

**NOTICE OF LEGAL NOTICE ADVERTISING RATE CHANGE**

Notice is hereby given that, with respect to all legal notice advertisements placed with the Franklin County legal Journal, for first publication therein, on January 6, 1995, or thereafter, until such time as such rates shall again be changed, the rates for legal notice advertising shall be changed from the old rates and shall be the new rates, as follows:

Kind of Ad	Old Rate Effective In 1994	New Rate Effective In 1995
Estate Ads	\$55 00	\$65.00
Fictitious Name Ads	\$40.00	\$50.00
Clerk of Court Ads	\$30.00	\$35.00
Per Line Ads	\$1.30 Per Line	\$1.52 Per Line

As approved by action of the Legal Journal Committee of Franklin County Bar Association, Incorporated, Owner and Publisher of Franklin County Legal Journal, at meeting of such Committee, on November 17, 1994, and announced and left standing, at annual meeting of the members of Franklin County Bar Association, Incorporated, on December 16, 1994.

December 23, 1994 /s/ KENNETH E. HANKINS, JR.,  
 Managing Editor and Chair of the  
 Legal Journal Committee of Frank-  
 lin County Bar Association, Incorp-  
 orated

IN RE: ESTATE OF JANET E. PISLE, DECEASED, C.P.  
 Franklin County Branch, O.C. Division, No. 1994-25

*Section 3501 of the Decedent's Estate and Fiduciaries Code- Accounting by Personal Representative-Dead Man's Act, 42 Pa.C.S. Section 5930*

1. One purpose of the Dead Man's Act is to protect the estate of decedent from a false claim derived from the testimony of a surviving party to a contract between the decedent and the claimant.
2. It has been held that an exception to the Dead Man Rule applies when a party initiates discovery by seeking to inspect documents, or when a party engages in informal questioning or requesting documents through correspondence.
3. It is the act of the party enjoining the benefit of the Dead Man's Act in instituting discovery procedures and not the act of the court in ordering discovery which constitutes the act of waiver.

*John M. Lisko, Esquire, Attorney for Claimant*  
*Jeffrey S. Evans, Esquire, Attorney for Estate*

**OPINION AND ORDER**

HERMAN, J., September 29, 1995:

On July 30, 1993, Elda Gail Helman (hereinafter the claimant) filed a claim against the estate of Janet E. Pisle (hereinafter the decedent) in the amount of \$59,630.00. The claimant asserts that this amount represented a total of two separate loans she made to the deceased. The first was given by way of a personal check on September 10, 1990 in the amount of \$29,630.00 from her checking account. The second in the amount of \$30,000.00 was withdrawn from a savings account and given to the deceased by way of a cashier's check. The claimant through a petition under Section 3501 of the Decedent's Estate and Fiduciaries Code is asking for an accounting by the personal representative of the estate of the deceased. Through this procedure the claimant intends to assert her position that the loans given to the deceased should now be repaid. The hearing was held on June 30, 1993, for the purpose of hearing evidence on the claim of Elda Gail Helman. Donald E. Pisle, administrator of the Estate of Janet E. Pisle, through his counsel objected to the competency of the claimant to testify

asserting the Dead Man's Act, 42 Pa.C.S. Section 5930. The Court reserved ruling on this objection and the claimant was permitted to testify.

One purpose of the Dead Man's Act is to protect the estate of decedent from a false claim derived from the testimony of a surviving party to a contract between the decedent and the claimant. The administrator of the deceased's estate seeks that protection in this proceeding. There are, however, several statutory and common law exceptions to the application of the rule. In this instance the claimant asserts that the administrator of the deceased waived the protection of the Dead Man's Act by engaging in discovery. It has been held that this exception to the Dead Man Rule applies when a party initiates discovery by seeking to inspect documents, *Moss v. Klebinoff*, 44 D&C 2d 142 (1967), or when a party engages in informal questioning or requesting documents through correspondence. *Bolinger Estate*, 3 Fiduciary Reporter 2d 274 (1980). In the instant case there is disagreement between counsel as to whether or not the estate actually engaged in discovery. However, we note that the administrator for the estate acknowledges in his argument that letters were sent to the attorney for the claimant informally requesting a copy of one of the checks which was alleged by the claimant to be a loan to the deceased. The administrator for the estate argues that this informal request for information is not formal discovery under the Rules of Civil Procedure and therefore the claimant is not entitled to an exception under the Dead Man's Act.

However, we adopt the reasoning of the court in the *Bolinger Estate* and find that the administrator of the estate did engage in discovery that would waive the application of the Dead Man's Act and permit the testimony of the claimant to be admitted into evidence. As the Allegheny Court of Common Pleas stated in *Vinski v. Holfedler*, 118 P.L.J. 375: "It is the act of the party enjoining the benefit of the Dead Man's Act in instituting discovery procedures and not the act of the court in ordering discovery which constitutes the act of waiver." We believe that the discovery exception to the Dead Man's Act does not depend on strict and

formal action or compliance under the Pennsylvania Rules of Civil Procedure regarding discovery. As noted, we find that the administrator of the estate through counsel did engage in sufficient informal discovery to trigger the exception to the Dead Man's Act and therefore the claimant is rendered competent to testify and that her testimony is admissible as evidence of the claim. The objection of the administrator of the estate will be overruled.

For the reasons stated herein an appropriate Order of Court will be entered as part of this Opinion.

#### ORDER OF COURT

NOW this 29th day of December, 1994, the objection of the administrator of the Estate of Janet E. Pisle to the testimony of the claimant, Elda Gail Helman, as inadmissible under the Dead Man's Act, 42 Pa.C.S. 5930 is hereby overruled.

Counsel for the parties will schedule an additional hearing to take evidence on the claim if necessary.