

# Guardianship Ethics

Honorable Patrick L. Woodward  
Court of Special Appeals

# Overview

- Client with Diminished Capacity (MRPC 1.14)
- Attorney as Advocate
  - *In re Sonny E. Lee*
- Other Ethical Obligations
- Conflict of Interest
- Independent Investigator

## Client with Diminished Capacity (1.14)

MRPC 19-301.14.

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished whether because of minority, mental impairment or for some other reason, ***the attorney shall, as far as reasonably possible, maintain a normal client-attorney relationship with the client.***

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# Attorney as Advocate

- It is the role of an attorney to:
  - “explain the proceedings to his client and advise him of his rights” (1.4)
  - “keep his confidences” (1.6)
  - “advocate his position” (1.2)
  - “protect his interests” (1.3)

In re Sonny E. Lee, 132 Md. App. 696, 718, 754 A.2d 426, 438–39 (2000)

## Other Ethical Obligations

- It is the role of an attorney to:
  - “explain the proceedings to his client and advise him of his rights” (1.4)

MRPC 19-301.4. Communication (1.4)

***(b) An attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.***

## Other Ethical Obligations

- It is the role of an attorney to:
  - “keep his confidences” (1.6)

MRPC Rule 19-301.6. Confidentiality of Information (1.6)

***(a) An attorney shall not reveal information relating to representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation, or the disclosure is permitted by section (b) of this Rule.***

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## Other Ethical Obligations

- It is the role of an attorney to:
  - “advocate his position” (1.2)

MRPC Rule 19-301.2. Scope Of Representation and Allocation of Authority Between Client and Attorney

(a) Subject to sections (c) and (d) of this Rule, ***an attorney shall abide by a client's decisions concerning the objectives of the representation and, when appropriate, shall consult with the client as to the means by which they are to be pursued.*** An attorney may take such action on behalf of the client as is impliedly authorized to carry out the representation.

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## Other Ethical Obligations

- It is the role of an attorney to:
  - “protect his interests” (1.3)

MRPC Rule 19-301.3. Diligence (1.3)

***An attorney shall act with reasonable diligence and promptness in representing a client.***



## Conflict of Interest – General Rule (1.7)

MRPC 19-301.7.

**(a)** Except as provided in section (b) of this Rule, an attorney shall not represent a client if the representation involves a conflict of interest. A conflict of interest exists if:


- (1) the representation of one client will be directly adverse to another client; or*
- (2) there is a significant risk that the representation of one or more clients will be materially limited by the attorney's responsibilities to another client, a former client or a third person or by a personal interest of the attorney.*

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**Acting as an attorney for the disabled person and as temporary guardian during litigation is a conflict of interest. Owings v. Foote, 150 Md. App. 1, 14 (2002).**

# Independent Investigator

- **Md. Rule 10-106. Appointment of Attorney or Investigator**  
**(c) Investigator.** The court may appoint an independent investigator to investigate the facts of the case and report written findings to the court. The fee of an appointed investigator shall be fixed by the court and shall be paid out of the fiduciary estate or as the court shall direct. To the extent the estate is insufficient, the fee of an independent investigator appointed by the court shall be paid by the State.
- Temporary guardian of the person or property



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