

ETHICS ADVISORY OPINION

16-01

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

Factual Background:

There is a dispute as to the validity of an alleged assignment between an attorney handling a personal injury case and the hospital that treated the patient. The attorney for the injured party believes that the assignment is invalid, and that the hospital's claim is frivolous.

Question Presented:

Does the personal injury attorney have the right to refuse to protect the hospital's claim if that attorney believes in good faith that the hospital's claim is frivolous?

Summary:

Whether or not a valid assignment exists is a matter of law. The personal injury lawyer may refuse to honor the hospital's claim if that lawyer believes in good faith that the hospital's claim is frivolous or without substantial grounds.

Discussion:

Rule 1.15(e) of the Rules of Disciplinary Conduct is unclear as to the definitions of "property" and "interests ." The Rule states:

"When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved."

Comment 4 provides:

"Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury accident. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between

the client and the third-party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.”

If the lawyer believes in good faith that it is frivolous, then the lawyer may refuse to protect the claim of the third party.

However, since there is much room for debate given the above language, a lawyer who refuses to protect the third party claim based on his view that it is frivolous may be placing himself at risk.