

ETHICS OPINION

RO-90-48

Lawyer properly interplead disputed trust funds into court to allow adjudication of clients' and third-party creditors' rights to said funds

QUESTION:

"As per our phone conversation of June 5, 1990, I write this letter to you requesting some guidance pursuant to a dispute between my clients and the clients' health care provider. In the case of Mary and John Doe vs. Mr. Smith, et al. case no CV-0000 & SC-1234 settlement was agreed to by all parties for the sum of \$17,000.00. Of this sum, \$5,047.00 had been assigned by the clients to Chiropractors, P.C., in Anytown, Alabama. This assignment was sent to us by the chiropractor's office when we wrote the chiropractor's office requesting their records for exhibit purposes.

At the time the settlement proceeds cleared our trust account, we were prepared to disburse funds, and at that time our client, John Doe disallowed us from sending the assigned benefits, \$5,047.00 to Chiropractors, P.C. on behalf of he and his daughter, Mary.

Of course, to not send the proceeds would put us in violation of what purports to be a valid contractual assignment between the Does and Chiropractors, P.C. Additionally, to pay the monies to Chiropractors, P.C. against our clients' wishes would also put us at tremendous odds with our client, as well.

Therefore, an interpleader has been prepared wherein the law firm is named as the plaintiff and the clients and chiropractor's office are defendants, wherein we are requesting the circuit court through declaratory judgment to declare where the money should be paid and relinquishing us of responsibility for said proceeds.

Please advise if this is the suitable course to follow, and if interpleader is not the suitable course, please recommend that procedure we should follow to resolve this dispute."

* * *

ANSWER:

In our opinion, an interpleader action wherein the disputed funds are paid into court and both parties claiming an interest in the funds are required to appear before the court is an appropriate and ethical response to the dilemma posed.

Disciplinary Rule 7-102(A)(7) provides that a lawyer may not counsel or assist his client in conduct that the lawyer knows to be illegal or fraudulent and Disciplinary Rule 7-102(A)(1) provides that a lawyer shall take no action on behalf of his client when he knows or when it is obvious that such action would serve merely to harass or maliciously injure another. In the present fact situation, your client authorized you to assign certain sums to a firm of chiropractors in order to obtain from those chiropractors records to be used in connection with the client's litigation. Upon settlement, the client revoked, ex parte, that agreement in effect attempting to perpetrate a fraud upon the chiropractor. In our opinion, you were justified in not assisting the client in that action by paying the disputed funds over to him and have taken appropriate action by interpleading the funds into the circuit court, where he may establish his right to the money in question and assert any defenses or counterclaims that might affect the chiropractor's claim.

AWJ/vf

6/15/90