
Welcome
Who is YOUR Client?
Part 1
Office of the Disciplinary Administrator

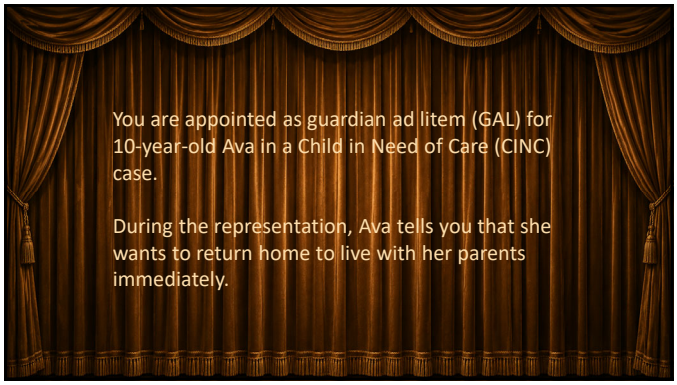
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Who is Your Client?

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Scene 1
Guardian ad litem

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You are appointed as guardian ad litem (GAL) for 10-year-old Ava in a Child in Need of Care (CINC) case.
During the representation, Ava tells you that she wants to return home to live with her parents immediately.

4


After investigating the case, reviewing records, and speaking with service providers, you conclude that returning home at this time would not be in Ava's best interests because of ongoing safety concerns.
In making your recommendation to the court, you must advance your client's position.

5


Who is Your Client?

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A. Ava. Therefore, you must advocate solely for Ava's expressed wishes.

B. Department of Children and Families, because it requested the appointment of a GAL.

C. The court, because the GAL is appointed by the judge.

D. The best interests of the child.

7

Answer #1

D.

8

The client of the GAL is the "best interest of the child." *See* K.S.A. 38-2205(a).

"The guardian ad litem shall make an independent investigation of the facts upon which the petition is based and shall appear for and represent the best interests of the child."

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Elaine, who is not an attorney, is the executive director for a state agency responsible for licensing and regulating licensed professionals.

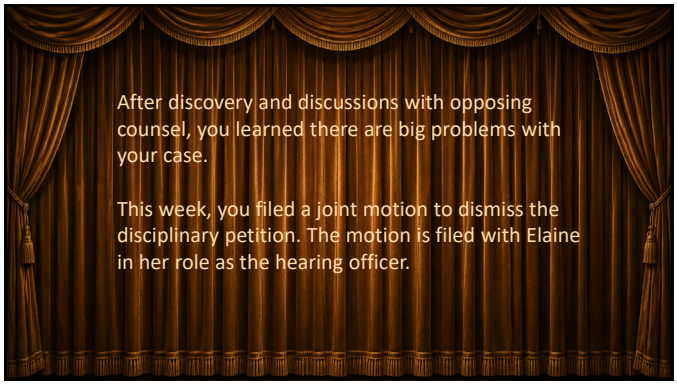
As executive director, Elaine is responsible for hiring and terminating staff, working with the agency general counsel to develop regulations, and is the hearing officer when petitions for violations are filed against licensees.

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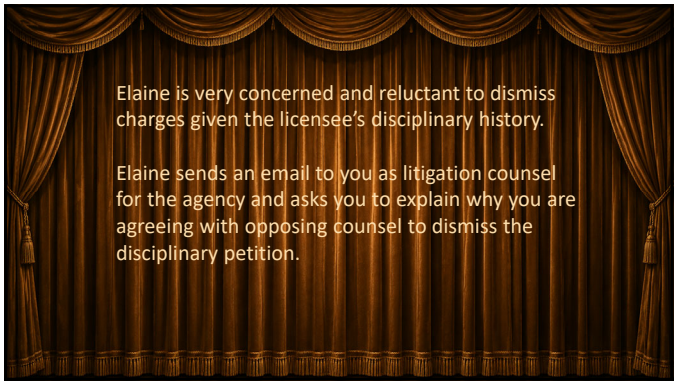
As litigation counsel for the agency, you filed a petition for discipline against a licensee who has a long disciplinary record.

As the hearing officer, Elaine has set the petition for an evidentiary hearing.

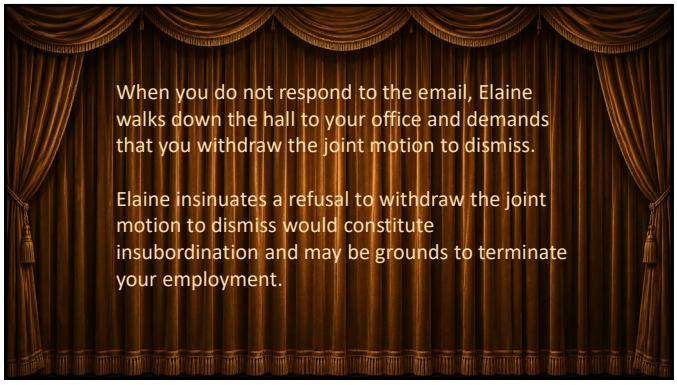
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After discovery and discussions with opposing counsel, you learned there are big problems with your case.
This week, you filed a joint motion to dismiss the disciplinary petition. The motion is filed with Elaine in her role as the hearing officer.

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Elaine is very concerned and reluctant to dismiss charges given the licensee's disciplinary history.
Elaine sends an email to you as litigation counsel for the agency and asks you to explain why you are agreeing with opposing counsel to dismiss the disciplinary petition.

14


When you do not respond to the email, Elaine walks down the hall to your office and demands that you withdraw the joint motion to dismiss.
Elaine insinuates a refusal to withdraw the joint motion to dismiss would constitute insubordination and may be grounds to terminate your employment.

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Who is Your Client?

16

A. Elaine, in her official capacity as executive director.

B. The agency responsible for licensing and regulating licensed professionals.

C. The state of Kansas.

D. Elaine, in her official capacity as hearing officer.

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Answer #2

B.

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The client is the state agency itself, not any individual employee, manager, board member, or elected official.

Agency officials, such as the secretary, executive director, or board members, are the people through whom the attorney communicates and receives instructions.

They are the constituents of the organizational client, not the client.

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You draft an irrevocable trust for your client, Clara.

The trust names you as trustee.

Clara signs the trust documents, funds the trust, and the trust becomes irrevocable.

21

Who is Your Client?

22

A. Clara as the settlor, because she asked you to draft the trust.

B. The trust itself, as an entity.

C. The beneficiaries of the trust.

D. It depends on which phase of the engagement you are in.

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Answer #3

D.

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The unclear, yet classic lawyer answer of, "it depends."

And the reason is that, at various stages in this scenario, the individual or entity that is your client does not stay static.

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Victor was driving his 7-year-old daughter Veronica to her dance class when they were hit by a truck, causing a violent crash.

Unfortunately, Victor did not survive. Veronica escaped with relatively minor injuries, but she was still transported to the hospital via ambulance, had a two-night stay in the hospital, and required months of physical therapy.

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Polly, Veronica's mom, was not in the vehicle at the time and has been helping Veronica with her recovery while grieving the loss of her husband.

Polly hired you to represent Veronica.

28

Who is Your Client?

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A. Only Polly, the mother

B. Polly and Veronica

C. Only Veronica, the child

D. The GAL appointed to assist Veronica

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Answer #4

C.

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Even though Polly hired you and even though Veronica is a minor, Veronica is your client.

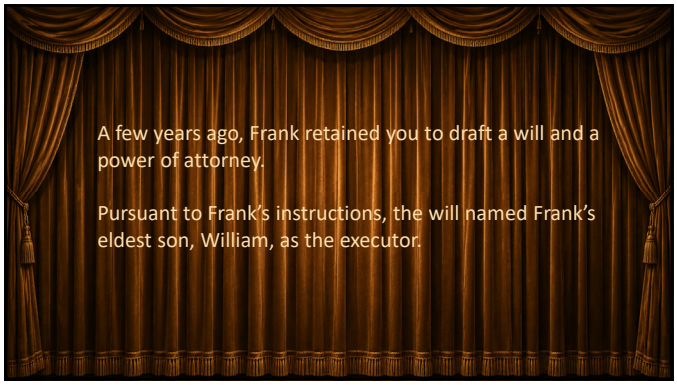
Pursuant to K.S.A. 60-217(c), certain representatives may sue on behalf of a minor, including a general guardian or conservator.

The parent acts as a representative – the procedural vehicle through which the child's claim is prosecuted.

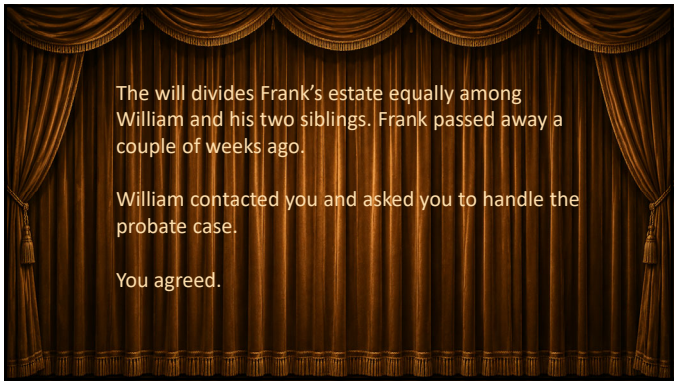
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A few years ago, Frank retained you to draft a will and a power of attorney.
Pursuant to Frank's instructions, the will named Frank's eldest son, William, as the executor.

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The will divides Frank's estate equally among William and his two siblings. Frank passed away a couple of weeks ago.
William contacted you and asked you to handle the probate case.
You agreed.

35


Who is Your Client?

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A. Frank's interests, because you drafted the will and want to make sure that his interests are carried out.

B. William, but only in his capacity as executor of Frank's estate.

C. Frank's estate, including its beneficiaries.

D. William, in both his personal capacity and in his capacity as executor of Frank's estate.

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Answer #5

B.

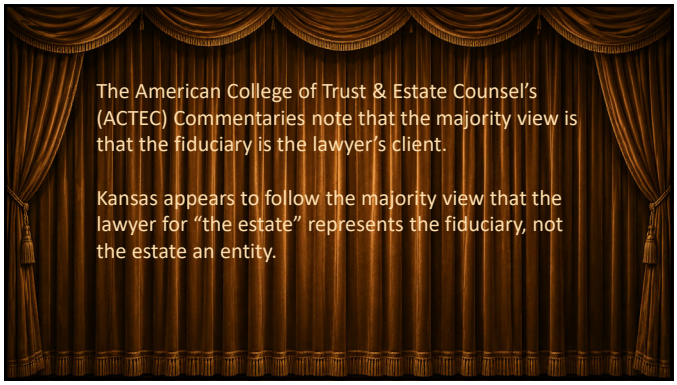
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William, in his capacity as executor of Frank's estate, is your client.

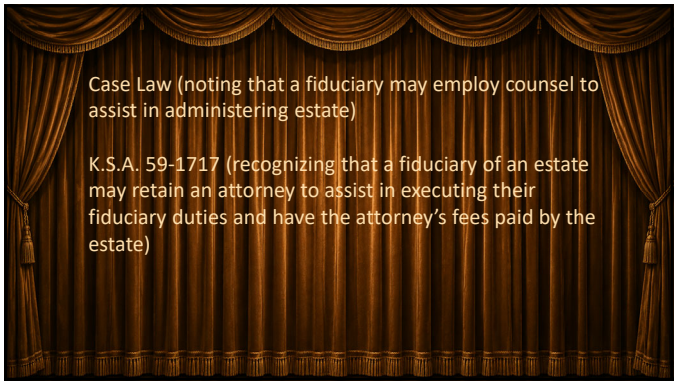
KRPC 1.7, Comment [26]: Notes the two main views: (1) Client is the Fiduciary or (2) Client is the "Estate" including its beneficiaries.

In order to comply with conflict of interest rules, the lawyer should make clear the lawyer's relationship to the parties involved.

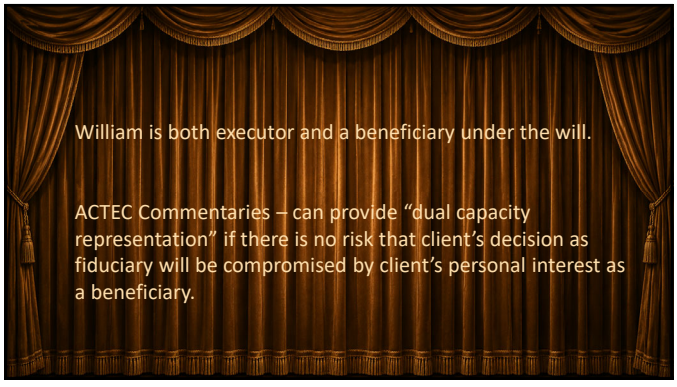
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The American College of Trust & Estate Counsel's (ACTEC) Commentaries note that the majority view is that the fiduciary is the lawyer's client.
Kansas appears to follow the majority view that the lawyer for "the estate" represents the fiduciary, not the estate an entity.

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Case Law (noting that a fiduciary may employ counsel to assist in administering estate)
K.S.A. 59-1717 (recognizing that a fiduciary of an estate may retain an attorney to assist in executing their fiduciary duties and have the attorney's fees paid by the estate)

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William is both executor and a beneficiary under the will.
ACTEC Commentaries – can provide "dual capacity representation" if there is no risk that client's decision as fiduciary will be compromised by client's personal interest as a beneficiary.

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Best Practice

In engagement letter, clearly define scope of representation to fiduciary. Execute informed waiver of lawyer advocating client's personal interest that is inconsistent with client's fiduciary duty.

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The Beneficiaries

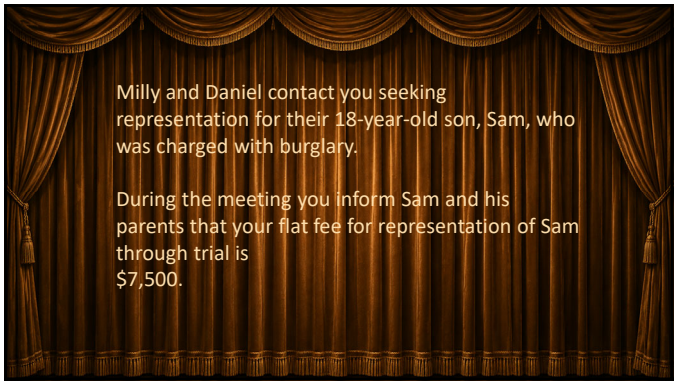
ACTEC Commentaries recommend that lawyer for fiduciary inform beneficiaries:

- Lawyer has been retained by the fiduciary to assist in administering estate.
- Lawyer represents the fiduciary, not them
- Will provide status updates regarding the probate case
- Beneficiaries may want to retain counsel to represent their interests

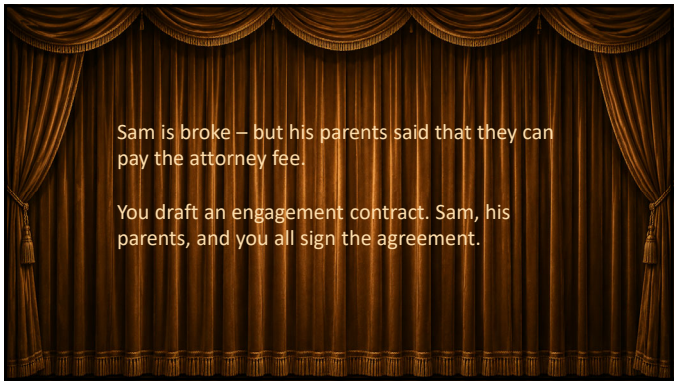
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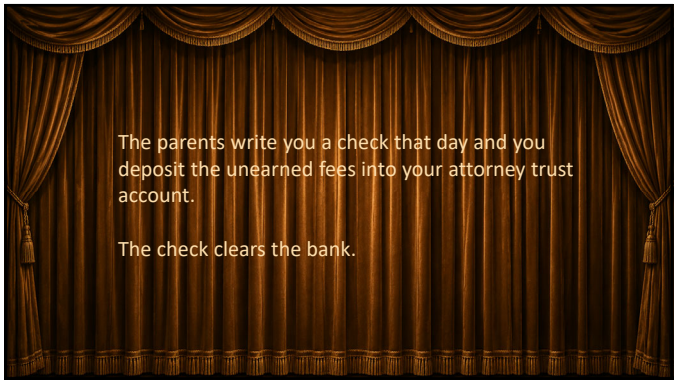
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Milly and Daniel contact you seeking representation for their 18-year-old son, Sam, who was charged with burglary.
During the meeting you inform Sam and his parents that your flat fee for representation of Sam through trial is $7,500.

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Sam is broke – but his parents said that they can pay the attorney fee.
You draft an engagement contract. Sam, his parents, and you all sign the agreement.

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The parents write you a check that day and you deposit the unearned fees into your attorney trust account.
The check clears the bank.

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Who is Your Client?

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A. Only Milly and Daniel because they paid the fee.

B. Only Sam because he is the one charged with the crime who needs representation.

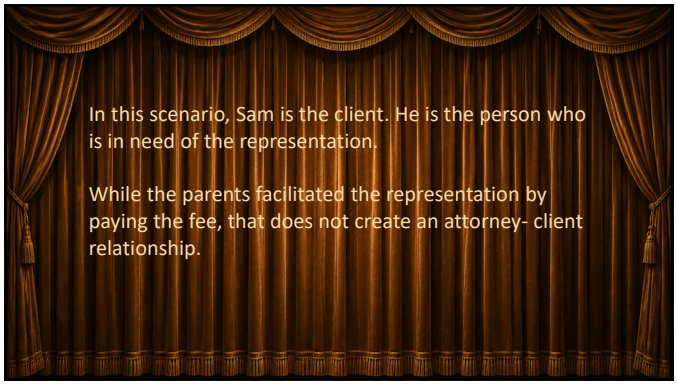
C. Milly, Daniel, and Sam because their interests (in keeping Sam out of prison) are aligned.

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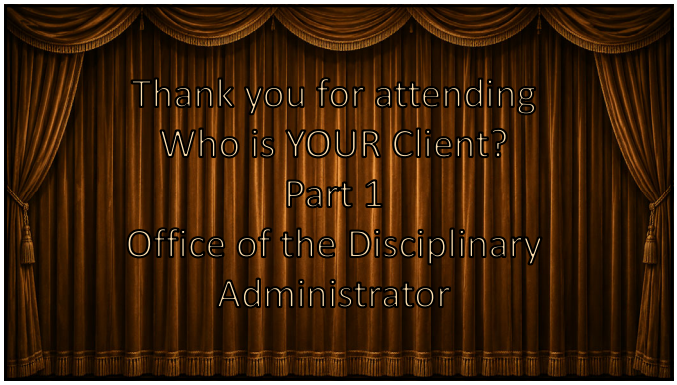
Answer #6

B.

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In this scenario, Sam is the client. He is the person who is in need of the representation.
While the parents facilitated the representation by paying the fee, that does not create an attorney- client relationship.

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Thank you for attending
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