

Ethics Advisory Panel
Opinion #92-66, Request #291
Issued October 8, 1992

An attorney seeks Panel advice with regard to the following circumstances. The attorney represents a client who has filed a malpractice claim against a deceased attorney's estate in 1992. The alleged malpractice occurred in 1991, when the decedent attorney's professional liability insurance policy was in force. The deceased attorney allegedly failed to renew the malpractice policy in 1992. A dispute has now arisen between the insurer and the deceased attorney's estate with regard to the availability of coverage for the claim. The deceased attorney's executor approached the inquiring attorney to represent the Estate in an action against the insurer. The attorney asks whether the attorney may represent both the original client and the estate.

The Panel believes that Rule 1.7 "Conflict of Interest: General Rule" and the comments thereto govern this inquiry. The Rule states that:

(b) A lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person, or by the lawyer's own interests, unless:

(1) the lawyer reasonably believes the representation will not be adversely affected; and

(2) the client consents after consultation. When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

A conflict of interest may exist by reason of a substantial discrepancy in the parties' testimony, incompatibility in positions in relation to an opposing party, or the fact that there are substantially different possibilities of settlement of the claims or liabilities in question. See, Comments to Rule 1.7.

It appears from the facts that there is sufficient basis for the attorney to reasonably believe that representation of the original client will not be adversely affected by simultaneous representation of the Estate, and that both the original client and the Estate have consented after consultation. Therefore, the representation of the estate does not violate Rule 1.7.