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Executor's Bid to Extend Limitations Period Falls

The executor of a will may not use the "continuous representation" doctrine to overcome the statute of limitations when suing a law firm for malpractice in connection with the drafting of the will, according to a Feb. 2 ruling by Manhattan Supreme Court Justice Manuel J. Mendez in *Allmen v. Fox Rothschild*, 101964/11.

The suit was filed against Fox Rothschild last year by Tara Allmen, executor of the estate of Renee Allmen, who died in 2006. Fox Rothschild represented Renee Allmen in drafting the will, and later represented Tara Allmen in executing it. Tara Allmen alleges that, in drafting the will in 2005, the firm failed to include some of Renee Allmen's bank accounts

in her estate, making the money in those accounts unavailable for paying the estate's tax liabilities. She also alleges that the firm overbilled her for the work it did for her directly.

Fox Rothschild moved to dismiss the malpractice claims related to the will on the grounds that they were barred by the three-year statute of limitations. Tara Allmen argued the firm should be deemed to have continuously represented the estate since 2005, tolling the limitation period. But Justice Mendez said that "plaintiff's assertion that defendant's representation after decedent's death constituted continuous representation is a bare legal conclusion unsupported by the facts." He wrote, "Courts have repeatedly found that the mere continuation of an attorney-client relationship was not enough to invoke the doctrine of continuous representation. In the instant case, Decedent's death would have ended any assertion that there could have been an understanding that the defendant would be called upon to revise the Will or otherwise continue their representation of Decedent." The ruling does not affect Tara Allmen's malpractice claims related to overbilling.

—Brendan Pierson