

ETHICS ADVISORY PANEL
OPINION # 95-9, REQUEST # 567
Issued March 23, 1995

The inquiring attorney believes that a paralegal assistant employed by a law firm has been holding him/herself out as an attorney.

Rule 8.3 entitled "Reporting Professional Misconduct" addresses the inquiring attorney's responsibility in this matter. That Rule states:

(a) 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.

Equally applicable to this inquiry is Rule 5.5 entitled "Unauthorized Practice of Law." The Rules states that:

(a) A lawyer shall not practice law in a jurisdiction where doing so violates the regulations of the legal profession in that jurisdiction; or

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

Furthermore, Rule 5.1 entitled "Responsibilities of a Partner or Supervisory Lawyer" and Rule 5.3 "Responsibilities Regarding Nonlawyer Assistants" address the law firm's obligations in this matter.

The Rules of Professional Conduct proscribe ethical conduct to which attorneys are to abide. The Rules require lawyers to supervise non lawyers in their employ. See, Rules 5.1, 5.3, 5.5. If the inquiring attorney believes that the law firm's partners' conduct rises to a Rule 8.3 violation, then he/she is obligated to report such conduct to the appropriate authorities.

The nonlawyer's activities are controlled by the statute governing Unauthorized Practice of Law, which is an area of substantive law as to which the Panel declines to opine.

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.

Pursuant to the above cited Rule, a lawyer "shall promptly notify" a client or third person when the attorney receives funds or property in which a client or third person claims an interest. However, if a dispute arises concerning respective interests, the portion in dispute shall be kept separate by the attorney.

Because there is a dispute regarding the client and the treating physicians, the portion in dispute should be kept separate by the inquiring attorney pending a resolution, arbitration or interpleader.