LOS ANGELES COUNTY BAR ASSOCIATION
PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

FORMAL OPINION NO. 478: July 18, 1994

SUMMARY

MEDICAL LIENS - DISBURSEMENT OF CLIENT FUNDS.

An attorney who has notice of a medical lien on funds recovered by a client in a personal injury action should not disburse those funds to the lienholder without the client's consent. The attorney may not simply disburse the contested funds to the client under such circumstances, however, even where the client so instructs the attorney.

AUTHORITIES CITED

American Bar Association Informal Opinion No. 1295

California Rules of Professional Conduct, Rules 4-100 and 4-210

Crooks v. State Bar, 3 Cal. 3d 346, 90 Cal. Rptr. 600 (1970)

"Interprofessional Guidelines," A Joint Publication of the California Medical Association and the Standing Committee to Confer With the CMA, State Bar of California (Revised 1991)

In The Matter of Respondent P, 2 Cal. State Bar Ct. Rptr. 622 (Review Dept. 1993)

Johnstone v. State Bar of California, 64 Cal. 2d 153, 49 Cal. Rptr. 97 (1966)

Los Angeles County Bar Association Formal Opinions No. 368 (June 16, 1977) and 454;

Miller v. Rau, 216 Cal. App. 2d 68, 30 Cal. Rptr. 612 (1963)

Pearlmutter v. Alexander, 97 Cal. App. 3d Supp. 16, 158 Cal. Rptr. 762 (1979)

State Bar of California Committee on Professional Responsibility and Conduct, Formal Opinion No. 1988-101

FACTS AND ISSUES PRESENTED

The Committee has been asked for an opinion regarding the following facts:

A client obtained medical services paid for by a health plan. An attorney filed a personal injury suit on the client's behalf. Prior to settling the client's case, the attorney received a notice of lien from the health plan and a copy of a lien acknowledgment form signed by the client. When the case settled, the client instructed the attorney not to pay the lien but, rather, to remit the settlement funds to the client. At the attorney's request, the client subsequently signed an acknowledgment form acknowledging personal responsibility for the debt.

The issues presented to the Committee are whether an attorney may properly remit settlement funds to a client, in accordance with the client's instructions or, alternatively, to a third party lienholder, despite the client's lack of consent, where (1) the attorney has notice of the third party's interest in those funds; (2) the attorney is aware that the client has executed a lien acknowledgment form; and (3) the client subsequently acknowledges his or her own responsibility to pay the third-party debt.

DISCUSSION

It should first be noted that the legal enforceability of a third party's interest in client trust funds held by an attorney is a question of law beyond the purview of this Committee. Thus, we limit our consideration of the issues presented here to their ethical components.[1]

The general rule concerning funds received or held by an attorney for the benefit of a client is stated in Rule 4-100 of the California Rules of Professional Conduct. That Rule provides in pertinent part that:

"A member shall...[p]romptly pay or deliver, as requested by the client, any funds, securities, or other properties in the possession of the member which the client is entitled to receive." (Emphasis added.)

Normally, disbursing trust funds to a client pursuant to the client's instructions would be an appropriate course of action. Under the facts presented here, however, should the attorney disburse the funds to the client without the lienholder's consent, the attorney may be subject to discipline. Because the attorney received a notice of lien from the health plan, as well as a copy of a lien acknowledgment form executed by the client, certain fiduciary duties to the health plan have arisen which now conflict with the attorney's duty to obey the client's instructions regarding disbursement of the funds.[1]See, e.g., Crooks v. State Bar, 3 Cal. 3d 346, 355, 90 Cal. Rptr. 600, 606 (1970) ("When an attorney receives money on behalf of a third party who is not his [or her] client, he [or she] nevertheless is a fiduciary as to such third party. . . .When an attorney assumes a fiduciary relationship and violates [that] duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he [or she] may properly be disciplined for [that] misconduct"), quoting Johnstone v. State Bar, 64 Cal. 2d 153, 155-156, 49 Cal. Rptr. 97, 98 (1966). See also In The Matter of Respondent P, 2 Cal. State Bar Ct. Rptr. 622 (Review Dept. 1993) ("An attorney holding funds for a person who is not the attorney's client must comply with the same fiduciary duties in dealing with such funds as if an attorney-client relationship existed"); LACBA Formal Opinion No. 454 (An attorney's fiduciary obligation extends to all third-party assets in his or her possession, not only to client funds).

Because the client is not necessarily "entitled to receive" the full sum in his or her account where a third party has what appears to be a legitimate interest in those funds, Rule 4-100 does not require the attorney to remit the full amount to the client upon his or her request. The attorney must, however, release those funds not in dispute to which the client is entitled.

On the other hand, the attorney may not simply disburse the contested funds to the health plan. American Bar Association Informal Opinion No. 1295 reminds us that "[o]bviously the attorney must always keep in mind that his [or her] responsibility is to represent the interests of the client and not of the physician." Rule 4-210 of the California Rules of Professional Conduct provides that an attorney may pay expenses incurred by the client to third persons out of funds collected for the client as a result of the representation only where the client consents. When the client does not consent, the attorney should not disburse funds to a third party. See also, LACBA Formal Opinion No. 368 (June 16, 1977) (attorney who has notice of physician's lien on funds recovered by client in personal injury action may not disburse funds to physician without client's consent).

The attorney has several viable options:

1. The attorney may obtain the consent of both the client and the lienholder to hold the funds in trust pending resolution of the dispute between the parties. The funds retained must be placed in the client trust account and must be limited to the amount in dispute. All other funds should be appropriately disbursed. Without the consent of both the client and the lienholder, however, the attorney may not unilaterally undertake to hold the disputed funds: authorization to do so exists only where the dispute over the funds is between the attorney and the client. [See Rule 4-100(A)(2) of the California Rules of Professional Conduct]; or

2. The attorney may commence a civil action in interpleader by which the attorney divests him or herself of responsibility for the funds and leaves resolution of the dispute to the appropriate court. [3]

See State Bar of California Committee on Professional Responsibility and Conduct, Formal Opinion No. 1988-101; "Interprofessional Guidelines," A Joint Publication of the California Medical Association and the Standing Committee To Confer With The CMA, State Bar of California (Revised 1991). [4]

This opinion is advisory only. The Committee acts on specific questions submitted ex parte, and its opinions are based only on such facts as set forth in the questions submitted.

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[1] Nevertheless, attorneys would be well-advised to consider the potential for incurring civil liability to the third-party lienholder under such circumstances. See, e.g., Pearlmutter v. Alexander, 97 Cal. App. 3d Supp. 16, 158 Cal. Rptr. 762 (1979); Miller v. Rau, 216 Cal. App. 2d 68, 30 Cal. Rptr. 612 (1963).

[2] The fact that, at the attorney's request, the client subsequently signed an acknowledgment form acknowledging personal responsibility for the debt does not alleviate these concerns, inasmuch as an agreement between the attorney and client cannot serve to alter or eliminate the attorney's fiduciary duties to the lienholder.

[3] Although outside the purview of this opinion, it should be noted that commencement of an interpleader action may create a conflict of interest between the attorney and his or her client.

[4] Alternatively, the Interprofessional Guidelines provide as follows: "[T]he attorney may contact both parties to the dispute in writing advising them:

a. Of the existence and nature of the dispute;

b. That the attorney cannot represent either side in the dispute;

c. That, if the parties agree in writing, the attorney can maintain the funds in trust until the parties resolve the dispute between themselves;

d. That, if the parties do not agree in writing within a set period of time, an interpleader action may be filed and the parties will be required to resolve their dispute in court."