

ETHICS ADVISORY PANEL  
OPINION # 95-27, Request # 589  
Issued May 4, 1995

Attorney # 1 represented a client in a personal injury matter. During the course of the client's treatment, the client and Attorney # 1 signed a medical lien authorizing payment to the treating physician directly from the settlement. The client became dissatisfied with Attorney # 1 and transferred the file to Attorney # 2 (inquiring attorney). The file did not contain a copy of the medical lien therefore Attorney # 2 was not aware of the lien. Attorney # 2 settled the client's case and the client directed Attorney # 2 to not pay the doctor. Attorney # 2 is contacted by the doctor, who advises the attorney about the lien and demands payment. Attorney # 2 placed the disputed funds in escrow pending this Panel's opinion. Attorney # 2 seeks advice regarding the disbursement of escrow funds.

When a lawyer is in possession of funds or property of others, Rule 1.15 entitled "Safekeeping of Property" applies. The Rule states in pertinent part as follows:

(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.

(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.

Subsection (b) imposes a duty on a lawyer who is in possession of funds in which a client or third person has an interest to promptly notify the client or third person. The Rule also requires a lawyer to forward to the client or third person any funds that the client or third person is entitled to receive.

In addition, the Comments to Rules 1.15 states that:

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third party claims 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.

By placing the disputed fee in escrow, the inquiring attorney has made an effort to comply with Rule 1.15. According to the facts provided, Attorney # 1 and the client undertook a duty to the physician when they signed a lien creating a reliance on behalf of the physician. If the client continues to dispute the amount owed to the physician, then the disputed portion should be held in escrow pending a resolution, arbitration or interpleader action.