

Final

**Ethics Advisory Panel  
Opinion 96-05, - Request # 646  
Issued, March 14, 1996**

**Facts:**

The inquiring attorney successfully collected the proceeds of a life insurance policy for a client who was the beneficiary. The inquiring attorney is concerned with the client's ability to handle the money because she was under treatment for a mental disorder. The client's doctor and social worker both believe that the client is vulnerable to those who may try to acquire her money. The inquiring attorney suggested that a guardian be appointed to help the client with her financial matters. A friend of the client's agreed to hold her bank book temporarily until a permanent guardian is appointed. The friend, with the inquiring attorney's permission, has disbursed \$30,000.00 to the client for various bills. The inquiring attorney is concerned that his/her client may be taken advantage of if a guardian is not appointed. The client at first consented to limited guardianship, but has now changed her mind.

**Issue Presented:**

The inquiring attorney asks what are his/her obligations regarding the client's inability to properly handle her financial affairs?

**Opinion:**

If the attorney believes that the client cannot adequately act in her own interest, he/she should seek to have a guardian appointed for her. Otherwise, the attorney owes her no duty beyond to maintain, so far as possible, a normal client-lawyer relationship, assisting her with advice which will help her protect her interests.

**Reasoning:**

Rule 1.14 entitled "Client Under a Disability" states:

- (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 comments that follow Rule 1.14 offer clarification in this situation and state, in part:

...The fact that a client suffers a disability does not diminish the lawyer's obligation to treat the client with attention and respect. If the person has no guardian or legal representative, the lawyer often must act as de facto guardian. Even if the person does have a legal representative, the lawyer should as far as possible accord the represented person the status of client, particularly in maintaining communication. If a legal representative has already been appointed for the client, the lawyer should ordinarily look to the representative for decisions on behalf of the client. If a legal representative has not been appointed, the lawyer should see to such an appointment where it would serve the client's best interests...

The inquiring attorney has a few choices when the client's competency is in serious doubt. Those choices are: to withdraw, to seek appointment of a guardian, to seek unofficial consent from a family member or close friend, to persuade the client to make a different choice, to proceed as defacto guardian or to continue to presume competence irrebuttably. See, Tremblay, on Persuasion and Paternalism: Lawyer Decisionmaking and the Questionably Competent Client, 1987 Utah L. Rev., 515, 519-520 (1987). In the instant case, if the inquiring attorney reasonably believes that the client cannot adequately act in his/her own interest, he/she should seek appointment of a guardian.