October 24, 2011

T&E Litigation Update: *Cohen v. Attorney General*

In *Cohen v. Attorney General*, Case No. 11-11500-NMG, 2011 U.S. Dist. LEXIS 120336 (D. Mass. Oct. 18, 2011), the federal district court dismissed an action brought by Jillian Cohen, purporting to act in her capacity as "Full Statutory Administratrix" of the estate of the decedent, effectively seeking federal court review of two state court dismissals of her previous suit for alleged negligence, products liability and wrongful death.

In dismissing the case on a motion brought by the attorney general on other grounds, the court offered the following commentary on the plaintiff's inability to pursue the action *pro se* on behalf of the estate:

"Notwithstanding that Cohen may have authority to act based on her appointment as Administratrix, that is not sufficient to permit her to represent the interest of the Estate, where she is not a duly-licensed attorney admitted to practice in this Court. Although 28 U.S.C. 1654 permits persons to proceed pro se, this provision does not allow unlicenced [sic] lay people to represent other pro se litigants. See *Feliciano v. DuBois*, 846 F. Supp. 1033, 1039 (D. Mass. 1994); *Eagle Assocs. v. Bank of Montreal*, 926 F.2d 1305, 1308 (2d Cir. 1991). Additionally, this Court's Local Rules do not provide such authorization. See District of Massachusetts Local Rule 83.5.3(c), providing that "[a] person who is not a member of the bar of this court, and to whom sections (a) and (b) are not applicable, will be allowed to appear and practice before the court only in his own behalf." *Id.* See also *Pridgen v. Andresen*, 113 F.3d 391, 393 (2d Cir. 1997) (holding that "an administratrix or executrix of an estate may not proceed pro se when the estate has beneficiaries or creditors other than the litigant."). Here, it appears that there are several beneficiaries and/or creditors, and thus claims inuring to the Estate...may only be prosecuted in this Court by duly-licensed counsel."