ETHICS OPINION

RO-82-591

[redacted]

QUESTION:

"I request a written opinion under Rule 14 whether or not I may represent all parties on claims under the following facts:

Family A is composed of husband and wife only. Family B is composed of husband, wife and two minor children. All of these people were riding in an automobile when it collided with a tractor-trailer truck. Wife A was killed instantly. Husband A and all members of Family B received minor personal injuries. All survivors desire that I represent them and Husband A desires that I represent him as personal representative of his deceased wife's estate in a wrongful death action. Considering the injuries and claims, there is no question of limitation on the carrier's coverage and ability to pay."

ANSWER:

If there is "no question of limitation on the carrier's coverage and ability to pay", in other words, there are sufficient assets for the full satisfaction of all potential claims, there is no ethical impropriety in your representing A and the members of family B to recover for personal injuries and representing A as personal representative of his deceased wife's estate in a wrongful death action. If there are not sufficient assets to satisfy all potential claims, and a recovery by one claimant will, of necessity, reduce the assets available for the satisfaction of the claims of the other claimants, the various claimants should be represented by independent counsel.

DISCUSSION:

Ethical Consideration 5-17 provides:

> "Typically recurring situations involving potentially differing interests are those in which a lawyer is asked to represent co-defendants in a criminal case, co-plaintiffs in a personal injury case, an insured and his insurer, and beneficiaries of the estate of a decedent. Whether a lawyer can fairly and adequately protect the interests of multiple clients in these and similar situations depends upon an analysis of each case. In certain circumstances, there may exist little chance of the judgment of the lawyer being adversely affected by the slight possibility that the interests become actually differing; in other circumstances, the chance of adverse effect upon his judgment is not unlikely." (emphasis added)

Disciplinary Rule 5-105(A) provides:

> "A lawyer shall decline proffered employment if the exercise of his independent professional judgment in behalf of a client will be or is likely to be adversely affected by the acceptance of the proferred employment, or if it would be likely to involve him in representing differing interests, except to the extent per-

mitted under DR 5-105(C)."

Disciplinary Rule 5-105(C) provides:

> "In the situations covered by DR 5-105(A) and (B), a lawyer may represent multiple clients if he reasonably determines that he can adequately represent the interest of each and if each consents to the representation after full disclosure of the possible effect of such representation on the exercise of his independent professional judgment on behalf of each."

Disciplinary 5-106(A) provides:

> "A lawyer who represents two or more clients shall not make or participate in the making of an aggregate settlement of the claims of or against his clients, unless each client has consented to the settlement after being advised of the existence and nature of all the claims involved in the proposed settlememt, of the total amount of the settlement, and of the participation of each person in the settlement."

Although Ethical Consideration 5-17 makes special note of the problems involved in representing "co-plaintiffs in a personal injury case, we find few if any opinions of ethics committees or courts discussing that problem.

Although the Disciplinary Commission has not been called upon to answer your precise question, opinions have been rendered concerning multiple claimants to a limited fund. Such cases have involved claimants to funds interpleaded in court, multiple beneficiaries of a deceased estate, etc. By analogy we feel that the principles set forth in those opinions are applicable to your case and that the foregoing answer to your question is correct.

WHMjr/vf
3-17-82