

ETHICS ADVISORY PANEL
Opinion #93-19, Request #351
Issued April 21, 1993

The attorney represented a client in a personal injury matter whereby he/she obtained a substantial settlement for the client. The attorney contacted the client on numerous occasions to endorse the check so that disbursements could be made. Eventually, the attorney met the client at her place of employment where she endorsed the settlement check. The client authorized the attorney to disburse the necessary funds from that check and the balance is currently being held by the attorney. The client instructed the attorney to hold the check and not to mail it to her. The check remains in the attorney's possession. The attorney indicated that there are no ill feelings between attorney and client. The attorney seeks advice from the Panel regarding the money held by the attorney.

The Panel agrees that Rules 1.15(b) addresses this situation. 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.

According to the facts, the client has made it clear that she would like the attorney to hold the settlement monies in a client account. The Panel cautions the attorney regarding Rule 1.2(d) entitled "Scope of Representation". The Rule states that:

(d) A lawyer shall not counsel a client to engage or assist a client in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or

assist a client to make a good faith effort to determine the validity, scope, meaning of application of the law.

The Panel opines that the attorney may continue to hold the client's funds in accordance with the client's request. There is no suggestion in the inquiry that the attorney believes that the client may be engaged in fraudulent activity.