

ETHICS ADVISORY PANEL
OPINION # 95-29, Request # 592
Issued - July 13, 1995

The inquiring attorney represents two family members who were involved in a serious automobile accident. Medical bills were substantial and exceeded the amount of coverage available through the driver's policy. A settlement was received and half of the inquiring attorney's contingency fee was taken. The other half remains in escrow pending this Panel's opinion. The inquiring attorney asks whether he/she can return a portion of the fee to his family members when there is a lien against the settlement by Medicare. One family member has terminal cancer and requires continuous medical care.

Rule 1.15 entitled "Safekeeping Property" applies to this inquiry. The Rule states in pertinent part:

(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.

Because Medicare has an interest in the personal injury settlement, the inquiring attorney shall promptly deliver to Medicare the funds it is entitled to receive. If the inquiring attorney reduces his/her fee, then that portion of the fee is owed to Medicare pursuant to Rule 1.15. The Panel opines that the inquiring attorney is not prohibited from gifting money to his/her relatives from his/her personal funds.