 provides that resort may be made to multi-party account funds where a decedent’s probate estate is insufficient to pay claims, it also provides that written demand to assert the liability must be made upon a personal representative, and that anything recovered by the personal representative from a multi-party account shall be administered as a part of the decedent’s estate. A decedent’s estate must be opened for a personal representative to be appointed, so the legislature intended for creditor claims of a decedent to be resolved through a probate estate, whether the funds to pay claims come from the probate estate or nonprobate property such as a multi-party account.

There is no duty of notice on the part of an applicant filing an Application for Consent to Transfer apart from the duties imposed upon personal representatives to notify creditors. Since Son has no duty to notify OFC upon filing an Application for Consent to Transfer, Lawyer would not have an obligation under Rule 4.1(b) to make a disclosure required by law. There would also not be a fraud involved in the sense of “[a] false representation of a matter of fact . . . which deceives and is intended to deceive another so that he shall act upon it to his legal injury.” (*Black’s Law Dictionary, supra*) Without a crime or fraud in Son’s Application for Consent to Transfer, Lawyer’s assistance to Son with the Application does not run afoul of the Rule 1.2(d) proscription from assisting a client in conduct a lawyer knows is criminal or fraudulent. Neither is there any tribunal under Rule 3.3(a)(2) to which Lawyer owes a duty of candor.

Whether Lawyer knows or does not know of Son’s plans not to notify OFC is not significant. Where Son has no duty to notify OFC upon his filing an Application for Consent to Transfer, and filing the Application without giving notice is not a fraud, Lawyer does not violate any ethical obligation by failing to notify OFC of the filing or by assisting Son in preparing and filing the Application.

### **Scenario 1**

Pursuant to I.C. 29-1-7-7, Son “shall” serve notice of administration on all known or reasonably ascertainable creditors. Under the facts, OFC is a known creditor, but even if Son were not actually aware the Medicaid benefits were provided to Mother, OFC is likely a reasonably ascertainable creditor, since any investigation of Mother’s circumstances would reveal that she received Medicaid benefits for two years. Son thus has a duty to provide actual notice of administration to OFC.

Under I.C. 29-1-7-7, the consequence of failing to provide notice to a known or reasonably ascertainable creditor is that a claim filed more than three months from the date of first publication of notice will not be untimely. An OFC claim for Medicaid, however, is not subject to the three months’ bar, as OFC is an agency of the state, not subject to the three month’s time-bar pursuant to I.C. 29-1-14-1. OFC’s claim would be timely whenever filed, even more than nine months from date of death.

In the event the estate is fully administered and closed without OFC having filed a claim, there are Probate Code provisions which would enable OFC to re-open the estate even after closing (*see, e.g.*, I.C. 29-1-7.5-6, where fraud, misrepresentation or inadequate disclosure related to settlement of an unsupervised estate are alleged, and I.C. 29-1-17-13, where mistake, fraud or willful misconduct are alleged in a supervised estate). Further, there may be remedies against the estate distributees (*see* I.C. 29-1-7.5-5, where undischarged claims not barred may be prosecuted against unsupervised estate distributees). It is also worthy of note that OFC has the same ability to learn of deaths and pending estate administrations as claimants who are not known and not reasonably ascertainable, namely, it can watch for obituaries of persons against whom OFC may have a claim and for published legal notices of the opening of an estate.

While Son clearly has the duty to give OFC actual notice of administration, Lawyer under the facts does not know OFC is a creditor. While Rule 4.1(b) prohibits a lawyer from knowingly failing to disclose that which is required by the law to be revealed, disclosure would only be required where Lawyer knows OFC is a creditor. Lawyer further would not know client’s conduct is criminal or fraudulent (if it is), which otherwise would have prevented Lawyer from assisting Son under Rule 1.2(d). In addition, without knowing OFC is a creditor, Lawyer is bound by the Rule 1.6 obligation not to reveal information relating to Son’s representation, although giving notice to estate creditors including OFC might be said to have been impliedly authorized under the Probate Code notice provisions. Finally, while a tribunal is involved once an estate is opened, Lawyer’s obligation to disclose facts to the tribunal necessary to avoid assisting in any fraud or crime by Son is again dependent on Lawyer’s knowledge, which is absent in Scenario 1. Lawyer thus commits no violation of the Rules of Professional Conduct under Scenario 1.

## Scenario 2

The analysis of Lawyer’s ethical obligations where an estate has been opened is not different from that under Scenario 1. Whether a Rule 4.1(b) duty to disclose that which by law ought to be disclosed, or a Rule 1.2(d) obligation not to counsel Son to engage in or assist Son in the commission of a fraud or crime, or a Rule 3.3(a)(2) obligation to disclose a fact to the tribunal necessary to avoid assisting Son in a crime or fraud, Lawyer’s lack of knowledge that OFC is a creditor means that Lawyer commits no violation of the Rules of Professional Conduct when Lawyer represents Son as personal representative in the estate administration. Further, while Lawyer might be justified by Rule 1.6(a) in breaching a client confidence on the grounds that notifying known and reasonably ascertainable creditors is required in an estate administration and thus impliedly authorized in order to represent Son as personal representative, the concept of “information relating to the representation” in Rule 1.6(a)

necessarily implies knowledge of the information; if Lawyer does not know, Lawyer cannot disclose it even if Rule 1.6(a) permits him to disclose it. Under Scenario 2, Lawyer commits no violation of the Rules of Professional Conduct.

### Scenario 3

Lawyer's knowledge that Son intends not to notify OFC of Mother's estate changes Lawyer's obligation to OFC and to the tribunal. Son has a clear duty to provide the notice, and Lawyer, while bound by Rule 1.2(a) to abide by Son's decision, is required by Rule 1.2(e) to counsel Son that Lawyer cannot assist in conduct which is criminal or fraudulent.

It may be that Son's conduct in failing to give notice to OFC, while a breach of duty, is not a crime or fraud. Under I.C. 29-1-14-1, the remedy for failure to give a creditor notice is that the creditor's otherwise untimely filed claim will not be untimely. Since OFC is exempt from the filing deadlines altogether, and the constructive notice of publication in a newspaper is adequate for other categories of creditors, OFC is not without some notice, and is not at all without a remedy from the legal consequences of Son's failure to give notice. If Son's conduct is not a crime or fraud, Lawyer may continue to represent Son in the estate administration and honor Son's demand that OFC not receive notice without violating Rule 3.3(a)(2). It should be noted, however, that Lawyer is permitted by Rule 1.16(b)(3) to withdraw from representing Son, conditioned only upon there not being a material adverse effect on Son's interests, if Lawyer finds that Son's disregarding of Lawyer's advice to give OFC notice is imprudent.

If Lawyer continues representing Son, Lawyer must take care that Lawyer does not assist Son in making a false representation to the court that all known or reasonably ascertainable creditors have received notice. A personal representative of an unsupervised estate is required in a closing statement pursuant to I.C. 29-1-7.5-4 to state that he has provided notice to creditors as required under I.C. 29-1-7-7(c) and (d). In a supervised estate, I.C. 29-1-16-5 requires the personal representative in a petition to settle and allow an account to specify to the court the persons to whom distribution is to be made and the amounts to which each is entitled. If Lawyer were to prepare either a closing statement containing a false statement that creditors were given proper notice or a petition to settle and allow by proposing distribution of a net estate to heirs or devisees without honoring OFC's priority under I.C. 29-1-14-9, Lawyer would be knowingly making a false statement of material fact to a tribunal prohibited by Rule 3.3(a)(1). At the point where the personal representative is required to make a statement that creditors have received proper notice, Lawyer cannot assist Son without violating Rule 3.3(a)(1).

Even if Lawyer would be permitted to continue in the representation, Lawyer's knowing assistance to Son in securing a larger inheritance through failing to give OFC notice is fraught with peril, as Son's conduct might be seen by some to constitute fraud or a crime. Under Rule 1.2(d), a lawyer shall not assist a client in engaging in conduct which is criminal or fraudulent. Further, under Rule 1.16(a)(1), a lawyer shall withdraw from a representation where the lawyer will be called upon to violate the Rules of Professional Conduct or some other law. Finally, under Rule 3.3(a)(2), a lawyer shall not knowingly fail to disclose a fact to a tribunal necessary to avoid a client's crime or fraud. Lawyer first must counsel Son that Lawyer cannot assist (Rule 1.2(e)) and give Son the opportunity to provide OFC the notice required by law. If Son insists that OFC not receive notice, and such conduct constitutes a fraud or crime, Lawyer shall withdraw. The withdrawal can be "quiet," not communicating any red flag to the court about the reason for the withdrawal, or "noisy," where Lawyer indicates that his withdrawal is mandated by the Rules of Professional Conduct, allowing the court to infer that there is a

problem with the client's conduct. In either event, Lawyer's withdrawal permits Lawyer to maintain Son's confidentiality but honors Lawyer's duty to the tribunal under Rule 3.3 and to OFC under Rule 4.1, since after withdrawal, Lawyer no longer has those duties. (See, however, Scenario 4, where Son is a former client of Lawyer rather than a current client.)

Although Lawyer has a duty not to reveal a client's confidences under Rule 1.6, there are a number of possible bases under which Lawyer would be permitted to reveal to the Court that OFC is a creditor or to OFC that an administration is pending. One of these is found in Rule 1.6(a) itself, where a lawyer is permitted to make disclosures impliedly authorized to carry out the representation. Another is contained in Rule 1.6(b), where a lawyer may reveal information reasonably necessary to prevent a client's criminal act (although it may be that notice to OFC is not reasonably necessary to prevent Son from committing a crime, either because what Son is doing is not a crime or because other circumstances make disclosure not reasonably necessary to prevent a crime). One final basis is the Rule 4.1(b) requirement that in order to be truthful to a non-client, a lawyer must disclose what is required by law to be revealed, here that an estate administration has been opened, which gives rise to a duty under the Probate Code to provide notice to creditors. Lawyer's subverting of Son's instructions and revealing Son's confidential information is problematic. While arguably authorized, it resolves the conflict between Rules 1.6 and 1.2 on the one hand, and making a disclosure required by law on the other, in favor of disregarding the duty of confidentiality and overriding a client's directions as to the objectives of the representation. Such a resolution offers no ethical safe harbor to attorneys who may instead safely choose to quietly withdraw.

Rule 1.6(a) expressly permits a lawyer to make disclosures impliedly authorized to carry out the representation. It could be argued that because the notice provisions of the Probate Code require Son to give notice to known creditors, Lawyer could add OFC's name to the list of creditors to receive notice, Son's direction notwithstanding, because giving OFC notice is impliedly authorized for Lawyer to represent Son in carrying out his duties as personal representative. Lawyer would arguably not be in violation of Rule 1.2 or Rule 1.6 by adding OFC's name to the list. (Lawyer would also be honoring the "special obligation" Lawyer may have to OFC as a possible beneficiary of Lawyer's client Son as a fiduciary under the Comment to Rule 1.2.) Doing so, however, would mean that Lawyer is disclosing something Son expressly told him not to disclose, and Lawyer may well decide that withdrawal is a better option.

Rule 1.6(b)(1) authorizes a lawyer to reveal a client's information which would otherwise be confidential where disclosure is reasonably necessary to prevent the client from committing a criminal act. While it is beyond the scope of this opinion to analyze whether Son's conduct might constitute some crime, for this purpose it will be assumed *arguendo* that a crime might be implicated. The inquiry then is whether Lawyer's disclosure is reasonably necessary to prevent Son's crime. It may be that the failure to give actual notice to an agency of the state as a creditor is not reasonably necessary, since the remedy for failing to give notice is an extension of time to file a claim, and the state already has no bar to the time within which it must file a claim. If so, Lawyer is required by Rule 1.6 to maintain Son's confidential information and not give OFC notice. If not, Lawyer would be permitted by Rule 1.6(b)(1) to reveal the information, although, as discussed above, many lawyers would choose to withdraw from the representation rather than breach the client's confidence and disregard the client's objective.

Rule 4.1(b) further requires Lawyer to disclose what is required by law to be revealed. Since the notice provisions of the Probate Code require notice be given to known creditors, Lawyer's duty of truthfulness to third parties means that Lawyer shall give OFC notice where Lawyer knows OFC is a creditor. Once Lawyer has terminated

his representation, however, he would no longer have a Rule 4.1(b) duty to disclose.

Although there are rationales for revealing Son's confidential information that OFC is a creditor, many lawyers again would terminate the representation rather than to reveal the confidential information and disregard Son's objectives. Further, while it may be possible for Lawyer to continue to represent Son up to the point where Son will be making a false statement to the court, it might be prudent for Lawyer to terminate the representation at the earliest opportunity rather than to continue the representation, reveal the confidential information, and seek to justify the breach of the confidence.

#### **Scenario 4**

Where Son is a former client of Lawyer's, Rule 1.9 is implicated. While Lawyer shall not use information relating to representing Son to Son's disadvantage, Rule 1.9(b) expressly cross-references Rule 1.6 or Rule 3.3. As discussed with Scenario 3, Rule 1.6(b)(1) would permit Lawyer to reveal information he reasonably believed necessary to prevent Son from committing a crime. If Son's conduct does not constitute a crime, Lawyer is bound by Rule 1.6 not to reveal a client's confidential information, and by Rule 1.9 not to reveal a former client's confidential information, so Lawyer may not reveal to OFC that an estate administration has been opened without violating the Rules of Professional Conduct. If Son's conduct is a crime, Lawyer may reveal to OFC that an estate administration has been opened and not be in violation of the Rules of Professional Conduct.

Similarly, Rule 3.3 by the terms of Rule 1.9(b) applies to a former client as it does to a current client. Lawyer would be required to disclose to the court the fact that OFC is an estate creditor if Son's conduct constitutes a fraud or a crime and disclosure is reasonably necessary to prevent a fraud or crime. If Son's conduct is not a fraud or crime, or if disclosure is not necessary to prevent a fraud or crime, Lawyer is bound by Rule 1.6 not to reveal a client's confidential information, and by Rule 1.9 not to reveal a former client's confidential information. Therefore, Lawyer may not inform the tribunal that OFC is a creditor without violating the Rules of Professional Conduct. If, however, Son's conduct is a fraud or crime and Lawyer's revealing to the court that OFC is a creditor is reasonably necessary to prevent Son's fraud or crime, Lawyer is required by Rule 3.3(a)(2) and Rule 1.9 to disclose to the court that OFC is a creditor, and Lawyer commits no Rule 1.6 violation by doing so.

#### **Scenario 5**

As is the case with a Consent to Transfer, the law does not require notice to creditors where an estate administration is not opened, so Son breaches no duty by failing to give notice to OFC. Mother's funds are, however, subject to the claims of Mother's creditors, limited to nine months from date of death for non-governmental creditors and not limited in the case of governmental creditors. In the event that OFC some day causes Mother's estate to be opened and files its claim, Son will be required to return the funds from Mother's bank account to the estate.

Whether Lawyer violates the Code of Professional Responsibility in assisting Son with a small estate affidavit turns upon whether not opening an estate administration and not notifying known and reasonably ascertainable creditors such as OFC is a fraud or crime. If so, Rule 1.2(d) prohibits Lawyer from preparing the small estate affidavit, and Rule 1.16(a) would require Lawyer to withdraw from the representation. Rule 3.3 is not implicated, as no tribunal is involved, and Rule 4.1 is not implicated, as no law requires notice to creditors where no estate is

opened. If Son's conduct does not constitute a fraud or crime, Lawyer is not prohibited from assisting Son with the small estate affidavit and commits no violation of the Code of Professional Responsibility by failing to disclose anything to OFC or to a tribunal.

There is no statutory duty to open an estate regardless of the value of a decedent's assets at death. Unless the estate is a small estate, however, such assets will not be able to be transferred. It also follows that where no estate is opened, there is no duty to give notice to potential estate claimants. Absent a duty to open an estate or a duty to notify creditors where no estate is opened, Son commits no fraud or crime by transferring Mother's bank account funds through the use of a small estate affidavit. Son as "person acting on behalf of the distributees" under a small estate affidavit (I.C. 29-1-8-3) would be a fiduciary with duties to persons entitled to a distribution from the estate property, including OFC. If Son having obtained possession of assets fails to make distribution to OFC, Son commits a breach of this fiduciary duty. If, however, Son commits no crime or fraud thereby, Lawyer violates no Rule of Professional Conduct in assisting Son by preparing a small estate affidavit and instructing Son on its use.