

DIGEST OF ETHICS ADVISORY PANEL
Opinion #92-16, Request #227
Issued April 15, 1992

An attorney seeks Panel advice regarding the representation of a client under a mental disability. The Panel advises that Rule 1.14 of the Code of Professional Responsibility governs the attorney's concern when a client has a disability. The Rule states:

(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

(b) A lawyer may seek the appointment of a guardian, or take other protective action with respect to a client, only when the lawyer reasonably believes that the client cannot adequately act in the client's own interest.

The Panel is of the opinion that the attorney should, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. If the client does not have a guardian, or legal representative, the attorney may have to act as a de facto guardian, which is set forth in the notes to Rule 1.14. Furthermore, if the attorney believes to the extent that it is reasonably possible, that the client cannot adequately act in his/her own best interest, then the attorney should have a legal representative appointed to serve the client's best interest.