

ETHICS ADVISORY PANEL
Opinion #93-15, Request #345
Issued March 31, 1993

An attorney represents two plaintiffs with joint claims against a simple tortfeasor who has an insurance policy limit of (\$XX) Dollars . Each of the two plaintiffs potentially sustained injuries and or damages in excess of half of (\$XX) dollars. The attorney's concern is that if one case settles first, the second plaintiff's right may be prejudiced with regard to a full settlement.

The Panel opines that Rule 1.7 entitled "Conflict of Interest: General Rule" applies to these set of circumstances. 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.

The comments to Rule 1.7 state that "loyalty is an essential element in the lawyer's relationship to a client. An impermissible conflict of interest may exist before representation is undertaken, in which event the representation should be declined. . . . If such a conflict arises after representation has been undertaken, the lawyer should withdraw from the representation. See, Rule 1.16 [amended to 1.17].

Where more than one client is involved and the lawyer withdraws because a conflict arises after representation, whether the lawyer may continue to represent any of the clients is determined by Rule 1.9." The lawyer is in a conflict of interest situation and must withdraw from one of the representations pursuant to Rule 1.17. If the interest of the retained client is or becomes adverse to that of the terminated former client, the attorney cannot continue to represent the retained client without the consent of the former client. See Rule 1.9.