

Final

Rhode Island Supreme Court Ethics Advisory Panel  
Opinion No. 2007-02 Request No. 926  
Issued February 8, 2007

Facts:

The inquiring attorney has settled a personal injury matter on behalf of a client. The client's medical bills were paid in large part by the client's health insurer. The client had received written inquiries from the health insurer but did not respond to the question of whether a claim was being pursued against a third-party. The inquiring attorney states that the health insurer has not asserted a written lien regarding its subrogation rights. The settlement check issued by the third party's insurer does not include the health insurer as payee. The third party's insurer has assured the inquiring attorney that the health insurer has not notified it of a claim. The client insists that the settlement proceeds be turned over to the client.

Issue Presented

The inquiring attorney asks what his/her obligations are relative to the disbursement of the settlement funds.

Opinion

In this case where the client insists that the settlement proceeds be disbursed to the client, and where the inquiring attorney has received no notice of a claim from the health insurer, the inquiring attorney must disburse the settlement funds to the client.

Reasoning

As a threshold matter, the inquiring attorney has an obligation to advise the client about the client's rights and obligations pursuant to the health insurance contract as they relate to medical claims resulting from the client's personal inquiry case. The inquiring attorney must also consider a lawyer's obligations under Rule 1.15(b). The Rule states:

(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 Comment to Rule 1.15 explains:

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.

Professors Geoffrey Hazard and William Hodes provide further guidance in determining when a lawyer's obligation to third parties arises under Rule 1.15(b). They have stated:

[The Comment] to Rule 1.15 uses the phrase "just claims" and "duty under applicable law" to suggest that the third party must have a *matured* legal or equitable claim, such as a lien on specific funds, in order to trigger the lawyer's duty to hold the funds apart from *either* claimant, pending resolution of the dispute. Geoffrey C. Hazard, Jr. and W. William Hodes, The Law of Lawyering § 19.6, at 19-12 (3<sup>rd</sup> ed., Supp. 2005-2).

Thus, for example, where a lawyer in possession of a client's award or settlement funds has received notice of a third party's lien, absent the client's consent to payment, a lawyer would have an obligation to hold and protect the disputed amount until resolution. See Ethics Advisory Panel General Informational Op. 7 (1997).

However, such is not the case in the instant inquiry. The Panel concludes that in this case where the client is insistent that the attorney turn over the settlement funds to him/her, and where the inquiring attorney has received no notice of a claim from the health insurer, the inquiring attorney must disburse the settlement funds (less any attorney's fees, expenses and costs) to the client. Before disbursing the funds to the client, the inquiring attorney is advised to obtain the client's signature on a disbursement sheet or letter that includes statements to the effect that no disbursement was made to the client's health insurer pursuant to the client's direction; and that the health insurer may seek reimbursement from the client for payments for medical claims relating to the personal injury matter.