

ETHICS ADVISORY PANEL
OPINION #94-44 REQUEST #511
Issued July 27, 1994

The inquiring attorney was retained by Plaintiff A to represent his/her child with respect to a personal injury claim resulting out of an automobile accident. A's child was a passenger in a car operated by Driver. The attorney notified Driver on behalf of A by letter informing Driver that a claim was pending. Soon thereafter, Plaintiff B, parent of another child passenger in Driver's car, retained the inquiring attorney regarding injuries sustained in this same accident. At this time, the attorney discovered that the primary cause of the injuries sustained to the children was a manufacturing and design defect in Driver's car. The attorney advised B that he/she would have to retain separate counsel if he/she pursued a claim against Driver because the attorney was currently representing A against Driver.

The attorney filed suit against the car manufacturer for A and B. A did not file suit against Driver. B retained separate counsel for the claim against Driver. As part of the discovery against the car manufacturer, and on behalf of A and B, the attorney deposed Driver who was represented by counsel assigned by the insurance carrier. Driver now seeks to retain the inquiring attorney to represent his/her child, who was the third child in the car, against the car manufacturer. Driver also has a personal claim resulting from his/her child's injuries and asked the inquiring attorney to represent him/her in that matter.

The attorney states that if he/she represents Driver against the manufacturer, the attorney intends to refer A to another attorney for the claim against Driver. Therefore the attorney would represent A, B, and Driver against the car manufacturer only and any claims asserted by A and B against Driver would be handled by separate counsel.

The attorney asks whether representation of Driver against the car manufacturer presents a conflict of interest pursuant to rules 1.7 and 1.9 given the attorney's prior representation of A against Driver in connection with the automobile accident.

Rule 1.7 entitled "Conflict of Interest: General Rule" states the following:

(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.