

January 26, 2017

State Bar of Arizona
Ethics Department
4201 N 24th Street, Suite 100
Phoenix AZ 85016

To Whom It May Concern

I am requesting a formal Ethics Opinion on the following issue Plaintiff is involved in a motor vehicle accident and has a personal injury claim pending against the Defendant The Defendant's insurance is insufficient to cover the Plaintiff's personal injury claim The Defendant has his own unrelated personal injury claim arising from an earlier accident The Defendant settles his own case while the case against him is pending First, may Plaintiff's counsel ethically send a Rule 1.15 letter to Defendant's counsel, claim an interest in those proceeds, and request that the Defendant's settlement money be held pending a resolution of Plaintiff's case against the Defendant Second, whether the Defendant's attorney may ignore the claim because Plaintiff has no cognizable "interest" and distribute the funds upon his client's demand

The issue is whether a Rule 1.15 letter may be sent under such circumstances and what "interest" means under Rule 1.15(c) See Ethics Opinion 11-03 discussing Rule 1.15 2003 Comment 4 ("The type of interest" protected under ER 1.15 is a matured legal or equitable claim"), *Silver v Statewide Griev Comm*, 242 Conn 186 (1997) ("An interest as used in the rules means more than an unsecured claim with respect to a third party An interest in the fund or property requires that the third party have a matured legal or equitable lien) See also 1 G Hazard & W Hodes, *The Law of Lawyering A Handbook on the Model Rules of Professional Conduct* § 1.15 302, p 460 (2d Ed 1996) ("The Comment to rule 1.15 uses the phrases 'just claims' and 'duty under applicable law' to suggest that the third party must have a matured legal or equitable claim in order to qualify for special protection [under the rule]", Alaska Bar Association Ethics Committee, Opinion No 3 (1992) ("In order to trigger an obligation on the part of the attorney to pay a creditor's claim, in contravention of a client's instructions, the creditor's claims must be a valid assignment on its face or statutory lien which has been brought to the attorney's attention"), Colorado Bar Association Ethics Committee, Formal Opinion

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Nos 94 and 95 (1994) (“Where the third party does not hold an interest as a result of a statutory lien or a contract or a court order, the property should be promptly distributed to the client”), Connecticut Bar Association Committee on Professional Ethics, Informal Opinion No 20 (1995) (“The mere assertion of a third party claim to property is insufficient to create a duty to deliver to that third party”))

As additional information, the case where this dispute arose has since been resolved, but I expect that others have the same question as to the interpretation of Rule 1.15 under similar circumstances. If an “interest” is undefined as is the language in Comment 4 of “a matured legal or equitable claim” then attorneys will remain uncertain as to what claims may be asserted which will impose the obligation under (e) and (f)

AJP bb
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