

E. Enforcing an Assignment of Benefits Signed by Client

Legal Ethics Opinion 1865 (November 16, 2012) discusses the obligations of a lawyer handling settlement funds when a third-party lien or claim is asserted.

The applicable rule of conduct is Rule of Professional Conduct 1.15(b)(4)&(5), which requires a lawyer to:

- * Promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and
- * Not disburse funds or use the property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

Comment 4 to Professional Conduct Rule 1.15 provides more specificity:

- * There exists no obligation to protect funds on behalf of the client's general creditors who have no valid claim to an interest in the specific funds in the lawyer's possession.
- * But if funds are claimed by the lawyer's client and a third person, such as a previous attorney asserting a lien, the funds must be protected.
- * You cannot release the funds to the client even upon demand by the client, and accordingly may refuse to surrender the property to the client. For example, if a lawyer has actual knowledge of a third party's lawful claim to an interest in the specific funds held on behalf of a client, such as a healthcare provider lien, workers' compensation, an attorneys' lien, a valid assignment executed by the client, past-due child support, or a lien on the subject property created by a recorded deed of trust, the lawyer has a duty to hold the funds.

* The lawyer must either deliver the funds or property to the third party or, if a dispute exists, safeguard the contested property or funds until the dispute is resolved.

* And where the client has "a non-frivolous dispute" with the third party's claim, then the lawyer cannot release those funds without the agreement of all parties, and the court will have to determine who is entitled to receive the funds.