

ETHICS ADVISORY PANEL
Opinion #92-47, Request #271
Issued July 23, 1992

An attorney seeks Panel advice based upon the following circumstances. The attorney represented a client who was hospitalized. A lien was recorded by the hospital and some of the hospital claims were turned over to a collection agency, prior to a settlement. Eventually a discharge of the liens was obtained by the hospital and an arrangement to pay the medical insurance was made. Before remittance to the client was made, written claims by the collection agency were received by the attorney. The attorney is unsure as to whether the hospital has been paid in full. The attorney's concern is with the further distribution of funds held by the attorney to the client if in fact the hospital was not paid in full at this time.

The Panel believes that Rule 1.15(c) and the comments thereto apply to this situation. The Rule states that:

When in the course of representation a lawyer is in the possession of property in which both the lawyer and another person claims interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

In addition, the Comments to Rule 1.15 states that:

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. (emphasis added).

The Panel believes that the lawyer may refuse to surrender the property to the client without breaching an ethical obligation pursuant to Rule 1.15(c). Disbursing the funds to the client would not be a violation of the Rules as long as the attorney properly informs the client regarding the possible problems which may arise as a consequence of an unresolved issue with the collection agency's claim for payment. See Rule 1.4 entitled "Communication."