

ETHICS ADVISORY PANEL
OPINION # 95-31, Request # 596
Issued - July 13, 1995

The inquiring attorney represents the husband a divorce action. Pursuant to the Final Decree, the husband agreed in writing to pay the wife one-half of the net proceeds received by him from a personal injury claim. The inquiring attorney anticipates that the client will instruct him/her not to pay the wife when the proceeds are received. The wife is not represented by counsel and the insurance company is not aware of the agreement. The inquiring attorney asks whether he/she has an obligation to pay the wife her one-half share.

Rule 1.15 entitled "Safekeeping Property" 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.

The comments to this provide further guidance to this inquiry and states:

Third parties . . . may have just claims against funds. 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.

In accordance with the final decree, the client is under an obligation to pay his ex-wife her share of the personal injury settlement. The client and the inquiring attorney cannot ignore this contract. Pursuant to Rule 1.15, the inquiring attorney shall promptly notify the client and the wife upon receiving the funds. If a dispute arises, the portion in dispute shall be kept separate by the inquiring attorney until the dispute is resolved.