

ETHICS ADVISORY PANEL
OPINION #94-21 REQUEST #476
Issued June 2, 1994

The inquiring attorney represented husband and wife, the debtors, in a Chapter 7 Bankruptcy proceeding. The bankruptcy filing was necessitated by the failure of a business run by the debtor's son. Many family members contributed to this business in order to keep it thriving including the debtors and the debtor's son-in-law. Approximately three years ago, the debtors took out a second mortgage on their home, contributed the proceeds to the business and then transferred their home to their son-in-law subject to the mortgages.

After the Debtors filed the bankruptcy petition, the trustee brought an adversary proceeding against the Debtors' son-in-law seeking to recover what he alleged was a fraudulent conveyance.

The inquiring attorney, with the consent of the debtors and their son-in-law, filed an answer to the adversary proceeding on behalf of the son-in-law. The inquiring attorney asks whether a conflict of interest exists in the dual representation of the debtors and the son-in-law.

Rule 1.7 entitled, "General Rule: Conflict of Interest" governs this inquiry. That Rule states that:

(a) A lawyer shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the relationship with the other client; and

(2) each client consents after consultation.

(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.

Under the facts presented, the Panel believes the attorney can represent the son-in-law without violating Rule 1.7. However, the Panel cautions the attorney that circumstances may develop where the representation of the son-in-law could materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the debtors.