

ETHICS ADVISORY PANEL
OPINION #93-91 REQUEST #426
Issued December 8, 1993

The inquiring attorney inquires whether his/her law firm may accept settlement offers for lawsuits in amounts it deems fair and reasonable on behalf of clients if the client cannot be located despite diligent efforts by the lawyer to locate the client. The inquiring attorney proposes having the settlement check paid to the order of the lawyer on behalf of the client.

The ethical obligations of a lawyer in situations in which a client cannot be located are outlined in General Informational Opinion #6 (Issued June 30, 1993). In that Opinion, this Panel opined, among other things, that "[a] lawyer may not settle the client's claim without express authority from the client." The inquiring attorney's proposed conduct of accepting settlement offers without the client's express consent is prohibited under General Informational Opinion #6.

Further, Rule 1.2(a) provides that:

A lawyer shall abide by a client's decision concerning the objectives of representation, subject to paragraphs (c), (d) and (e), and shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to accept an offer of settlement of a matter. (emphasis added)

Under Rule 1.2(a), the client possesses the sole authority for making the ultimate decision with respect to whether to settle a case. The Panel believes that the acceptance of an offer to settle a lawsuit by a lawyer without the client's authority is an usurpation of the client's right to decision making in pursuit of the objective(s) of representation. Thus, pursuant to Rule 1.2(a), the inquiring attorney may not accept settlement offers without the express authority from the client despite his/her inability to locate the client.