

DIGEST OF ETHICS ADVISORY PANEL
Opinion #90-31, Request #88
Issued August 2, 1990

An attorney seeks Panel guidance as to the proper distribution of client funds under two related circumstances.

The attorney first advises the Panel that he represents a client who is seeking funds in connection with a physical injury. The attorney states that he and his client agreed that the attorney would ask the medical professionals who have provided treatment not to initiate collection proceedings on the condition that they would be compensated when a judgment or settlement was obtained. The attorney states that he did this and that the medical professionals relied upon his representation and did not initiate collection proceedings. Upon receipt of the settlement funds the client changed his mind and directed the attorney not to pay debts incurred for medical treatment. The attorney asks what obligations he now has with regard to the distribution of the settlement funds.

In a second scenario the attorney advises the Panel that he again represents a client seeking funds in connection with a physical injury, but in this scenario the client not only agreed verbally that he would compensate treating medical professionals when a settlement or judgment was obtained but also executed a form entitled "Medical Reports and Doctor's Lien." This form includes the client's authorization to the attorney to pay sums due to medical professionals directly out of settlement proceeds. It provides that the client understands that he or she is fully responsible for medical bills submitted in connection with treatment. The form also includes the following paragraph:

I agree never to rescind this document and that rescission will not be honored by my attorney. I hereby instruct that in the event another attorney is substituted in this matter, the new attorney honor [sic] this lien as inherent to the settlement and enforceable upon the case as if it were executed by him.

Upon receipt of the funds this client too changes his mind and, the agreement notwithstanding, directs the attorney not to pay debts incurred for medical treatment. The attorney asks what obligations he has with regard to the distribution of settlement funds in this second scenario.

Rule 1.2, titled "Scope of Representation" provides, in pertinent part:

- (a) A lawyer shall abide by a client's decision concerning the objectives of representation subject to paragraphs (c), (d), (e) . . .

* * *

(d) A lawyer shall not . . . assist a client in conduct that the lawyer knows is . . . fraudulent . . .

The Interprofessional Code of Cooperation for the Rhode Island Bar Association and the Rhode Island Medical Society, (hereinafter "Interprofessional Code") adopted in 1985 includes specific provisions, implementing some of the obligations arising from Rule 1.2 in the contexts described. Article 4, sections 4.3 and 4.4 of the Interprofessional Code provide:

4.3. Attorneys should advise their clients that bills rendered for such medical services by a physician are the sole responsibility of the client and are independent of pending litigation, and that such bills are due and payable when rendered by the physician. Attorneys should also incorporate into their agreements with clients an assurance that treating physicians will be paid unpaid balances from the proceeds of the case.

4.4. Counsel should obtain authority from the client to pay medical bills directly to the physician in the event of a settlement or judgment in accordance herewith.

With regard to the first scenario described, the Panel takes the position that since the client agreed to pay medical professionals out of funds received in settlement and the medical professionals agreed to forgo collection proceedings in reliance on this agreement, if the attorney assists the client in violating this agreement, the attorney will be in violation of Rule 1.2(d).

In the second scenario, the fact that the agreement to pay medical professionals out of settlement proceeds is committed to writing does not alter the Panel's position. The Panel finds that if a client, medical professional and attorney all agree that the bills for medical treatment will be paid to the medical professional by the attorney out of the funds received through settlement then it is a violation of Rule 1.2(d) for the attorney to accede to a client's subsequent request that the attorney disregard the agreement.

The Panel issues a word of caution with regard to the specific agreement form which the attorney submitted for review. The Panel generally cannot "embark on the task of editing." See digest of opinion 87-3. In this case, however, the Interprofessional Code includes sample language approved by both the state's medical and legal associations and designed to describe the various obligations at issue in this inquiry. The language submitted exceeds the reach of the language approved in the Interprofessional Code. It is permissible and desirable for a client to indicate in writing that he will honor the terms of the agreement he makes. The agreement submitted, however, does not simply set forth the client's obligations; it appears to include an attempt to bind some future attorney hired by the client. The agreement submitted also includes a statement which the client is to ratify:

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"I agree never to rescind this document and that a
rescission will not be honored by my attorney"

A client may not be asked to agree "to surrender the right to
terminate the lawyer's services." Two portions of the agreement
submitted, both cited above, have this effect and are therefore
impermissible. See, Comment, Rule 1.2; ABA/BNA Manual of Professional
Conduct 31:1101 et seq.

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.