

**Rhode Island Supreme Court  
Ethics Advisory Panel Opinion No. 2012-06  
Issued July 12, 2012**

FACTS

The inquiring attorney represents a client in a personal injury claim related to a motor vehicle accident involving an uninsured motorist. The client accepted in settlement her own insurance company's maximum \$25,000 policy limit. The client has approximately \$22,000 in outstanding medical bills related to her injuries. After receiving the settlement funds, the inquiring attorney phoned the client's medical providers to ascertain outstanding balances and further, to inquire whether there were any assignments or so-called medical liens. One of the providers (Provider) responded that it was owed over \$10,000, and that the client had signed a lien. The inquiring attorney has obtained a copy of the assignment made by the client in favor of this Provider. After explaining to Provider that the settlement funds are insufficient to satisfy all providers, Provider stated that it would accept no less than \$9,000 to settle the outstanding balance.

ISSUE PRESENTED

The inquiring attorney seeks the Panel's advice regarding his/her ethical obligations under the Rules of Professional Conduct relative to the disbursement of the client's settlement funds to this Provider.

OPINION

Pursuant to Rule 1.15, the inquiring attorney has an obligation to notify Provider that the inquiring attorney is in possession of the client's settlement funds. If the client consents, the inquiring attorney may pay Provider an agreed upon amount. Absent the client's consent to payment, the inquiring attorney has an obligation to hold the outstanding amounts due Provider until resolution. If no resolution results, the inquiring attorney may pay the disputed amounts into the court registry and may commence a lawsuit to seek judicial determination.

REASONING

Rule 1.15 of the Rules of Professional Conduct entitled "Safekeeping Property," imposes three obligations on a lawyer who receives settlement funds in which a client or a third person has an interest: The duty to notify promptly, the duty to deliver promptly, and the duty to account. Rule 1.15 states in pertinent part:

- (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

permitted 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 to which the interests are not in dispute.

While Rule 1.15 imposes on a lawyer obligations to third persons who have an interest in a client's settlement funds, payment to a third person out of those funds may only be made by the lawyer with the client's consent. R.I. Supreme Ct. Ethics Advisory Panel Gen. Informational Op. No. 7. Where a third person has an interest in the funds, but the client does not give the attorney consent to deliver them, the lawyer may not surrender them to the client, but instead must hold and protect the funds until disputes are resolved. Id.

Comment [4] to Rule 1.15 explains:

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

Professors Geoffrey Hazard and William Hodes have stated:

[The Comment] to Rule 1.15 uses the phrase "just claims" and "duty under applicable law" to suggest that the third party must have a *matured* legal or equitable claim, such as a lien on specific funds, in order to trigger the lawyer's duty to hold the funds apart from *either* claimant, pending

resolution of the dispute. Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering § 19.6, at 19-12 (3<sup>rd</sup> ed., Supp. 2005-2).

In the instant inquiry, there exists an assignment in favor of Provider. The Panel believes that the assignment triggers the inquiring attorney's duties under Rule 1.15(d). The Panel concludes that under Rule 1.15, the inquiring attorney has an obligation to notify Provider that he/she is in possession of the client's settlement funds. If the client consents, the inquiring attorney may pay Provider an agreed upon amount. Absent the client's consent to payment, the inquiring attorney has an obligation to hold the outstanding amounts due Provider until resolution. If no resolution results, the inquiring attorney may pay the disputed amounts into the court registry and may commence a lawsuit to seek judicial determination. The inquiring attorney should counsel the client about the client's obligations to pay the Provider, and should counsel the client that the Provider may seek payment from the client through collection agents and court action.