

Final

ETHICS ADVISORY PANEL
OPINION #94-79, REQUEST #553
Issued January 11, 1995

A client engaged the inquiring attorney to secure his/her release from a hospital. The inquiring attorney learned from the hospital staff that the client suffers from a mental disorder and other serious medical problems. After investigation, the inquiring attorney concluded that a guardian of the person and of the estate should be appointed for the client and that the client should be placed in a nursing home. The inquiring attorney reported this conclusion to the client. The client then dismissed the inquiring attorney.

In prior conversations with the inquiring attorney, the client had requested that his/her trust officer from the local bank be appointed as guardian. Bank policy, however, prohibited the trust officer from serving as guardian of the person. The inquiring attorney asks whether he/she may be appointed as guardian of the person of the former client and states that an associate in the office would draft the necessary paperwork.

Rules 1.9 and 1.10 apply to the circumstances presented by the inquiring attorney. Rule 1.9 entitled "Conflict of Interest: Former Client" states the following:

A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation; or

(b) use information relating to the representation to the disadvantage of the former client except as Rule 1.6 or Rule 3.3 would permit or require with respect to a client or when the information has become generally known.

0646

Ethics Advisory Panel
94-79, Request # 553
Page 2

Rule 1.10 entitled "Imputed Disqualification" states in pertinent part:

(a) while lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), 1.9 or 2.2

The matter of the client's release from the hospital is substantially related to the appointment of a guardian of the person of the client. Accordingly, because the client refused to consent, the inquiring attorney is prohibited by Rule 1.9 from so serving. The inquiring attorney cannot proposit to act for the former client or for a third party, such as the hospital or the bank, in a matter in which the former client's interest are adverse. If the inquiring attorney cannot so serve, an associate in the firm is disqualified from "drafting the paperwork" by Rule 1.10(a).