



New York State Bar Association Committee on Professional Ethics

Opinion 946 (11/7/12)

Topic: Payments from lawyer's trust account to third parties at direction of client.

Digest: The Rules of Professional Conduct do not prevent a lawyer from distributing settlement proceeds to a third person at the request of the lawyer's client.

Rules: 1.0(e); 1.2(a); 1.15 (c)(4)

FACTS

In this inquiry, a lawyer has settled a personal injury action on behalf of his client and after paying all fees, disbursements, liens and expenses, plans to distribute to the client the net proceeds which the client is entitled to receive. However, the client is incarcerated, does not have a checking account and is not able to open one. The lawyer proposes to issue the net proceeds by check payable to the client or the third party (“John Client or Mary Friend”).

QUESTION

1. May a lawyer distribute settlement proceeds from a personal injury action to a person other than the client who is the party to the action, at the request of the client?

OPINION

2. Rule 1.15 (c)(4) requires a lawyer to “promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.”

3. The focus of this subsection of the Rule is at its opening phrase. The Rule requires prompt action by the lawyer. Failure to act promptly has been a factor in several disciplinary matters under DR 9-102(c)(4), the predecessor to Rule 1.15(c)(4). (see, *Matter of Jebb*, 46 A.D. 3d 167 (4th Dept. 2007); *Matter of King*, 36 A.D.3d (4th Dept. 2006)).

4. The inquiry is then answered by the next phrase which directs the lawyer to “pay or deliver to the client or third person as requested by the client or third person ...” The request has been made by the client to make the proceeds check payable to the client or a third person. Thus Rule 1.15 (c)(4) does not prevent the distribution to “John Client or Mary Friend”. The lawyer should advise the client that when the funds are paid to the third party that person will have full control over the funds.

5. The inquiry raises the concern whether the closing language of Rule 1.15(c)(4), “entitled to receive the funds”, restricts the lawyer's ability to follow the client's instruction. Under Rule 1.2(a), a lawyer “shall abide by a client's decisions regarding the objectives of the representation....” If a client instructs the lawyer to deliver funds to a third party, then that third person is entitled to receive to funds within the meaning of Rule 1.15(c)(4).

6. In NY State 717 (1999) we construed the phrase, “entitled to receive the funds”, to include medical providers who have valid assignments or liens against proceeds but exclude other unsecured provider creditors about whom the client has objected. This opinion implies that if the client had authorized payment to an unsecured provider, that payment would fall within the permissive language of Rule 1.15(c)(4).

7. This opinion, of course, is based on the clear authorization from the client to the lawyer directing payment to the third party. While not ethically required, it might be prudent for the lawyer receiving these instructions to follow the guidance of Rule 1.0(e) and have that authorization “confirmed in writing”.

CONCLUSION

8. Upon receiving clear instruction from a client to distribute settlement proceeds to the client or a named third person, a lawyer may follow the request of the client to distribute the funds in a certain manner.

(43-11)