

ETHICS ADVISORY PANEL
OPINION #94-50 REQUEST #520
Issued July 27, 1994

The inquiring attorney represented a client in a personal injury matter which resulted in a lump sum settlement for for the client. Prior to the settlement the attorney received notice of a lien from a state department requesting reimbursement for medical expenses. The medical expenses were paid by the State Department on behalf of the client for a nervous disorder unrelated to the personal injury matter. The state alleges that the medical bills arose out of said accident. The attorney believes that the state is owed a fraction of what it is seeking. The client demands the settlement proceeds which are currently in the attorney's client's account. The inquiring attorney seeks guidance regarding appropriate conduct under these circumstances.

Whenever there is a dispute regarding the property of a client, Rule 1.15 entitled "Safekeeping Property" is applicable. Particularly Rule 1.15(b) and (c) and the comments thereto state the following:

(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.

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 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.

Pursuant to the above cited Rule, a lawyer "shall promptly notify" a client or third person when the attorney receives funds or property in which a client or third person claims an interest. However, if a dispute arises concerning respective interests the portion in dispute shall be kept separate by the attorney.

Because there is a dispute regarding the client and the state agency, the portion in dispute should be kept separate by the inquiring attorney pending a resolution, arbitration or interpleader.