

DIGEST OF ETHICS ADVISORY PANEL
OPINION #89-16, REQUEST #62
Issued July 20, 1989

An attorney seeks Panel advice concerning the proper course of action in the circumstances described. The attorney advises the Panel that in 1988 she represented a real estate purchaser and that at the closing the house which her client was purchasing had not been completed. The attorney states that her client, the seller and the bank all agreed that she would escrow money from the seller's proceeds equal to the outstanding amount which the seller owed the general contractor. The attorney adds that all parties agreed that this money would be paid to the general contractor upon completion of the construction.

The inquiring attorney states that approximately one month later the general contractor notified her that the remaining work had been completed. The attorney's client contends that some of the work has been done improperly, and insists that additional work is required under the purchase and sale agreement. The client persists in taking this position despite the fact that the inquiring attorney has advised her that she is not in fact entitled to any additional work. The client refuses to authorize release of any of the escrowed funds. The inquiring attorney states that no litigation has been commenced regarding this matter and asks the Panel what steps to take and what to do with the escrowed funds.

Rule 1.16, "Declining or Terminating Representation," provides, in pertinent part:

(b) . . . A lawyer may withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

* * *

(3) The client insists upon pursuing an objective that the lawyer considers repugnant or imprudent.

By refusing to authorize release of the funds the inquiring attorney is holding which the attorney believes rightfully belong to another, the client is insisting upon conduct which the attorney finds "repugnant or imprudent." The Panel takes the position that the attorney should immediately withdraw from representation of the client, commence an action to interplead the client and the general contractor and deposit the funds at issue with the court. Because the situation described falls within the ambit of Rule 1.16 (b)(3), it is immaterial whether the attorney's withdrawal impacts adversely on the client or not.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.