



ETHICS ADVISORY OPINION

13-02

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:

Inquirer was appointed pursuant to Rule 608 to represent an indigent person in a criminal matter. Inquirer chose an outside investigator to assist with the matter. The investigator was to be paid by the South Carolina Commission on Indigent Defense (CID), subject to CID rules and guidelines. Inquirer instructed the investigator not to do any work until she was pre-approved for reimbursement by CID.

The investigator started the work without pre-approval. CID refused to pay for the work done in advance of approval. The investigator then demanded payment from Inquirer for the portion of her bill not paid by CID, citing *In Re Jackson*, 365 S.C. 176, 617 S.E.2d 123 (2005), in her demand letter.

Question:

Does Inquirer have an ethical obligation to pay the investigator amounts not paid by CID?

Summary:

No. *In Re Jackson* addressed counsel's failure to fulfill a contractual commitment to a court reporter. Where there is no such legal obligation, the Rules of Professional Conduct do not impose any ethical requirement that counsel supplement CID payments.

Opinion:

The crux of this inquiry concerns how broadly attorneys should interpret the principles announced in *In Re Jackson*, 365 S.C. 176, 617 S.E.2d 123 (2005). This Committee does not render legal opinions. However, a cursory review of *In Re Jackson* and the authority cited therein reflects that the Court's opinion addressed counsel's failure to pay invoices that were admittedly due. Notably, the Court cited Rule 1.15 for the proposition that "lawyer shall promptly deliver funds to which a third party is entitled." *Id.* (emphasis added)

Nothing in the South Carolina Rules of Professional Conduct requires counsel to serve as a guarantor of payment to investigators in Rule 608 cases. Provided there was no contractual obligation incurred by Inquirer – a matter on which we express no opinion – Inquirer had no ethical obligation to supplement payments made by CID.