

ETHICS ADVISORY PANEL
OPINION #94-46 REQUEST #513
Issued July 27, 1994

The inquiring attorney requests an opinion regarding the obligations imposed upon his/her situation pursuant to Rule 1.15(a) and (b). The attorney asks whether an attorney who represents a client in a personal injury matter can forward money recovered in the settlement to the client knowing that the client has outstanding medical expenses. The attorney states that neither the hospital nor the surgeon asserted a lien. The attorney knows that the client is in dire need of funds and believes that the client will not pay the medical care providers if the money is provided to him/her. The hospital telephoned the attorney regarding the status of the case. The attorney informed the hospital that the payment of the outstanding bills was contingent upon a "successful" outcome. The attorney believes that given the severity of the injury and the client's inability to work, the net amount of the recovery cannot be viewed as a successful recovery.

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 also requires a lawyer to forward to the client or third person any funds that the client or third person is entitled to receive.

In addition, the Comments to Rule 1.15 states that:

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 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.

According to the facts provided, the attorney undertook a duty to the hospital when he/she made assurances of payment upon a successful outcome creating a reliance on behalf of the hospital. Since the attorney had notice of the outstanding medical bills, and made a promise to pay the bills from the proceeds of settlement the attorney is under an obligation to promptly notify the hospital upon receipt of the funds pursuant to Rule 1.15(b).

If the client refuses to disburse the funds to the hospital, the attorney should counsel the client regarding his/her obligations to protect the interest of the hospital. If the client disputes the amount owed to the hospital or the authority of the attorney to have undertaken the obligation to the hospital then the disputed portion should be held in escrow pending a resolution, arbitration or interpleader.