

**RHODE ISLAND SUPREME COURT
ETHICS ADVISORY PANEL
GENERAL INFORMATIONAL OPINION NO. 7
Issued April 10, 1997**

The Panel has received inquiries concerning a lawyer's obligations under Rule 1.15(b) of the Rules of Professional Conduct in the disbursement of a client's recovery or settlement funds in which third persons such as medical providers may have an interest. Typically, the client in a personal injury case has executed a purported assignment or "medical lien" in favor of medical providers, but after settlement is reached, instructs the lawyer not to pay the outstanding medical bills. The client may dispute the outstanding bills or may have other plausible reasons for not paying the medical providers. In rare instances, a client may have no apparent reason to withhold payment, but insists that the lawyer not pay the providers. Often the client demands that the lawyer disburse the funds to the client.

Obligations under Rule 1.15(b) may arise in other situations. For example, a lawyer who is in possession of a client's settlement funds in a legal malpractice case may have notice that the client executed an assignment in favor of medical providers in the underlying personal injury case. In another situation, a client may make an offer, either directly or through counsel, to pay a judgment creditor in one case out of the client's recovery in an unrelated case. The duties under Rule 1.15(b) also arise when a lawyer in possession of a client's settlement funds in a superior court case receives notice, typically from the lawyer for the client's spouse in a divorce action, that the spouse is entitled to one-half of the net settlement funds pursuant to a property settlement agreement and order in the Family Court.

Rule 1.15(b) of the Rhode Island Supreme Court Rules of Professional Conduct imposes three obligations on a lawyer receiving funds in which a client or a third person has an interest: the duty to notify promptly, the duty to deliver promptly, and the duty to account. See R.I. Sup. Ct. Ethics Advisory Op. 95-60 (1996). That Rule provides 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.

Whether and to what extent a third person has an interest in a client's recovery or settlement funds are questions of substantive law, which if disputed are matters for judicial determination.

Although Rule 1.15(b) imposes on a lawyer obligations to third persons having an interest in a client's settlement funds, under a lawyer's concomitant obligation to abide by his or her client's decisions concerning the objectives of representation (Rule 1.2(a)), payment to a third person out of those funds may only be made by the lawyer with the client's consent. See R.I. Sup. Ct. Ethics Advisory Panel Op. 91-32 (1991). A lawyer owes a special duty of loyalty to his or her client as one of the claimants of the funds, and does not stand as a neutral observer as between a third party claimant and the client. Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering, §§1.15:301-302, at 459-460 (2nd ed. Supp. 1994). Therefore, where the client does not consent or repudiates a prior agreement to pay, and directs a lawyer not to pay medical providers or other persons who have an interest in the settlement funds, the lawyer may not pay them. See Ethics Comm. of the Los Angeles County Bar Association Op. 478 (1994).

What, then, are a lawyer's ethical obligations with respect to the disputed amounts? The controlling provision is Rule 1.15(b). The Panel is of the opinion that where a third person has an interest in the funds, but the client will not authorize payment, the lawyer has an obligation under Rule 1.15(b) to protect those funds. Moreover, a lawyer's duty to protect the disputed amounts arises notwithstanding a client's demand that the amounts be disbursed to the client. Rule 1.2(a) does not reach so far as to require a lawyer to accede to a client's demand for funds to which a third person may be entitled.¹ The Comment to Rule 1.15 provides some guidance in these circumstances. It states:

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 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.

¹In addition to their ethical obligations, lawyers must consider their potential legal liability in these circumstances. Lawyers who have notice of an assignment of their client's recovery have been held liable to assignees for disbursing the recovery in disregard of the assignment. See e.g., Kaiser Foundation Health Plan v. Aguiluz, 54 Cal. Rptr. 665, 668 (Cal. App. 1 Dist. 1996); Herog v. Isace, 594 A. 2d 1006, 1110 (Me. 1991); Leon v. Martinez, 638 N.E. 2d 511, 513 (N.H. 1994). But see Farmers Insurance Exchange v. Zerim, No. C021079 (Calif. Ct. App. 3d Dist. March 11, 1997).

Hazard and Hodes have noted:

The Comment to Rule 1.15 uses the phrases "just claims" and "duty under applicable law" to suggest that the third party must have a matured legal or equitable claim in order to qualify for special protection. Only in such cases may it be said that failure to recognize the third party interest is a species of fraud upon creditors or fraud upon the rendering court. ...[A]bsent some special duty to the third party, a lawyer would obviously be prohibited from disobeying the instructions of a client. Hazard and Hodes, at 460.

The Panel concludes that a lawyer may not pay medical providers or other third persons out of a client's settlement funds or recovery without the client's consent. Where a lawyer has notice that there are claims of third persons for payment for services or disbursements related to a client's case, such as outstanding medical bills, or that there is a lien or a purported assignment in favor of third persons, absent the client's consent to payment, a lawyer has an obligation to protect the funds in dispute, and may therefore refuse to honor a client's demands for the disputed amounts. In that instance the lawyer must notify the medical providers or other creditors that he/she is in possession of the amounts claimed but does not have the client's authority to disburse the funds; and must either retain the disputed amounts in his/her trust account until resolution, or pay them into the court registry in an interpleader action, with a full accounting to the interested parties. See California State Bar Comm. on Professional Responsibility Op. 1988-01 (undated); Maryland State Bar Comm. or Ethics Op. 96-16 (undated); Ohio Sup. Ct. Bd. of Grievances and Discipline Op. 95-12 (1995); R.I. Sup. Ct. Ethics Advisory Panel Ops. 95-12 and 95-27 (1995).

To the extent that prior opinions of the Panel regarding a lawyer's obligations under Rule 1.15(b) are inconsistent with this General Informational Opinion, they are hereby superseded.