

Final

RHODE ISLAND SUPREME COURT
ETHICS ADVISORY OPINION 97-20, REQUEST No. 726
Issued October 9, 1997

Facts:

The inquiring attorney recently sought a Panel advisory opinion relating to his/her obligations under Rule 1.15(b) in the disbursement of a client's settlement funds in which a physician claimed an interest which the client disputes. The Panel advised the inquiring attorney that under Rule 1.15(b) he/she has an obligation to protect disputed funds in his/her possession by either retaining them in his/her trust account until resolution, or if after a reasonable time no resolution is reached, paying them into the court registry in an interpleader action. R. I. Sup. Ct. Ethics Advisory Opinion 97-17(1997). In the instant follow-up request, the inquiring attorney states that the amount in dispute is not substantial and that an interpleader action would not be cost-efficient for his/her client.

Issues Presented:

The inquiring attorney now asks (1) whether the amount in dispute may be placed in a savings account, and (2) whether he/she is obligated to file an interpleader action if the dispute is not resolved.

Opinion:

(1) The inquiring attorney may place the disputed amount in a separate savings account in trust pending resolution. (2) The inquiring attorney is not obligated to file an interpleader action if the client and the physician are unable to settle the dispute. The inquiring attorney has an obligation to protect the disputed funds by either retaining the funds in a trust account until resolution or depositing them in the court registry in an interpleader action.

Reasoning:

Rule 1.5(d) requires lawyers to deposit clients' funds which are nominal in amount or to be held for a short period of time in interest-bearing trust accounts known as IOLTA accounts. Whether clients' funds are nominal in amount or to be held for short time periods shall be determined solely by the lawyer. Rule 1.15(d)(2). Lawyers may elect not to deposit clients' funds in such accounts. Rule 1.15(f). In addition, Rule 1.15(g) permits lawyers to deposit a client's funds in a separate trust account. Paragraph (g) provides:

(g) Nothing in this Rule shall preclude a lawyer or law firm from depositing any funds of a client other than those funds described in paragraph (d) of this Rule in an interest bearing account and accounting for the interest to such client.

Pursuant to Rule 1.5(g), the inquiring attorney may hold the disputed funds in trust in a separate savings account.

Regarding the inquiring attorney's second question, Rule 1.15(b) does not require the inquiring attorney to file an action in interpleader if a dispute over a portion of the settlement funds cannot be resolved. In General Informational Opinion No. 7 (1997) the Panel addressed a lawyer's obligations under Rule 1.15(b) in the disbursement of a client's settlement funds in which third persons such as medical providers may have an interest. Rule 1.15(b) requires lawyers to protect funds in their possession in which clients and third persons may have an interest. Where a client and a third person, such as a physician, each claim to be entitled to certain funds in the possession of a lawyer, the lawyer may not disburse the disputed amounts to either of them, and is required to hold those amounts in trust until resolution. Resolution may be nowhere on the horizon and a lawyer could end up holding disputed funds for months, even years. After a reasonable time and after failed efforts to resolve the dispute, a lawyer may decide that he/she no longer wishes to remain a stakeholder. However, the lawyer still has an obligation to protect the disputed amounts. Filing an interpleader action in which the funds are deposited in the court registry is a permissible option under the Rules.