

ETHICS ADVISORY PANEL  
OPINION #93-55, REQUEST #396  
Issued August 25, 1993

Attorneys A and B represented a creditor in a collection suit and recorded a lien against a debtor-spouse's interest in real property owned as tenants by the entirety. Attorneys A and B provided a payoff figure with regard to a closing to Attorney C, the title attorney, but received no funds. One (1) year later, after numerous inquiries, Attorneys A and B were advised by Attorney C that the funds had been set aside at the closing, but were being held in escrow by Attorney D, the attorney for the debtor-spouse and his wife. It is unclear when the closing occurred. Attorneys A and B subsequently wrote to Attorney D and notified the title insurance company of the lien and their intention to enforce it. As a result, Attorney D promptly forwarded the funds to Attorneys A and B.

Attorneys A and B inquire as to whether Attorney D's actions in failing to notify them that he was holding the funds, or that a dispute arose concerning payment of the same, imposes a duty on them to report Attorney D's conduct to the Disciplinary Board.

The Panel opines that these facts present a possible violation of Rule 1.15(b) by Attorney D. Rule 1.15(b) provides:

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.

Pursuant to the rule, a lawyer is required to promptly notify the client or third person holding an interest in funds or other property upon receiving the same. Because the facts are unclear as to when the closing occurred, the Panel cannot determine whether Attorney D failed to act promptly as required under Rule 1.15(b). The Panel notes however, that it appears there may have been a one (1) year delay between the receipt of the funds by Attorney D, and the time Attorney D forwarded the same to Attorneys A and B. If that were the case, the Panel believes Attorney D's conduct would constitute a violation of Rule 1.15(b), and trigger the duty of Attorneys A and B to inform the appropriate professional authority pursuant to Rule 8.3. Rule 8.3 states that:

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[a] lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority.

The Panel opines that if Attorneys A and B believe that Attorney D's conduct violates Rule 1.15(b), then they have a duty to report the misconduct to the Disciplinary Board pursuant to Rule 8.3.