

Final

RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
Opinion No.2008-03 Request No. 951
Issued July 10, 2008

FACTS:

The inquiring attorney represented a client in a claim for personal injuries related to an automobile accident. Following the accident, the client was treated by various medical providers, including a chiropractor and a medical facility that took x-rays. The client did not have health insurance. The client signed a purported assignment, entitled "Doctor's Lien," in which the client gave "a lien to [the chiropractor] on any settlement, claim, judgment, or verdict as a result of said accident/illness, and authorize and direct you, my attorney/insurance carrier, to pay directly to said doctor such sums as may be due and owing for services rendered me, and to withhold such sums from such settlement, claim, judgment or verdict as may be necessary to protect said doctor." The inquiring attorney also signed the document, in which he acknowledged receipt of the "lien" and agreed to honor it. The inquiring attorney signed a similar document in favor of the provider of x-rays.

Several months later, the inquiring attorney received a check in the amount of \$1000 from an insurance company under the medical-payment coverage of the pertinent insurance policy. The check was made payable to the client. The inquiring attorney phoned the client and requested that the client come to the law office to endorse the check, but the client did not respond. The next day, the client retained other counsel to pursue the claim. The successor counsel has sent the inquiring attorney a letter, requesting him/her to forward the proceeds to the client. The chiropractor has asked the inquiring attorney not to forward the check to either the successor counsel or the client.

ISSUE PRESENTED:

The inquiring attorney requests the Panel's advice regarding what to do with the check.

OPINION:

Under Rule 1.15(d) and (e), the inquiring must hold the check until the disputes between the client and the providers can be resolved, or file an interpleader action for resolution by the court.

REASONING:

Paragraphs (d) and (e) of Rule 1.15 entitled "Safekeeping property" are pertinent to this inquiry, and state as follows:

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as which the interests are not in dispute.

Rule 1.15(d) imposes three obligations on a lawyer receiving funds in which a client or third party has an interest: the duty to notify promptly, the duty to deliver promptly, and the duty to account. Ethics Advisory Panel Gen'l Informational Opinion No. 7. Where the client does not consent to payment of a third party or repudiates a prior agreement to pay a third party, the lawyer may not pay the third party. Id. The lawyer has an obligation to protect the disputed property notwithstanding a client's demand that amounts be disbursed to the client. Id.

In the instant inquiry, the inquiring attorney has notified the client and the providers, but the client has not consented to the inquiring attorney's paying them. The client and the providers both are claiming an interest in the check. In that instance, Rule 1.15(e) requires the inquiring attorney to hold the check until the dispute is resolved. Because the check is made payable to a client who will not endorse it, the inquiring attorney does not have the option of depositing it in his/her client account for safekeeping. Alternatively, the inquiring attorney may institute an interpleader action for resolution by the court.