

Final

**Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2011-02  
Issued June 9, 2011**

FACTS

The inquiring attorney represents Mr. A, a long-standing client, in a negligence claim that arose in 2010. In 2008, Mr. A accompanied Ms. B to the inquiring attorney's office, and after consulting with Ms. B, the inquiring attorney took on the representation of Ms. B in a child support matter which is pending in Family Court.

During recent months, a dispute over a financial debt ensued between Mr. A and Ms. B. In February 2011, Ms. B delivered to the inquiring attorney a document that purports to set forth an agreement between her and Mr. A concerning the debt. The document, executed by Mr. A and Ms. B in February 2011, states that Mr. A owes Ms. B three thousand dollars, and that the amount owed shall be paid out of the settlement proceeds of Mr. A's pending negligence claim. The document further states that Mr. A shall direct the inquiring attorney to make such payment upon receipt of the settlement funds.

Mr. A's claim settled in May 2011, and the inquiring attorney is prepared to disburse the settlement proceeds. The inquiring attorney informed Mr. A that he/she is in possession of the aforementioned document. Mr. A has instructed the inquiring attorney not to disburse any funds to Ms. B, and Ms. B has told the inquiring attorney she wants him/her to pay what Mr. A owes her out of Mr. A's settlement funds. The inquiring attorney seeks the Panel's guidance on how to proceed.

ISSUES

(1) What are the inquiring attorney's obligations regarding disbursement of Mr. A's settlement funds? (2) Is there a conflict of interest in the continued representations of Mr. A and of Ms. B? (3) Must the inquiring attorney withdraw from one or both representations?

OPINION

(1) The inquiring attorney must either retain the disputed amounts in his/her trust account until resolution of the dispute, or at his/her option, pay the disputed funds into the court registry and file an action to have a court resolve the dispute. (2) Rule 1.7 does not

prohibit the continued representations of Mr. A in his negligence matter, and of Ms. B in her child support matter. (3) The inquiring attorney may choose to withdraw from one or both representations pursuant to Rule 1.16, subject to the conditions set forth in Rule 1.16(b)(c) and (d).

### REASONING

Rule 1.15 entitled “Safekeeping property” provides in pertinent part as follows:

(d) 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 person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Comment [4] to Rule 1.15 is instructive. It states:

Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

A lawyer may not pay a third person out of a client's settlement funds without his or her client's consent. Ethics Advisory Panel Gen'l Informational Op. 7 (1997). Further, where a lawyer has notice that there is a purported assignment of settlement funds in favor of third persons, absent the client's consent to payment, a lawyer has an obligation to protect the funds in dispute, and to refuse to honor a client's demands for the disputed amounts. Id. In the instant inquiry, the inquiring attorney has notice that Ms. B has what purports to be an assignment of a portion of Mr. A's settlement proceeds, but does not have Mr. A's consent to pay her. The Panel concludes that the inquiring attorney must notify Ms. B that he/she is in possession of the amounts claimed by her, but that he/she

does not have Mr. A's authority to disburse the funds to her; and must either retain the disputed amounts in his/her trust account until resolution of the dispute, or at his/her option, pay the disputed funds into the court registry and file an action to have a court resolve the dispute.

The Panel next considers issues of conflict of interest, and the inquiring attorney's continued representations of Mr. A in his negligence claim, and of Ms. B in her domestic matter. One thing is certain: The Rules of Professional Conduct prohibit the inquiring attorney from representing either Mr. A or Ms. B in their adverse contract claims and debt dispute. See Rule 1.7(a)(1).

The Panel is of the opinion that the Rules permit the inquiring attorney to continue the representation of Ms. B in the domestic matter, and to execute the disbursement of Mr. A's settlement funds consistent with Rule 1.15. Although the inquiring attorney's representation of Mr. A in the negligence claim appears complete, the inquiring attorney has yet to disburse Mr. A's settlement proceeds, and the Panel views Mr. A as a current client. Therefore, Rule 1.7 applies. The rule states:

**Rule 1.7. Conflict of interest: Current clients.** (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Rule 1.7(a)(1) prohibits the *representation* of one client that is directly adverse to another client. The inquiring attorney's representation of Mr. A in his negligent claim, specifically in the disbursement of the remainder of the settlement funds exclusive of the disputed amounts, is not directly adverse to Ms. B. As well, the representation of Ms. B in her child support matter is not directly adverse to Mr. A. The interests of these two clients are indeed adverse, but in a third matter in which the inquiring attorney represents neither client. Therefore, no conflict of interest exists under paragraph (1) of Rule 1.7(a) for the

inquiring attorney to continue to represent Mr. A in his negligence claim and Mrs. B in her domestic matter.

A conflict of interest may also exist under Rule 1.7 if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client. Rule 1.7(a)(2). The bone of contention between Mr. A and Ms. B is the three-thousand dollars which Ms. B seeks out of Mr. A's settlement funds. Consistent with Rule 1.15, those funds will be set apart and protected until the dispute over them is resolved. It is not apparent to the Panel that there will be a significant risk that the continued representation of Mr. A in his negligence claim will be materially limited by the inquiring attorney's responsibilities to Ms. B in her domestic case; or that there will be a significant risk that the continued representation of Ms. B will be materially limited by the attorney's responsibilities to Mr. A. Therefore, a conflict of interest does not exist under Rule 1.7(a)(2) for the inquiring attorney's continued representations of Mr. A in his negligence matter, and of Ms. B in her child support case.

Having concluded that Rule 1.7 does not prohibit the continued representations of each client in their respective matters, the Panel notes that the inquiring attorney may not wish to continue one or both of the representations. Rule 1.16 entitled "Declining or terminating representation," permits the inquiring attorney to withdraw from either or both representations at his/her option, subject to the conditions set forth in Rule 1.16(b),(c) and (d).

Accordingly, the Panel concludes (1) that the inquiring attorney must either retain the disputed amounts in his/her trust account until resolution of the dispute, or at his/her option, pay the disputed funds into the court registry and file an action to have a court resolve the dispute; (2) that Rule 1.7 does not prohibit the inquiring attorney from continuing his/her representations of Mr. A in his negligence claim and of Ms. B in her child support case; and (3) that the inquiring attorney may choose to withdraw from one or both representations pursuant to Rule 1.16, subject to the conditions stated in Rule 1.16(b),(c) and (d).