

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS**

Opinion No. 625

February 2013

QUESTION PRESENTED

Is it permissible for a lawyer who replaces a client's prior lawyer in a litigation matter to distribute funds resulting from settlement of the litigation matter without regard to a promise of payment, of which the second lawyer is aware, given to the client's healthcare provider in a letter signed by the client's prior lawyer?

STATEMENT OF FACTS

A client in a personal injury case sought treatment from a healthcare provider for injuries sustained in an accident. Prior to providing treatment, the healthcare provider requested and obtained from the lawyer who initially represented the client with respect to the personal injury case a "Letter of Protection" addressed to the healthcare provider. This "Letter of Protection" promised that for medical care provided to the client the healthcare provider would be paid directly out of any settlement proceeds or payment resulting from a jury verdict in the personal injury case.

Thereafter a second lawyer replaced the client's first lawyer in the personal injury litigation. The second lawyer, who was aware of the "Letter of Protection," contacted the healthcare provider and attempted to negotiate a compromise of the amount billed by the healthcare provider for services rendered to the client but the healthcare provider refused to discount the amount previously billed. The second lawyer later settled the case, took his agreed fee, and distributed the remaining funds to the client without paying the healthcare provider any amount for the medical services provided to the client for which payment had been promised in the "Letter of Protection" signed by the client's first lawyer.

DISCUSSION

Rule 1.14(c) of the Texas Disciplinary Rules of Professional Conduct provides as follows:

"When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and other person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separated by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately."

In the circumstances here considered, Rule 1.14(c) requires that the client's second lawyer keep settlement proceeds to which the client's healthcare provider has a claim separate until there is an accounting and severance of the interests claimed in these funds by the healthcare provider. Although it is a legal question, rather than a matter of interpretation of the Texas Disciplinary Rules of Professional Conduct, whether and to what extent the "Letter of Protection" signed by the client's first lawyer binds the client, the client's second lawyer is aware that as a consequence of the "Letter of Protection" the healthcare provider is claiming an interest in a portion of the settlement funds. In such circumstances, the second lawyer would violate the requirements of Rule 1.14(c) if, before the validity of the healthcare provider's claim has been conclusively determined, the lawyer distributed to someone other than the healthcare provider the portion of the funds claimed by the healthcare provider. Following the approach suggested in Comment 2 to Rule 1.14 with respect to a dispute between a client and lawyer as to the disposition of funds, it would be appropriate in these circumstances for the lawyer to hold in trust the portion of the settlement funds claimed by the healthcare provider and to suggest a means for prompt resolution of the dispute, such as arbitration.

CONCLUSION

It is a violation of the Texas Disciplinary Rules of Professional Conduct for a lawyer who replaces a client's prior lawyer in a litigation matter to distribute funds resulting from settlement of the litigation matter without regard to a promise of payment, of which the second lawyer is aware, given to the client's healthcare provider in a letter signed by the client's prior lawyer.