

representation is permissible where the clients are generally aligned in interest even though there is some difference of interest among them”, scholars argue that single representation provides for better client protection and lowers the risk for conflicts of interests.⁴ For example, a child’s interest in protecting his or her inheritance may interfere with an elder client’s wishes involving Medicaid planning, and “it is the [elder] who [would] need[] long-term care and whose finances [would be] under consideration.”⁵ Thus, some important questions to ask during the initial scheduling and/or appointment may be who is establishing the trust or writing a will, or whose money is at issue in tax or Medicaid planning. Ultimately, the question of who the client is “must be resolved before an attorney agrees to represent” anyone.⁶

Addressing Conflicts of Interest

Although family members may be involved in assisting their loved one, or the attorney may be representing clients jointly, it is important the attorney avoids any conflicts of interests. Determining who the client is upfront and communicating that to the family will help the attorney mitigate potential conflicts of interests in the beginning of representation. After the attorney identifies who the client is, it is best to ask to speak to the client privately. Upon speaking to the client privately, the attorney can further determine whether he or she has any existing conflicts of interests and allow the client to share confidential information with the attorney.⁷

If an attorney represents clients jointly however, the attorney must take extra steps to ensure that all clients involved understand how the joint representation will operate. For example, although it may be normal for a couple to seek estate planning services together, it is important they know certain conflicts may arise that could hinder the attorney’s ability to appropriately represent both clients. Rule 1.7 of the Rules of Professional Conduct explains that an attorney may represent a client as long as the representation will not “be directly adverse to another client; or there is [not] a significant risk that the representation of one or more clients will be materially limited by the [attorney’s] responsibilities to another client.”⁸ However, if a conflict of interest does arise during the representation that materially affects the attorney’s duty to either client, the attorney must withdraw representation.⁹

Beyond the issue of family members assisting their loved one in obtaining an elder law attorney and accompanying them to the meetings, a family member may also pay for the

⁴ See David Rosenfeld, *Whose Decision is it Anyway?: Identifying the Medicaid Planning Client*, 6 Elder L.J. 383 (1999), Mark Falk, *Ethical Considerations in Representing the Elderly*, 36 S.D. L. Rev. 54 (1991), Patricia Rumore, *Elder Law: Pitfalls for the Unwary*, 58 Ala. Law. 160 (1997).

⁵ David Rosenfeld, *Whose Decision is it Anyway?: Identifying the Medicaid Planning Client*, 6 Elder L.J. 383, 389 (1999).

⁶ Mark Falk, *Ethical Considerations in Representing the Elderly*, 36 S.D. L. Rev. 54, 62 (1991).

⁷ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.7, .8, .9, .18 (2008).

⁸ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.7(a) (2008).

⁹ Okla. Stat. tit. 5, Ch. 1, App. 3-A, R. 1.16(a)(1) (2008).