

(0009J)

ETHICS ADVISORY PANEL
Opinion #92-82, Request #310
Issued November 18, 1992

An attorney seeks Panel advice regarding the following situation. The attorney's client has had a lien placed on the file by a previous attorney. Once the case settled, the inquiring attorney reports that monies were disbursed and held pursuant to Rule 1.15. The client filed a disciplinary action against the previous attorney alleging the lien was frivolous. The client requests that the remaining monies on deposit with the inquiring attorney should be paid to the client and not the previous attorney.

As a threshold matter, the Panel declines to comment on the past conduct of an inquiring attorney. Rule 2(d) of the Ethics Advisory Panel states that the Panel may decline to render an advisory opinion when the request requires a determination to be made concerning past conduct.

The Panel may comment, however, regarding the attorney disbursing the funds held by him which are subject to the attorney's lien. The Panel believes that Rule 1.15(b) entitled "Safekeeping Property" governs this inquiry. The Rule states that:

(b) 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 persons, shall promptly render a full accounting regarding such property.

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 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.

The Panel agrees that the requesting attorney should again suggest to the client that the fee arbitration program established by the Bar Association may provide a means for resolving this matter. In the interim, the disputed amount of the attorney's lien may be kept separate by the inquiring attorney and not disbursed until the dispute is resolved. If the fee dispute between the parties cannot be resolved, then the attorney may need to seek the guidance from the proper tribunal in the form of an interpleader action.