

ETHICS ADVISORY PANEL
OPINION #94-24 REQUEST #483
Issued May 5, 1994

The inquiring attorney seeks an advisory opinion regarding the representation of two trust beneficiaries, the income beneficiary who has the ability to invade the principal for a limited percentage and the remainderman. The beneficiaries seek to bring suit against the trustee for failing to properly diversify asset investments. Both parties are aware of the conflict between the nature of their positions as they relate to the trust, however, they also believe that they have a valid case against the trustee. The inquiring attorney states that the parties are harmonious at this time and does not believe Rule 1.7 is being violated.

Rule 1.7 entitled "General Rule: Conflict of Interest" is applicable under these circumstances. The rule states:

(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.

In order to represent both beneficiaries, the inquiring attorney must gain each client's consent after consultation. The attorney states that the clients are aware of the potential conflict between an income beneficiary and a remainderman. In addition, the lawyer must reasonably believe that the dual representation will not adversely affect the relationship with each client. Although the relationship is currently harmonious, the Panel cautions the attorney regarding the representation of both parties because interests of the parties may become adverse to one another.