

(0009J)

ETHICS ADVISORY PANEL
Opinion #92-87, Request #315
Issued November 18, 1992

An attorney seeks Panel advice with regard to the following facts. The inquiring attorney represents a client in a legal matter whose first attorney was suspended from the practice of law. A third attorney, who was the partner of the first attorney, asserted an attorney's lien against the client's settlement for the services rendered by the first attorney. The inquiring attorney informs the Panel that the client instructed the inquiring attorney not to pay any fee to the first attorney or the successor attorney. The inquiring attorney asks whether the client's request should be honored.

The Panel advises that Rule 1.5(e) addresses this issue specifically. The Rule states that:

A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer or, by written agreement with the client, each lawyer assumes joint responsibility for the representation;

(2) the client is advised of and does not object to the participation of all the lawyers involved; and

(3) the total fee is reasonable.

The fees should be divided between the suspended attorney based on quantum meruit; the fair value of services rendered before the former attorney's suspension. See Opinion #91-71. The Panel believes that the inquiring attorney should keep the fee amount in an escrow account until the dispute is resolved. Both attorneys should try to reach an agreement on the reasonable value of services prior to the suspension and if that fails, then a tribunal may have to make the determination. The Panel does not comment on the suspended attorney's right to assert an attorney's lien for a fee.