

ETHICS ADVISORY PANEL
OPINION #94-11 REQUEST #464
Issued February 23, 1994

Through the Volunteer Lawyers Project, the inquiring attorney has represented an elderly client. Over the past few years, the inquiring attorney has reorganized the client's financial affairs and has succeeded in managing the client's monthly expenses. As a result of the client's inability to care for him/herself, he/she now resides in a nursing home. The client's income exceeds his/her monthly expenses and his/her bank account is approaching a level at which his/her total assets will disqualify him/her for Medicaid benefits. The client's assets must be reduced in order to avoid Medicaid ineligibility. The inquiring attorney queries whether he/she may compensate him/herself for services rendered to date, notwithstanding the fact that his original representation of the client was on a pro bono basis.

Rule 1.14 addresses the issue raised by this inquiry and 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.

The Panel believes a guardian or conservator should be appointed in order to determine whether the inquiring attorney's proposed conduct would be in the client's best interest.

The Panel's guidance is restricted to interpretations of the Rules of Professional Conduct and does not extend to interpretations of any of the applicable rules of the Volunteer Lawyers Project.