23 REPRESENTATION OF GUARDIAN FOR MINOR IN PERSONAL INJURY SETTLEMENT

Adopted July 20, 1962.
Addendum issued 1995.

Syllabus

It is unethical for an attorney to represent the guardian of a minor when the attorney is selected or employed by the insurance company with whom a damage settlement for injuries sustained by the minor has been negotiated.

Facts

In a recent case an insurance company negotiated a settlement with the natural guardian of a minor who had been injured by an act of an insured person of the insurance company. The insurance company, with the consent of the guardian, selected or employed an attorney to represent the guardian in commencing the guardianship proceedings and obtaining court approval of the settlement agreement. The attorney disclosed to the court his relationship to the insurance company. The court denied the right of the attorney to appear on behalf of the guardian.

Opinion

On the factual situation presented, it is the opinion of the Committee that the actions of the attorney violated Canons 6 and 35 of the Canons of Ethics.

Canon 6 prohibits an attorney from representing conflicting interests. It is patently apparent that the attorney was attempting to represent incompatible interests. He could not conceivably be considered as appearing before the court even as an impartial person advocating the fairness of the settlement agreement, when he was initially selected or employed by the insurance company to represent the guardian. The attorney represents only the lay agency which intervened in violation of Canon 35 between himself and the alleged client.

A proviso to Canon 6 permits an attorney to represent conflicting interests if the express consent of all concerned is given after a full disclosure of the facts. This proviso cannot be construed as having universal application. It cannot be employed to permit an attorney to represent both the plaintiff and the defendant in an adversary proceeding, nor can it be employed to permit an attorney to represent a fiduciary when the consent of the fiduciary to the conflicting interest of the attorney would constitute a breach of the fiduciary's duty.

The propriety of the court's action in guarding the interests of the minor under similar facts is fully established in *Seaton v. Tohill,* 11 Colo. App. 211, 53 Pac. 170.

It should not be concluded from this Opinion, however, that it would be improper for the insurance company to agree to reimburse the guardian for legal fees incurred by the guardian in connection with the proceeding, when the selection and employment of the attorney is entirely within the discretion of the guardian.

1995 Addendum

This Opinion was based upon the Canons of Professional Ethics, the predecessor to the Code of Professional Responsibility. The Colorado Rules of Professional Conduct became effective on January 1, 1993, replacing the Code of Professional Responsibility. While the language of the Rules is somewhat different from the Code and the Canons, the Ethics Committee considers this Opinion to continue to provide guidance to attorneys in this area. Attorneys are cautioned to review The Colorado Code of Professional Responsibility (found in the *Colorado Ethics Handbook*), to update the research contained in this Opinion and to conduct any independent research necessary.

Relevant provisions of the Colorado Rules of Professional Conduct, which should be examined together with this Opinion, are Rule 1.7, in particular 1.7(c) (regarding conflicts of interest); and Rule 1.8(f) (regarding acceptance of fee payments from one other than the client). The Ethics Committee directs attorneys to Opinion 91 and the relevant provisions of the Colorado Rules of Professional Conduct contained in that opinion. This opinion is supplemented by Opinion 91 which should be reviewed in conjunction with the Rules.