

ETHICS ADVISORY PANEL
OPINION #93-64 REQUEST #403
Issued September 14, 1993

The inquiring attorney represented A in the settlement of a lawsuit. The settlement was to be paid in an initial lump-sum payment with monthly payments. A executed a direct payment authorization empowering the inquiring attorney to pay a financial institution all monies due to A that were obtained from the settlement. The direct payment authorization was forwarded to the financial institution. The inquiring attorney received the initial lump-sum payment, as well as a monthly payment. The inquiring attorney deposited the initial lump-sum payment into his/her client trust account. Subsequently, A terminated the inquiring attorney's services and executed a release authorizing the inquiring attorney to retain the funds as partial payment for counsel fees and costs. The financial institution is now in receivership. The inquiring attorney asks whether he/she must notify the financial institution's receiver that funds have been received, whether he/she must inform A if he/she notifies the receiver, and whether he/she may keep the funds as payment toward attorney's fees.

When a lawyer is in possession of funds or property of others, Rule 1.15 entitled "Safekeeping Property" applies. The Rule states in pertinent part as follows:

(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.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

Subsection (b) imposes a duty on a lawyer who is in possession of funds in which a client or third person has an interest to promptly notify the client or third person. The Rule further requires a lawyer to forward to the client or third person any funds that the client or third person is entitled to receive. If a dispute arises concerning property in which another person and the lawyer claim interest, the property shall be kept separate by the lawyer until the dispute is resolved.

Under the facts as presented, it is apparent that the financial institution has an interest in the funds by virtue of the direct payment authorization executed by A. The inquiring attorney similarly possesses an interest in the same funds pursuant to the release. In this situation, the Panel cannot undertake resolving the rights of the parties to the funds. However, the Panel opines that the inquiring attorney must notify the financial institution that he/she is in possession of the funds under Rule 1.15(b), and shall deposit all monies received relative to the settlement of A's lawsuit in a client trust account pursuant to Rule 1.15(c) until the rights of the parties to the funds are determined.