

ETHICS ADVISORY PANEL
OPINION #94-5 REQUEST #457
Issued February 23, 1994

The inquiring attorney represents client A in a matter by A's spouse. A had suffered a severe head injury and has difficulty in communicating. Certain facts have come to the inquiring attorney's attention suggesting that A's spouse may have interests adverse to A's. The inquiring attorney asks whose interests he/she represents.

In this case, it is clear that the inquiring attorney represents A's interests and not his/her spouse's.

Rule 1.14 entitled "Client Under a Disability" provides as follows:

Rule 1.14. Client Under a Disability. - (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.

Under the facts as described by the inquiring attorney, the Panel believes that the appointment of a guardian may be necessary to protect A's interests. If the inquiring attorney reasonably believes that the client is unable to adequately act in his/her own interest, the inquiring attorney should seek the appointment of a guardian.