

ETHICS ADVISORY PANEL
OPINION #94-76 REQUEST #550
Issued December 6, 1994

The inquiring attorney had been retained by a group of related corporations, Client X, to perform a variety of legal services for which he had been compensated by a "weekly salary." In addition, Client X gave the inquiring attorney \$XXX for the inquiring attorney's out of pocket expenses on behalf of Client X. The attorney rendered regular accountings of this expense fund.

After this arrangement had been in effect for some time, the client discharged the inquiring attorney. Although the inquiring attorney sought to withdraw from all matters involving Client X, the attorney and client agreed that the attorney would continue to represent Client X in certain matters and would be compensated at specified hourly rates.

The inquiring attorney now asserts that Client X has failed to pay the agreed hourly compensation. The inquiring attorney seeks the Panel's opinion as to whether the attorney can retain the funds in the client's account in payment of the attorney's fees, whether the attorney may sue the former client for outstanding fees and whether or not the disputed funds should be held in a separate account.

Rule 1.15 entitled "Safekeeping Property" states in pertinent part:

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

The Panel does not perceive any basis for the attorney's claiming an interest in the client's funds that are held by the attorney for the express and sole purpose of paying expenses. If, as the attorney states, the representation of Client X has been completed, the attorney should return to Client X any balance in this expense account with an accounting. The result would be otherwise if the attorney were holding funds received from the client or a third party with the understanding that all or a portion of those funds would be used to pay the attorney's fees.

The Panel encourages the inquiring attorney to attempt to arbitrate the fee dispute before the Rhode Island Bar Association Committee on Fee Disputes. In other respects, the attorney's claim against Client X is a matter of substantive contract law as to which the Panel declines to opine.