

Concurrent Representation of Trustees and Beneficiaries under Ohio Rule of Professional Conduct 1.7

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A trustee and a beneficiary occupy distinct legal positions within a trust, but those positions are not inherently adverse for purposes of the Ohio Rules of Professional Conduct. The trustee holds and administers trust property subject to fiduciary duties owed to the beneficiary, while the beneficiary possesses beneficial interests in the trust. Differences may arise concerning investments, accountings, administration, or the timing and amount of distributions, particularly where the trustee exercises discretion. Those potential differences warrant careful conflict analysis when an attorney proposes to represent both trustee and beneficiary.

Prof.Cond.R. 1.7(a) provides that accepting or continuing a representation creates a concurrent conflict if the representation will be directly adverse to another current client, or if there is a substantial risk that the attorney's ability to consider, recommend, or carry out an appropriate course of action for one client will be materially limited by responsibilities to another client, former client, third person, or the attorney's own interests. Accordingly, simultaneous representation of a trustee and beneficiary requires a fact-specific inquiry. Where their objectives are genuinely aligned—for example, in addressing a third-party claim against trust property—joint representation may not initially present a conflict. Nevertheless, the attorney must remain attentive to developments such as a disputed accounting, challenged investment decision, contested discretionary distribution, or allegation of fiduciary misconduct that may create direct adversity or materially limit the attorney's representation of either client.

Where a conflict exists under Rule 1.7(a), Rule 1.7(b) permits the representation only if three conditions are satisfied: the attorney will be able to provide competent and diligent representation to each affected client; each affected client gives informed consent, confirmed in writing; and the representation is not prohibited by Rule 1.7(c). Crucially, however, Rule 1.7(c) identifies circumstances in which consent cannot cure the conflict, including **representation of clients adverse to one another in the same proceeding**. Thus, if a beneficiary asserts a breach-of-fiduciary-duty claim against the trustee in litigation in which the attorney would purport to represent both sides, the attorney cannot continue the joint representation merely by obtaining waivers.

Wynveen v. Corsaro, 2017-Ohio-9170 (8th Dist.) illustrates the seriousness of this inquiry in the trust context. There, the beneficiary sued an attorney who served as trustee of multiple trusts established for members of the beneficiary's family and as executor of an estate of which the plaintiff was a beneficiary. The beneficiary sought, among other relief, removal of the trustee, trust and estate accountings, disgorgement of attorney and fiduciary fees, surcharges, and damages. The trustee then asserted a counterclaim against the beneficiary to recover debts allegedly owed to the trust and to the estate. The Eighth District affirmed disqualification of an attorney from the trustee's firm, emphasizing the firm's extensive prior and continuing representation involving the beneficiary, his estate planning, his rights as a beneficiary, and his property interests. The court expressly recognized that Prof.Cond.R. 1.7 prohibits representation that is adverse to or materially limits the representation of a current client and that such conflicts may be imputed throughout a firm under Prof.Cond.R. 1.10.

Given the unpredictability associated with trust administration, wherein conflicts often arise between trustees and beneficiaries, many of which may need to be adjudicated by a court, substantial risk is posed by an attorney or by a law firm that attempts to represent both a trustee and a beneficiary of the same trust concurrently. Thus, any interested party should seek competent and experienced counsel to ensure that they are receiving adequate representation in accordance with the Ohio Rules of Professional Conduct.

This article provides an overview and summary of the matters described therein. It is not intended to be and should not be construed as legal advice on the particular subject.