

RAINEY, KIZER, REVIERE & BELL, P.L.C.

ATTORNEYS AT LAW
POST OFFICE BOX 1147

JACKSON, TENNESSEE 38302-1147

(731) 423-2414

THOMAS H. RAINEY
JERRY D. KIZER, JR.
RUSSELL E. REVIERE
WILLIAM C. BELL, JR.
JOHN D. BURLESON
GREGORY D. JORDAN
LAURA A. WILLIAMS
ROBERT O. BINKLEY, JR.
R. DALE THOMAS
DEANA C. SEYMOUR
CHARLES C. EXUM
MARTY R. PHILLIPS
DALE CONDER, JR.
TIMOTHY G. WEHNER
BRADFORD D. BOX
PATRICK W. ROGERS
ANGELA C. YOUNGBERG
MICHAEL L. MANSFIELD

MICHELLE GREENWAY SELLERS
KEELY N. WILSON
GEOFFREY A. LINDLEY
JESSICA BELL PRUETT
KATE E. RHODES
CRAIG P. SANDERS
MARY M. PETRINJAK
JONATHAN D. STEWART
JAMES V. THOMPSON
ADAM C. CRIDER
DANIEL E. KING
ASHLEY D. CLEEK
ERIN A. MELTON
SPENCER R. BARNES
W. PAUL WHITT
TODD D. SIROKY
JOSHUA A. HILLIS

ROBERT E. ALDERSON (RET.)
CLINTON V. BUTLER, JR. (RET.)

May 25, 2006

HIGHLAND AVENUE OFFICE:
105 SOUTH HIGHLAND AVENUE
JACKSON, TENNESSEE 38301
FAX: (731) 426-8111

MAIN STREET OFFICE:
209 EAST MAIN STREET
JACKSON, TENNESSEE 38301
FAX: (731) 426-8150

MEMPHIS OFFICE:
THE KOGER CENTER
65 GERMANTOWN COURT, SUITE 209
CORDOVA, TENNESSEE 38018
(901) 333-8101
FAX: (901) 751-9596

WRITER'S DIRECT DIAL NUMBER

PERSONAL REPRESENTATIVE OF AN ESTATE HELD PERSONALLY LIABLE TO A CREDITOR

In the Tennessee case of Burke v. Landon, the Tennessee Court Of Appeals held the personal representative of an estate personally liable on a claim of the estate when the personal representative did not mail or deliver a copy of the published Notice To Creditors to the plaintiff (the creditor).

The decedent died on March 21, 2001. At the time of his death, the decedent had not paid a debt owed to the plaintiff for the plaintiff's attorney's fees the decedent owed as part of a divorce order. After the estate was opened, the personal representative did not mail a copy of the Notice To Creditors to the plaintiff. Almost two and one-half years after the decedent's death, the plaintiff filed a claim against the estate, which was overruled because it was filed more than two years after the date of the decedent's death (thus being time barred under TCA §30-2-307(a)(1)(B)).

After this claim was denied, the plaintiff sued the personal representative personally on the basis that the personal representative was aware the decedent owed money to the plaintiff and had a duty under TCA §30-2-306(e) to notify the plaintiff of the time to file claims. The court wrote that the plain language of TCA §30-2-306(e) was that there was the duty on the personal representative to provide notice to all creditors of the decedent of whom the personal representative had actual knowledge or who could be reasonably ascertained. Since the plaintiff was not seeking recourse against the estate, the statute of limitations in the probate statute did not apply. The court found that the clear legislative intent and purpose of the statute was to create a duty and to hold a personal representative personally liable for a breach of that duty for failing to notify a known creditor of the decedent.

The court acknowledged that it was aware that the way it treated this statutorily created duty could have a chilling effect on individuals' willingness to serve as personal representatives of an estate. However, the court further wrote that this policy decision would be best addressed by the legislature and does not impact the court's obligation to interpret and enforce the statute as enacted by the legislature.

MY RECOMMENDATION: Personal representatives should be prudent and diligent in determining creditors that exist of a decedent and making sure that the statutory notice is sent to those creditors. The attorney representing the estate should lead the personal representative in advising on this duty and assuring that the notices are sent to known creditors.

RAINEY, KIZER, REVIERE & BELL, P.L.C.

William C. Bell, Jr.