

ETHICS ADVISORY PANEL
Opinion #02-40, Request #260
Issued July 23, 1992

An attorney seeks Panel advice based on the following situation. An attorney has represented an elderly client for numerous years. The attorney prepared a trust agreement for the benefit of the client and was named a trustee. After a period of time, the client began to accuse the attorney of misdeeds regarding the client's finances. The attorney states that these charges are unfounded. The attorney suggests that the client's mental capacity is in question.

Disturbed by the accusations, the attorney offered to resign as trustee and to arrange for the appointment of a successor but the client would not consent to this arrangement. The attorney asks whether the attorney may resign as trustee or upon revocation of the trust assign all assets to the client.

The Panel believes that the priority in this situation is to protect the interest of the client. The Panel refers the attorney to Rule 1.14(b) where it states that "a lawyer may seek the appointment of a guardian . . . only when the lawyer reasonably believes that the client cannot adequately act in the clients own interest." If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests. See Comments to Rule 1.14. Moreover, Rule 1.16(b) states that "a lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interest of the client."

If the attorney believes it appropriate or necessary the attorney should petition the court to appoint a guardian for the client pursuant to Rule 1.14. The guardian would then be able to conduct the appropriate accounting of the finances while protecting the best interest of the client.