

Final

ETHICS ADVISORY PANEL
OPINION 96-08, - REQUEST 647
ISSUED -May 16, 1996

Facts:

The inquiring attorney represents Defendant X and her four siblings in an action brought against them by the administrator of an estate. Defendant Y, the mother of the defendants, is represented by a separate attorney. The Plaintiff, administrator, alleges that all six defendants committed conversion and fraud with respect to the decedent's bank accounts.

Defendant Y was related to the Decedent and cared for her during her lifetime. Decedent placed Defendant Y's name on various bank accounts and gave her power of withdrawal. After the Decedent passed away, Defendant Y disbursed the funds from the joint accounts to her children as gifts. Thereafter, a Court order was entered prohibiting the Defendants from disposing of any of the funds given to them from the Decedent's bank accounts.

Defendant X violated the Court Order and informed the inquiring attorney that she appropriated the funds to her own use but, on the attorney's advice, has replaced it.

Issues Presented:

1) Must the inquiring attorney disclose Defendant X's actions to a tribunal and/or her co-defendants? 2) Does the inquiring attorney have a conflict of interest in continuing to represent all the defendants?

Opinion:

1) No, the information is protected under Rule 1.6. 2) If the attorney believes a conflict has arisen, then he/she must withdraw from the representation.

Reasoning:

A fundamental principle in the client-lawyer relationship is that the lawyer safeguard the confidentiality of information relating to the representation. Rule 1.6 states in part:

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraph (b).

The confidentiality rule is subject to limited exceptions not applicable under these circumstances. The information about Defendant X's actions is protected under Rule 1.6 and the inquiring attorney cannot disclose the information to the court or the other co-defendants.

Rule 1.7 entitled "**Conflict of Interest: General Rule**" is the pertinent rule to this inquiry. That Rule states the following:

1.7(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.

Rule 1.7(b) addresses the simultaneous representation of co-parties. It applies to conflicts that may arise, even if only indirectly. The rule operates to require either refusal to accept a matter or withdrawal from a representation that has commenced.

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See, The Law of Lawyering: A Handbook on The Model Rules of Professional Conduct, Hazard & Hodes, p. 140.2 (1986).

In this case, the lawyer received the information from Defendant X after the representation commenced. Once that information becomes discoverable either in a deposition or during litigation, the inquiring attorney must determine whether the multiple representation will adversely affect the remaining defendants. If so, the lawyer must withdraw under Rule 1.17.