

ETHICS ADVISORY PANEL  
Opinion #93-16, Request #346  
Issued March 31, 1993

An attorney represents a client regarding a personal injury matter. The attorney settled the case for the full amount of the negligent party's liability coverage. The client authorized the payment of some outstanding medical bills but not all of these bills. In order to avert collection proceedings against the client, the attorney and creditor agreed pursuant to the clients instructions, that the attorney would hold a sum equal to the outstanding bills. The attorney continued to represent the client against the client's insurance carrier under the underinsured motorist coverage. In the interim, the client filed a disciplinary complaint against the attorney. The disciplinary complaint was dismissed. The client also mailed a hostile and threatening letter to the attorney. Given this environment, the attorney withdrew representation and forwarded the file to the client. The attorney seeks advice on his/her obligations regarding the remaining money in the client's trust account.

The Panel agrees that Rule 1.15 entitled "Safekeeping Property" addresses the inquiring attorney's situation. Rule 1.15(b) states that:

(b) Upon receiving funds or other property which a client or third person has an interest, a lawyer shall promptly notify a 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.

The comments to Rule 1.15 discuss an attorney's obligation with regard to property of a client or a third party. "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."

In this case, the attorney undertook, at the client's instruction, to act as a stakeholder pending the resolution of a dispute between the client and a third party. As such, the attorney may not unilaterally turn the money over to the client, even if the client should later give a contrary instruction. The lawyer must hold the funds pending a resolution of this matter and, if the attorney deems it appropriate, may institute an interpleader proceeding.