

## **ADVISORY COMMITTEE ON PROFESSIONAL ETHICS**

**Appointed by the Supreme Court of New Jersey**



### **OPINION 747**

#### **RPC 1.15 (Safekeeping Property): Procedure When Disputes Arise Regarding Who is Entitled to Monies Held by a Lawyer**

The Advisory Committee on Professional Ethics received several inquiries through the attorney ethics research assistance hotline about Rule of Professional Conduct (RPC) 1.15 (Safekeeping Property) and lawyers' obligations to hold monies until the dispute is resolved. When a dispute arises as to who is entitled to receive monies, or in what amount, the lawyer has an obligation to hold the disputed portion of the monies separately until the dispute is resolved. RPC 1.15(c). If the dispute raises a colorable claim and it cannot be expeditiously resolved, the lawyer should hold the disputed monies in the trust account or may initiate an action under Rule 4:57 and deposit the disputed funds in court. In

limited circumstances when the dispute is clearly frivolous and efforts to resolve the dispute are unsuccessful, the lawyer may undertake a good faith review of the controlling documents and, if appropriate, release the monies but should counsel the client about any legal repercussions of such action.

RPC 1.15 (Safekeeping Property), provides, in part:

- (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.
  
- (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.

The Rule does not provide a time frame for how long the lawyer must keep the monies in the trust account; the monies must be kept “until the dispute is resolved.” This Rule can place an attorney in a dilemma. Under paragraph (c), the attorney has an obligation to continue to hold the money “until the dispute is resolved,” but under paragraph (b), the attorney has an obligation to “promptly” deliver the funds to the person who is entitled to receive the monies.

Some hotline callers say that they are holding monies for lengthy periods of time because the parties have not taken any steps to resolve the dispute. The

question arises most frequently in real estate matters where the lawyer is holding a deposit and there is a dispute about which party breached the contract. At times, the client is disadvantaged, needing the deposit to be returned so it can be used to place a bid on another property. In such situations, the lawyer should attempt to resolve the dispute amicably. If these efforts are unsuccessful, the lawyer may initiate a Rule 4:57 action and turn the monies over to the court to resolve the dispute and determine who is entitled to receive the monies. If a party's claim to the monies is clearly frivolous; the lawyer has made efforts to resolve the dispute amicably; and the lawyer's good faith review of the controlling documents clearly demonstrates that release of the monies is authorized; the lawyer may turn over the monies to the party entitled to receive them. In such cases, the lawyer must inform the client about the dispute and provide appropriate advice about potential civil liability.

Hence, pursuant to RPC 1.15, when a dispute as to the amount of monies payable or who is entitled to receive the monies arises, the lawyer has an obligation to hold the disputed portion of the monies separately. If the dispute raises a colorable claim and it cannot be expeditiously resolved, the lawyer should hold the monies in the trust account or may initiate an action under Rule 4:57 and deposit the disputed funds in court. In limited circumstances when the dispute is clearly frivolous and efforts to resolve the dispute are unsuccessful, the lawyer may

undertake a good faith review of the controlling documents and, if appropriate, release the monies but should counsel the client about any legal repercussions of such action.