A LAWYER'S ETHICAL OBLIGATIONS WHEN THE CLIENT'S CREDITORS CLAIM A SHARE OF THE TORT SETTLEMENT PROCEEDS

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When a litigant obtains proceeds from a tort suit, through judgment or settlement, creditors of the litigant can and do assert claims against those proceeds. In that circumstance, the litigant's lawyer may have duties, imposed by Rule 1.15 of the Model Rules of Professional Conduct, *to the creditor. These duties of notification, payment, accounting, and otherwise, do not exist under the* Model Code of Professional Responsibility.

The author examines the sources of these duties, and potential conditions on them, and addresses when and how the creditor has an interest sufficient to give rise to Rule 1.15 duties. He also discusses the issue of how a client's directions to the lawyer can affect the duties. Finally, he notes that sanctions can be and, increasingly, are imposed for violation of Rule 1.15, and cites a number of cases from various jurisdictions so holding.

I. INTRODUCTION

This article will address ethical issues[1] that arise from the assertion of a claim for payment by creditors of the client upon the proceeds of a tort

1. For a lawyer's civil liability under such circumstances, *see*, *e.g.*, Kaiser Found. Health Plan, Inc. v. Aguiluz, 54 Cal. Rptr. 2d 665 (Ct. App. 1996) (attorney who knew client had agreed to repay medical provider from settlement proceeds was liable for amount client owed provider); Shelby Mut. Ins. Co. v. Della Ghelfa, 513 A.2d 52 (Conn. 1986) (insurer could enforce lien against lawyer who disbursed proceeds to insured); Unigard Ins. Co. v. Fremont, 430 A.2d 30 (Conn. Super. Ct. 1981) (lawyer liable for conversion because of failure to honor a statutory insurer's lien); Bonanza Motors, Inc. v. Webb, 657 P.2d 1102 (Idaho Ct. App. 1983) (law firm liable for failing to honor assignment that client, but not firm, had signed);

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suit under Rule 1.15 of the *Model Rules of Professional Conduct*[2] and its variants in the states. As discussed below, this ethical duty has been the source of numerous published disciplinary proceedings in recent years.[3]

Before the *Model Rules*, there was no comparable rule in the prior *Model Code of Professional Responsibility*[4] that expressly recognized a lawyer's ethical duty to the client's creditors.[5] There was no ethical duty to the client's creditors that would stand in constant tension with the duties traditionally owed to the client, such as following the client's informed decisions,[6] keeping client information confidential,[7] avoiding conflicts of interest,[8] not using information gained in representing the client to the disadvantage of the client,[9] subordinating the interests of others to the interests of the client,[10] and others.

If a client's creditor has an interest in settlement proceeds, Rule 1.15 imposes duties of notification, payment, and accounting on a lawyer to that creditor.

> (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.[11]

According to the official comments, the rationale for this rule is that the lawyer should recognize the creditor's property interest in the funds in the lawyer's possession. One comment observes that a lawyer should hold

W. States Ins. Co. v. Louise E. Olivero & Assocs., 670 N.E.2d 333 (Ill. App. Ct. 1996) (firm's failure to honor subrogation lien constituted conversion); Roberts v. Total Health Care, Inc., 709 A.2d 142 (Md. 1998) (liability based on lawyer's knowledge of statutory lien or valid assignment); Leon v. Martinez, 638 N.E.2d 511 (N.Y. 1994) (if enforceable assignment is proven, lawyer is liable to pay the creditor the assigned amount); Prewitt v. City of Dallas, 713 S.W. 2d 720 (Tex. App. 1986) (a lawyer's constructive notice of the city's right to the first money paid to the firm's client rendered the law firm liable after it paid those monies out to its client).

2. Model Rules of Prof'l Conduct R. 1.15 (1983) [hereinafter Model Rules].
3. *See* discussion *infra* Part V.
4. Model Code of Prof'l Responsibility (1980) [hereinafter Model Code].
5. *Cf.* Model Code DR 9–102 (1980) (duties to preserve the identity of funds and property of a client, to notify of receipt of funds, to render an accounting, and to promptly pay the funds are all duties expressly owed to the client). Indeed, the ABA Standing Committee on Ethics and Professional Responsibility, Formal Op. 163 (1936), forbade a lawyer from advising medical creditors that settlement money had been received.
6. Model Rules R. 1.2(a); Model Code DR 7–101(A).
7. Model Rules R. 1.6(a); Model Code DR 4–101(B)(1).
8. Model Rules R. 1.7(a); Model Code DR 5–101 and DR 5–105.
9. Model Rules R. 1.8(b); Model Code DR 4–101(B)(2).
10. Model Rules R. 4.4; Model Code DR 5–107.
11. Model Rules R. 1.15(b).

property of others with "the care required of a professional fiduciary" and that all "property of clients or third persons" should be kept separate from the lawyer's property.[12] Another comment refers to a creditor's "just claims against funds" in the lawyer's possession and a lawyer's duty under applicable law "to protect such third-party claims against wrongful interference by the client."[13] The lawyer is not a fiduciary for the creditor,[14] but must hold the funds with the care of a professional fiduciary.[15] With regard to the handling of the funds, the lawyer's duties to the client and the creditor are the same.[16]

The ethical duty to the creditor has been held to prohibit a lawyer from relying upon the statute of limitations or equitable concepts such as waiver and estoppel to defeat the claims of the creditor[17] and to prohibit a lawyer from advising the client to take steps that would extinguish the creditor's valid claims.[18]

This ethical duty is owed to the public and may be enforced by anyone, even if the creditors and client do not complain.[19] Likewise, other lawyers may have a duty to report Rule 1.15 violations under Model Rule 8.3.[20]

II. SOURCES OF THE LAWYER'S DUTY TO THE CLIENT'S CREDITORS

Under Rule 1.15, a lawyer owes a duty to a creditor of the client if the creditor has an interest in settlement proceeds. Several ethics opinions have noted the distinction between having an interest and claiming an interest, from which they deduce that an interest must be a legal or equitable right to a share of the proceeds and that an interest is created by some source of obligation other than Rule 1.15 itself.[21]

12. Model Rules R. 1.15 cmt. [1].

13. Model Rules R. 1.15 cmt. [3].

14. D.C. Bar Legal Ethics Comm., Op. 293 (1999) (recognizing that a lawyer owes duties regarding settlement funds to the client by virtue of the attorney-client relationship, but owes such duties to the creditor only to the extent that the creditor has a "just claim" to the funds).

15. Model Rules R. 1.15 cmt. [1].

16. Advance Fin. Co. v. Tr. of Client's Sec. Trust Fund of Bar of Md., 652 A.2d 660 (Md. App. 1995) (holding that because Rule 1.15 imposed fiduciary obligations to maintain funds for benefit of clients or creditors, the state fund that pays for lawyers' violations of fiduciary obligations was liable to a creditor); Okla. Bar Ass'n v. Taylor, 4 P.3d 1242 (Okla. 2000); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

17. N.H. Bar Ass'n Ethics Comm., Formal Op. 1998–99/3 (1999).

18. Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 97–02 (1997) (unethical to advise client to sign a release that would extinguish a valid subrogation claim).

19. Prue v. Statewide Grievance Comm., 690 A.2d 898 (Conn. Super. Ct. 1995) (former associate had standing to file bar complaint, even if client and creditors did not join).

20. R.I. Ethics Advisory Panel, Op. 93–55 (1993).

21. Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992); Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993); Conn. Comm. on Prof'l Ethics, Informal Op. 02–04 (2002) and Informal Op. 95–20 (1995); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

There are three typical sources of interests that a creditor of one's client may have in settlement proceeds. Public law may give the creditor a legal interest in the proceeds of a suit, typically in the form of a lien. A private agreement between the client and a creditor, typically a health care provider, can create an enforceable interest in the proceeds of a suit in some jurisdictions. Finally, the lawyer's own words or conduct may give the creditor an expectation of payment that is enforceable under Rule 1.15.

The mere assertion of an unsecured claim, however, is not such an interest that would create a duty to the creditor under Rule 1.15.[22] Any other interpretation of Rule 1.15 would put lawyers in an untenable conflict situation and would create an unconstitutional prejudgment attachment of the property.[23] Therefore, claims unrelated to the subject matter of the representation, although just, are not sufficient to trigger duties to the creditor without a valid assignment or perfected lien,[24] but even so, in order to avoid giving the creditor the impression that a lawyer agrees to pay the creditor from settlement proceeds, the lawyer should not remain silent in the face of a demand for assurances of payment, but should state his or her intentions unambiguously.[25]

In the absence of such a valid interest, the lawyer has no duty to the creditors since the lawyer's duty is to act in the best interest of the client.[26]

A. *Interests Created by Public Law*

The ethics opinions all agree that an interest includes undisputed statutory liens, judgment liens, and court orders or judgments affecting the property.[27] The effect of such statutes and judgments is a matter of law, and the lawyer will need to understand the applicable law in order to determine whether they create an interest in the proceeds.[28]

B. *Private Contractual Interests*

In the jurisdictions that permit plaintiffs to create valid assignments of, or security interests in, the proceeds of personal injury claims, opinions dis-

22. Silver v. Statewide Grievance Comm., 679 A.2d 392 (Conn. App. Ct. 1996); D.C. Bar Legal Ethics Comm., Op. 293 (1999); Phila. Bar Ass'n Prof'l Guidance Comm. Op. 92–11 (1992).

23. Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (citing Sniadach v. Family Fin. Corp. of Bay View, 395 U.S. 337 (1969); Fuentes v. Shevin, 407 U.S. 67 (1972); N. Ga. Finishing, Inc. v. Di-Chem, Inc., 419 U.S. 601 (1975)).

24. Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992).

25. *Id.*

26. Klancke v. Smith, 829 P.2d 464 (Colo. Ct. App. 1991); Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992).

27. *See, e.g.*, Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993); D.C. Bar Legal Ethics Comm., Op. 293 (1999); Va. Standing Comm. on Legal Ethics, Op. 1747 (2000).

28. Phila. Bar Ass'n Prof'l Guidance Comm., Op. 2000–3 (2000). *See* discussion *infra* Part III.A.

agree considerably over the sort of contractual agreements that would give the creditor an interest under Rule 1.15. Some would recognize an assignment or security agreement covering the proceeds of the case as an interest, even if the lawyer did not participate in its creation.[29] Others would not recognize the contract as binding on the lawyer at all unless the lawyer participated in some way in the contract, such as promising to abide by it,[30] which turns on the rationale of opinions collected in the next section.[31]

If the agreement between the creditor and client creates no enforceable interest in settlement proceeds under the law of the applicable jurisdiction, the lawyer should turn over the funds to the client even if the lawyer has actual knowledge of the agreement.[32] If, on the other hand, the agreement between the client and creditor gives the creditor an enforceable interest in the proceeds, the attorney's knowledge of the agreement is sufficient to raise ethical duties to the creditor.[33]

C. *Assurances by the Lawyer*

Assurances of payment from the lawyer, whether they create binding contractual obligations, also create ethical duties to creditors under Rule 1.15. The basis for such duties is the fundamental duty of lawyers to deal honestly with third parties.[34] Consequently, a lawyer who signs a lien or other agreement between a client and a creditor believing it to be unenforceable

29. *See*, *e.g.*, Kaiser Found. Health Plan, Inc. v. Aguiluz, 54 Cal. Rptr. 2d 665 (Ct. App. 1996); Advance Fin. Co. v. Tr. of Client's Sec. Trust Fund of Bar of Md., 652 A.2d 660 (Md. App. 1995); Herzog v. Irace, 594 A.2d 1106 (Me. 1991); Berkowitz v. Haigood, 606 A.2d 1157 (N.J. Super. Ct. Law Div. 1992); Leon v. Martinez, 638 N.E.2d 511 (N.Y. 1994) (lawyer had not executed or acknowledged, but had drafted, assignment agreement); Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 98–06 (1998); Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995); S.C. Bar Ethics Advisory Comm., Op. 94–20 (1994), Op. 93–31 (1994) (insurer's subrogation claim) and Op. 93–14 (1993).

30. Farmers Ins. Exch. v. Zerin, 61 Cal. Rptr. 2d 707 (Ct. App. 1997) (attorney not liable where he made no promise to protect subrogee's rights or property); Travelers Ins. Co. v. Haden, 418 A.2d 1078 (D.C. 1980) (mere knowledge of insurer's claim insufficient to create liability on part of lawyer); Conn. Comm. on Prof'l Ethics, Informal Op. 96–12 (1996) (an escrow agreement by which the lawyer holds funds pending resolution of the dispute between the client and the creditor gives the creditor an interest under Rule 1.15); D.C. Bar Legal Ethics Comm., Op. 293 (1999) (expanding rule to apply to successor lawyers who know of a prior lawyer's commitment); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 95–12 (1995); Phila. Bar Ass'n Prof'l Guidance Comm., Op. 94–24 (1994) (permissible to pay client where lawyer had made no promise to protect third party's interest) and Op. 86–134 (1986) (no duty to pay medical service provider, or even to withhold funds, where no agreement by client to pay provider from settlement funds).

31. *See* discussion *infra* Part II.C.

32. Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995); S.C. Bar Ethics Advisory Comm., Op. 91–10 (1991) (medical lien signed before the client employs the lawyer not binding on lawyer); Leon v. Martinez: *Attorneys' Ethical Obligations to the Clients' Creditors*, 67 N.Y. St. B.J. 40 (1995).

33. N.H. Bar Ass'n Ethics Comm., Formal Op. 1998–99/3 (1999).

34. Model Rules R. 4.1 and R. 8.4.

may be subject to discipline because such conduct tends to deceive the creditor.[35] Because a lawyer's words or conduct may implicitly or tacitly give a creditor the impression that the creditor will be paid,[36] if the lawyer does not intend to be bound by an agreement between the client and the creditor, that fact should be plainly expressed.[37] Because this kind of interest arises from the lawyer's ethical obligations, a similar assurance of payment made only by the client will not create an interest unless it is otherwise enforceable by law.[38]

Some opinions limit this obligation to those letters of protection that directly relate to the funds recovered and that are intended to aid the lawyer in making the recovery.[39] Others extend this rationale to impose on subsequent counsel the duty to creditors that prior counsel undertook.[40] If there is a successor counsel, the lawyer should make the successor aware of the letter and advise the service provider of the change.[41]

Before the lawyer may give a creditor an assurance of payment, the lawyer should discuss the matter with the client, because it is ultimately a matter for the client to decide.[42] If the lawyer is asked to sign a document assuring payment, the lawyer should explain to the client the ramifications, including the lawyer's potential ethical and civil liability, ensure that the client is competent to understand the explanation, and obtain the client's informed consent.[43] Before signing, the lawyer should also perform a conflict-of-interest analysis and make disclosures to the client on important issues, such as how the fee is calculated in relation to gross or net proceeds, the lawyer's and client's desire to maintain a good relationship with the lienholder and the costs and benefits of doing so, the client's liability if the client dishonors the lien, the consequences of signing, the potential consequences of limitations on the enforceability of the lien, and the extent to which the signing may affect the client's subsequent rights against the pro-

35. *The Dishonored Medical Lien: A New Trend in Bar Complaints*, 25 Ariz. Att'y 17 (1989) (the lawyer should either refrain from signing the document or otherwise make some disclaimer so that the provider does not rely on the appearance that the lawyer agrees that the lien is valid).

36. R.I. Ethics Advisory Panel, Op. 94–46 (1994) (lawyer's response to hospital's inquiry about status of the personal injury case that the payment of bills was "contingent upon a 'successful' outcome" was sufficient to raise Rule 1.15 duties).

37. Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992).

38. Conn. Comm. on Prof'l Ethics, Informal Op. 98–22 (1998).

39. Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995).

40. Conn. Comm. on Prof'l Ethics, Informal Op. 92–5 (1992); D.C. Bar Legal Ethics Comm., Op. 293 (1999); R.I. Ethics Advisory Panel, Op. 95–27 (1995) (prior lawyer discharged by client).

41. Conn. Comm. on Prof'l Ethics, Informal Op. 95–18 (1995).

42. Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993).

43. ABA Standing Comm. on Ethics and Prof'l Responsibility, Informal Op. 1295 (1974); *The Dishonored Medical Lien*, *supra* note 35, at 17.

vider.[44] The lawyer should also discuss the forensic effect of the document if it is disclosed to the adversary.[45]

Because a "letter of protection" or other assurance of payment imposes significant ethical duties, as well as potential civil liability, the lawyer should refrain from using a form provided by the creditor. Instead, the lawyer should prepare a letter of protection that addresses at least the following issues.[46] It should explain that the lawyer's undertaking is contingent upon receipt of funds.[47] The lawyer will not be liable, for example, if the client prevents the lawyer's performance by discharging the lawyer or otherwise.[48] It should set forth a procedure, perhaps including arbitration, for resolving any disputes about payment from the proceeds, including those that arise if the funds are insufficient to pay all creditors.[49] It should expressly allow for the deduction for attorney fees and expenses.[50] It should manifest the client's agreement that the client will not challenge payment under the terms of the letter of protection.[51]

III. CONDITIONS OF THE LAWYER'S DUTY TO THE CLIENT'S CREDITORS

A. *Viable, Perfected, Present Interests*

Even if the creditor's claim otherwise qualifies as an "interest," it may not suffice to impose ethical duties on the lawyer for various reasons. The lawyer should consider the following defenses in determining whether the creditor has an interest in the funds in the lawyer's possession. If the interest attaches only to funds while in the client's possession, and not before, the lawyer may ignore the creditor's interest.[52] If the creditor must take

44. *The Dishonored Medical Lien*, *supra* note 35, at 17.

45. *Cf.* Sharp v. Fagan, 449 S.E.2d 648 (Ga. Ct. App. 1994) (lien could be used to show medical provider's interest in the outcome).

46. Cal. Comm. on Prof'l Responsibility and Conduct, Formal Ethics Op. 1988–101 (1988); Conn. Comm. on Prof'l Ethics, Informal Op. 95–18 (1995); S.C. Bar Ethics Advisory Comm., Op. 93–31 (1994).

47. *See*, *e.g.*, D.C. Bar Legal Ethics Comm., Op. 293 (1999) (citing Heffelfinger v. Gibson, 290 A.2d 390 (D.C. 1972) (lawyer's liability on the promise continues even though case was transferred to another lawyer).

48. Conn. Comm. on Prof'l Ethics, Informal Op. 95–18 (1995).

49. *Id.* (suggesting a provision that allows the lawyer to make a pro rata distribution if the funds are insufficient).

50. *Id.*

51. Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995).

52. Silver v. Statewide Grievance Comm., 679 A.2d 392 (Conn. Ct. App. 1996) (the statutory lien was not perfected until the money was received by the client and, therefore, was not an interest that would prevent the lawyer from freely disbursing to the client); Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 97–02 (1997) (a statutory right of reimbursement does not require reimbursement from particular funds, but a right of subrogation clearly provides an interest in particular funds).

certain steps to perfect the lien, the attorney should determine whether the creditor has taken those steps; if not, the attorney is free to disburse the funds to the client.[53] A lawyer is not required to wait for the creditor to perfect its claim.[54] If there is a statutory defense to the claim, the lawyer may ignore it.[55] If the interest is created by agreement, the lawyer may ignore it if no valid contract has been created.[56]

B. *The Lawyer's Knowledge*

Rule 1.15 does not apply to claims about which the lawyer lacks knowledge.[57] The degree of knowledge that triggers a lawyer's duty *to a creditor* seems to be actual knowledge of the third party's interest,[58] although actual knowledge will be imputed by, for example, proof of returned receipt mailing of a paper giving notice.[59] A lawyer's duty to the creditor is not triggered by knowledge that the creditor may have a valid interest in the settlement.[60] But if the interest is otherwise adequately perfected and the lawyer knows that it applies to funds received in settlement of a particular case, the lawyer has ethical duties to the creditor even if the creditor claimed an interest in unrelated litigation and mistakenly failed to mention the current case in claiming an interest.[61]

On the other hand, a lawyer's duty *to a client* to advise about the lawyer's obligations under Rule 1.15 arises when the client tells the lawyer that a

53. Sentry Inc. v. Chambers, Steiner, Mazur, Ornstein & Amblin, P.C., No. 185149, 1996 Mich. App. LEXIS 735 (Mich. Ct. App. 1996); Md. State Bar Ass'n Comm. on Ethics, Op. 97–20 (1997); Pa. Bar Ass'n Comm. on Legal Ethics & Prof'l Responsibility, Informal Op. 95–138 (1995).

54. Cal. Comm. on Prof'l Responsibility and Conduct, Formal Ethics Op. 1988–101 (1988); Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993).

55. *See, e.g.*, Pa. Bar Ass'n Comm. on Legal Ethics and Prof'l Responsibility, Informal Op. 98–101 (1998) (since judgment creditor's lien was subject to statutory exception for workers' compensation recoveries, the lawyer may disburse to client).

56. Phila. Bar Ass'n Prof'l Guidance Comm., Op. 94–24 (1994) (where creditor rejects an offer of letter of protection by filing suit against the client, but later seeks to have the claim honored by the lawyer, the lawyer is free to disregard the claim and disburse to the client).

57. D.C. Bar Legal Ethics Comm., Op. 293 (1999).

58. Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 98–06 (1998); Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000) (arguing that specific language in Rule 1.15 and its comments strongly implies an actual knowledge standard). This author has found no case addressing issues of liens that are perfected by filing in public dockets and that thereby give constructive notice to the entire world.

59. Okla. Bar Ass'n v. Bedford, 956 P.2d 148, 151 (Okla. 1997).

60. Conn. Comm. on Prof'l Ethics, Informal Op. 98–13 (1998) (although client's medical bills were stamped with words "Medicaid" or "Welfare," without formal notice of a claim by state welfare agencies, lawyer had no duty to ask client whether he owed Medicaid, since inquiring about this might violate ethical duties against creating a conflict of interest or against using client information to the disadvantage of the client, and such liens applied to funds in lawyer's possession only upon receipt of written claim).

61. Conn. Comm. on Prof'l Ethics, Informal Op. 99–16 (1999).

creditor has a subrogation provision known by the lawyer to be enforceable. In such circumstances, the lawyer has a duty to recognize and determine the extent of the creditor's interest even in the absence of communications from the creditor and to advise the client accordingly.[62] Whether the lawyer has a duty to the creditor under the same circumstances is unclear.[63]

IV. RESOLVING THE CREDITOR'S CLAIMS

A. *Classifying the Creditor's Claims*

The lawyer's duties turn on whether the creditor has a sufficient interest under Rule 1.15.

1. Clearly Insufficient Interests

If the creditor's claim is insufficient to constitute an interest as described above, the lawyer should ignore the creditor and promptly disburse to the client.[64] The lawyer has no duty to seek out creditors.[65] Hence, without a valid lien or letter of protection, the lawyer has no ethical duty to see that doctors are paid out of settlement proceeds.[66] Absent fraud or dishonesty, the lawyer has no obligation to honor the client's agreements with medical providers to pay them out of a settlement or judgment.[67] Even if an agreement between the client and the creditor purported to impose an obligation on the lawyer or create a lien on the funds that are handled by the lawyer, the lawyer's liability would only be a matter of substantive law (agency and contract) rather than ethics.[68]

2. Clearly Valid Interests

On the other hand, if the creditor's claim is a valid interest and the amount of the interest is undisputed,[69] the lawyer should disburse directly to the creditor.[70] The lawyer may not deduct a fee for collecting the amount for

62. S.C. Bar Ethics Advisory Comm., Op. 93–31 (1994).

63. *Compare id.* (suggesting that there is no duty to the creditor, only the client, in the context of a health insurer's subrogation claim) *with* Conn. Comm. on Prof'l Ethics, Informal Op. 98–13 (1998) (suggesting that information from the client would give the lawyer actual knowledge of the existence of an interest in the context of a statutory welfare lien).

64. Alaska Bar Ass'n Ethics Comm., Op. 80–1 (1980); Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 97–02 (1997); Del. State Bar Ass'n Comm. on Prof'l Ethics, Op. 1981–3 (1981).

65. Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995).

66. Conn. Comm. on Prof'l Ethics, Informal Op. 95–28 (1995).

67. Utah Ethics Advisory Op. Comm., Op. 96–03 (1996).

68. Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

69. For a discussion of the effect of the client's objections, see discussion *infra* Part IV.B.1.

70. Alaska Bar Ass'n Ethics Comm., Op. 98–3 (1998); D.C. Bar Legal Ethics Comm., Op. 293 (1999); N.H. Bar Ass'n Ethics Comm., Formal Op. 1998–99/3 (1999). *Cf.* S.D. State Bar Ethics Comm., Op. 98–3 (1998) (if client cannot be found to consent to payment, duty to pay depends on whether lawyer is satisfied that client does not dispute the debt).

the creditor, without the creditor's consent, particularly where doing so would result in double compensation.[71] The lawyer also has a duty to advise the client about the legitimacy of the creditor's rights and may be sanctioned for giving the client false information.[72] The duty to safeguard property for the creditor exists even if the creditor has become difficult to locate.[73]

If the funds are insufficient to cover the claims of multiple creditors, even after eliminating those creditors who do not have an interest under Rule 1.15, the money should be placed in escrow and all creditors notified.[74] The lawyer may not settle with some creditors if an inadequate sum is left for the claims of other creditors.[75] If the parties are unable to resolve the matter, the claims may be treated as uncertain[76] and interpleader may be the only means to resolve the dispute.[77]

3. Uncertain Claims

Between these extremes, legal or factual issues may make the rights of the creditor or the amount of the debt uncertain. In these cases, there are certain clear responsibilities and several open questions.

If there is no dispute as to the disposition of part of the funds, those must be promptly paid to the client or third party.[78] As to remaining funds, the lawyer may not arbitrate the dispute.[79] Hence, the lawyer may not determine factual disputes over the sufficiency of the claim or resolve disputes over the amount of the claim.[80] Thus, the lawyer must abide by Rule 1.15 duties to the creditor as well as general duties to the client to protect the funds.[81] The duty to the creditor exists even if the lawyer believes that

71. *In re* Brown, 669 N.E.2d 989 (Ind. 1996) (lawyer given two-month suspension for, inter alia, deducting from Medicare reimbursement his 25% fees, because the total fee he collected exceeded 25% of the total recovery); Lawyer Disciplinary Bd. v. Hardison, 518 S.E.2d 101 (W.Va. 1999) (lawyer sanctioned for, among other things, failing to handle the negotiation of medical expense claims in a reasonable period of time after deducting funds sufficient to do so from the closing with the client; court expressed disapproval of his habit of reducing amounts payable to medical providers by his contingent fee percentage, but he repaid those deductions by the time of discipline).

72. *In re* Ragland, 697 N.E.2d 44 (Ind. 1998) (lawyer sanctioned for falsely telling client that Medicare reimbursement did not have to be paid out of the settlement).

73. Md. State Bar Ass'n Comm. on Ethics, Op. 98–14 (1998); N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Op. 717 (1999) (suggesting options).

74. Conn. Comm. on Prof'l Ethics, Informal Op. 99–39 (1999).

75. *Id.*

76. *See* discussion *infra* Part IV.A.3.

77. D.C. Bar Legal Ethics Comm., Op. 293 (1999).

78. Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993); N.Y. State Bar Ass'n Comm. on Professional Ethics, Op. 717 (1999).

79. Model Rules R. 1.15 cmt. [3].

80. Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993).

81. Va. Standing Comm. on Legal Ethics, Op. 1747 (2000).

the creditor's conduct has made the services worthless,[82] or if the client claims that the creditor is liable to the client in an amount that would more than offset the debt.[83]

The authorities do not agree on a specific course of conduct for the lawyer to take. Some suggest that the lawyer may immediately interplead it.[84] Others allow the lawyer to hold the funds in trust for a reasonable period of time in order to encourage settlement before resorting to interpleader.[85] Others allow that the lawyer may seek a declaratory judgment or attempt mediation at the client's further expense.[86] Others allow the lawyer to have the settlement check issued jointly in the name of the client and creditor.[87] Most provide that the lawyer may not simply sit on the money for a prolonged period of time, since the lawyer has a duty of diligence under Rule 1.3,[88] but some treat retention in a trust account and interpleader as alternative courses of action.[89]

4. Legal Uncertainty

The ethical guidance is unclear in cases where a lawyer must realize that because of uncertainty in the law, there is a nonfrivolous, good faith basis for the creditor's claims, but nevertheless believes that those claims will be defeated as a matter of law.

Certainly the most prudent course is to treat the claims as uncertain, notify the client and creditor, place the funds in an escrow account, and if the matter is not resolved promptly, initiate an interpleader,[90] as discussed above.[91] But the issue is whether, under Rule 1.15, a lawyer may ignore a creditor's claim only if the assertion of that claim would be *frivolous*, or may the lawyer ignore it if the lawyer believes in good faith that the claim is simply legally wrong? The few existing informal opinions that specifically address this issue are inconsistent.[92]

82. Conn. Comm. on Prof'l Ethics, Informal Op. 02–04 (2002) (doctor whose testimony was sought lacked credibility after pleading guilty to fraudulent billing practices).

83. Conn. Comm. on Prof'l Ethics, Informal Op. 00–13 (2000).

84. N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Op. 717 (1999).

85. Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 98–06 (1998); Ga. State Disciplinary Bd., Advisory Op. 94–2 (1994); Va. Standing Comm. on Legal Ethics, Op. 1747 (2000).

86. S.C. Bar Ethics Advisory Comm., Op. 95–29 (1995).

87. *Id.*

88. *The Dishonored Medical Lien*, *supra* note 35, at 17; *Attorneys' Ethical Obligations to the Clients' Creditors*, *supra* note 32; Phila. Bar Ass'n Prof'l Guidance Comm. Op. 91–6 (1991).

89. Ill. State Bar Ass'n, Advisory Op. 93–3 (1993).

90. *The Dishonored Medical Lien*, *supra* note 35, at 17.

91. *See* discussion *supra* Part IV.A.3.

92. *See*, *e.g.*, Phila. Bar Ass'n Prof'l Guidance Comm., Op. 92–18 (1992) (holding that if the lawyer is of the opinion that the creditor has no legal interest in the funds, Rule 1.15(b) does not impose the duty to notify the creditor or deliver any funds to the creditor, but noting that it reached a different opinion before), Op. 92–140 (1992) (holding under the same

B. *Effect of the Client's Directions*

1. Disclosure to Creditor

If the creditor is a mere general creditor without a special lien or court order, and if the lawyer has not induced the creditor's reliance by a promise to pay the creditor, the lawyer should respect the client's wishes for confidentiality and disburse to the client.[93] This duty would be subject only to rules against assisting the client in committing a fraud[94] or other violations of the rules or law,[95] but assisting in the breach of a contract does not qualify as assisting in a fraud or a crime.[96] On the other hand, if the creditor's claim is based on a statutory lien or court order, the lawyer should disclose it regardless of the client's wishes because Rule 1.15 takes precedence over confidentiality interests.[97] Even if Rule 1.15 imposes no duties on the lawyer to the creditor, the lawyer must respond truthfully to inquiries from creditors, such as whether the case was settled,[98] but the lawyer may refuse to comment.[99] The lawyer will be sanctioned for lying about the amount of the settlement.[100]

2. Payment to Creditor

If the creditor has a legally viable interest but the client has a good faith, colorable, or plausible basis to object to the creditor's claim, the opinions agree that the lawyer may disregard the client's direction to pay the funds to the client and instead seek to have the objections resolved.[101] The debt should be treated in the same way that other uncertain claims are treated: the lawyer must notify the creditor, protect the funds until the matter is resolved, and interplead the funds if the matter is not resolved promptly.[102]

circumstances that the lawyer may not simply turn funds over to the client), and Op. 90–4 (1990) (holding that whether the attorney may simply turn the money over to the client can only be answered with finality by litigating whether the interest is legitimate).

93. Model Code R. 1.2(a) (abiding by client's decisions on the objectives of the representation, including settlement); R. 1.6(a) (keeping client's information confidential).

94. Model Rules R. 1.2(d).

95. Model Rules R. 1.2(e).

96. S.C. Bar Ethics Advisory Comm., Op. 91–10 (1991).

97. Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 97–02 (1997); Colo. Bar Ass'n Ethics Comm., Op. 94–94 (1993); S.C. Bar Ethics Advisory Comm., Op. 94–20 (1994).

98. Model Rules R. 4.1 and R. 8.4.

99. S.C. Bar Ethics Advisory Comm., Op. 91–10 (1991).

100. *In re* Hanvik, 609 N.W.2d 235 (Minn. 2000) (lawyer falsely told Medicare agent that the case settled for less than it actually settled for, and then failed to send even the reduced reimbursement to Medicare—indefinite suspension); *In re* Williams, 521 S.E.2d 497 (S.C. 1999) (lawyer sanctioned for sending misleading half-truths to lienor concerning the amount actually recovered by the plaintiff that was available to satisfy the lien).

101. *See, e.g.*, Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995); Md. State Bar Ass'n Comm. on Ethics, Op. 98–9 (1998); Or. State Bar Bd. of Governors Ethics Op. 1991–52 (1991); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

102. Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992); Ariz. Comm. on Rules of Prof'l

Good faith reasons to object include at least: (1) whether consideration for the client's debt was provided, (2) the amount of the charge or debt, (3) whether the charge is reasonable, and (4) whether there is a defense or offset to the charge.[103]

If, on the other hand, there is no basis for the client's objection to a creditor's claim, the opinions agree that the lawyer must disregard the client's directions to pay the client,[104] but there is some disagreement as to what the lawyer may or should do. Some opinions state that the lawyer may pay the claim over the client's objection.[105] Others hold that the lawyer may not simply pay the creditor over the client's objections,[106] but instead that the lawyer should urge the client to allow payment by telling the client that without a waiver, a compelling reason, or an amicable resolution, the lawyer will ultimately have to pay the funds into court.[107] Some expressly allow the lawyer to negotiate the claim on behalf of the client with the creditor.[108] Some simply list the options, suggesting that the most prudent course would be to commence an interpleader, hold the funds with consent,

Conduct, Formal Op. 98–06 (1998); Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995); D.C. Bar Legal Ethics Comm., Op. 251 (1994); N.H. Bar Ass'n Ethics Comm., Formal Op. 1998–99/3 (1999); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 95–12 (1995); R.I. Ethics Advisory Panel, General Informational Op. 7 (1997); S.C. Bar Ethics Advisory Comm., Op. 94–20 (1994) and Op. 93–14 (1993); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

103. Conn. Comm. on Prof'l Ethics, Informal Op. 95–18 (1995).

104. *See, e.g.*, Cal. Comm. on Prof'l Responsibility and Conduct, Formal Ethics Op. 1988–101 (1988) (lawyer whose client agreed to pay recovery proceeds to health care provider may not ignore agreement and disburse all funds to client upon client's instruction); Md. State Bar Ass'n Comm. on Ethics, Op. 94–19 (1994) (lawyer must disregard client's instruction not to pay creditor when client had valid assignment with creditor); Ohio Bd. of Comm'rs on Grievances and Discipline, Op. 95–12 (1995) (lawyer must disregard client's instruction not to pay physician when client had earlier agreed to pay medical bills from settlement proceeds); S.C. Bar Ethics Advisory Comm., Op. 94–20 (1994) (if lawyer knows that client has executed valid doctor's lien he may not comply with client's instruction to disregard it; no principle of confidentiality or client loyalty permits lawyer to violate ethical obligations owed to third parties); Va. Standing Comm. on Legal Ethics, Op. 1747 (2000) (citing Aetna Cas. & Sur. Co. v. Gilbreath, 625 S.W.2d 269 (Tenn. 1981) (lawyer has duty to honor employer's statutory workers' compensation lien against settlement with third party)).

105. W. States Ins. Co. v. Louis E. Olivero & Assocs., 670 N.E.2d 333 (Ill. App. Ct. 1996); Md. State Bar Ass'n Comm. on Ethics, Op. 00–14 (2000); S.C. Bar Ethics Advisory Comm., Op. 93–14 (1993).

106. *See, e.g.*, Va. Standing Comm. on Legal Ethics, Op. 1747 (2000) (citing Conn. Comm. on Prof'l Ethics, Informal Op. 95–20 (1995) (lawyer cannot pay money over to creditor over client's objection); Pa. Bar Ass'n Ethics Op. 92–89 (1992) (lawyer, whose client was ordered to pay child support arrearage, cannot release funds from real estate sale without client consent)); Utah Ethics Advisory Op. Comm., Op. 00–04 (2000).

107. Alaska Bar Ass'n Ethics Comm., Op. 92–3 (1992); R.I. Ethics Advisory Panel, General Informational Op. 7 (1997); Va. Standing Comm. on Legal Ethics, Op. 1747 (2000).

108. D.C. Bar Legal Ethics Comm., Op. 251 (1994); N.Y. State Bar Ass'n Comm. on Prof'l Ethics, Op. 717 (1999) (negotiate or file interpleader).

or some combination of the two, or to take the risks of paying the client or creditor.[109]

C. *Other Options for Resolving the Creditor's Claims*

No attempt to circumvent the ethical rules intended for the protection of creditors that have a sufficient "interest" in the settlement proceeds has yet succeeded. The lawyer may not simply disburse to the client a notice that the creditor may seek reimbursement from the client[110] nor may the lawyer present the client with a signed agreement that the client will pay the creditor.[111] Nor may the lawyer impose a deadline on the creditor with a valid lien, so as to "put the ball in the creditor's court," beyond which the lawyer will "assume" that the creditor consents to the lawyer's disbursement to the client.[112] The lawyer may not hold the money indefinitely in trust pending the expiration of the creditor's statute of limitations.[113] Nor may the lawyer avoid responsibility to the creditor by having the tortfeasor or its insurer pay money directly to the client.[114]

V. SANCTIONS FOR VIOLATION OF THE DUTY TO THE CLIENT'S CREDITORS

Since 1996, sanctions have been imposed increasingly upon lawyers for violations of Rule 1.15. The sanction of disbarment has usually only been imposed in the context of several serious breaches of various ethical rules.[115]

109. Cal. Comm. on Prof'l Responsibility and Conduct, Formal Ethics Op. 1988–101 (1988).

110. Ariz. Comm. on Rules of Prof'l Conduct, Formal Op. 97–02 (1997).

111. *In re* Minor, 681 P.2d 1347 (Alaska 1983) (a lawyer who receives money on behalf of another becomes a fiduciary to that person in the absence of an agreement to the contrary); *In re* Burns, 679 P.2d 510 (Ariz. 1984) (lawyer suspended for one year for assisting client in illegal or fraudulent conduct by depositing settlement check made out to client, lawyer, and U.S. Air Force into his account without Air Force approval, disbursing his fee and all but the medical expenses to the client, advising the client of the Air Force's lien, and giving the client the option of paying the Air Force, leaving the money in trust, or distributing it to the client, who chose the latter option); *In re* Norman, 708 N.E.2d 867 (Ind. 1999) (lawyer reprimanded for failing to promptly pay the doctor's bill from settlement proceeds; instead, lawyer ignored a signed letter of protection and paid the funds to the client with a written agreement that the client would promptly pay the doctor).

112. Conn. Comm. on Prof'l Ethics, Informal Op. 94–8 (1994) (two months after placing funds in escrow, lawyer demands that creditor sue within sixty days or it will be deemed a release of the claim; creditor did not sue, but maintained its claim; lawyer was not authorized to arbitrate whether the claim was abandoned; only the lapse of the period of limitations could do so); S.C. Bar Ethics Advisory Comm., Op. 95–29 (1995).

113. N.H. Bar Ass'n Ethics Comm., Formal Op. 1998–99/3 (1999).

114. Fla. Prof'l Ethics Comm. Op. 00–2 (2000) (any other rule bypasses important safeguards for lawyer-client relations).

115. Attorney Grievance Comm'n of Md. v. DiCicco, 802 A.2d 1014 (Md. 2002) (attorney indefinitely suspended for trust fund violations, including failure to keep adequate funds to pay client's creditor's disputed bill); *In re* Gregory, 790 A.2d 573 (D.C. 2002) (lawyer disbarred

Suspensions of specific duration generally occurred when the lawyer engaged in intentional conduct without excuse.[116] Reprimands were given in

for misappropriation of client funds and failure to notify medical providers of his receipt of funds to which the providers were entitled; lawyer could not rely upon staff to perform this function unsupervised, and in any case, upon discovery, the lawyer breached a duty to take prompt remedial action); *In re* White, 791 So. 2d 602 (La. 2001) (lawyer disbarred for, among many violations, withholding a part of the settlement funds to reimburse health care providers and then making no effort to disburse the funds to them); *In re* Morris, 541 S.E.2d 844 (S.C. 2001) (lawyer disbarred for, among many violations, failing to pay the client's medical bills from settlement proceeds and for failing to notify Medicare on four occasions that he settled cases and that he was holding Medicaid funds in trust, and for the later disappearance of the funds); *In re* Carlson, 745 A.2d 257 (D.C. 2000) (lawyer disbarred for failure to pay creditor in full from trust funds, causing creditor to sue client and garnish client's wages); Cotton v. Miss. Bar, 809 So. 2d 582 (Miss. 2000) (lawyer disbarred for deducting funds to pay doctor from settlement, but not actually paying until the client was sued); *In re* Hanvik, 609 N.W.2d 235 (Minn. 2000) (lawyer suspended indefinitely for falsely telling Medicare agent that the case settled for less than it actually settled for, and then failing to send even the reduced reimbursement to Medicare); *In re* Gregory, 740 A.2d 538 (D.C. 1999) (lawyer disbarred for, inter alia, ignoring workers' compensation lien and paying disputed funds to himself); *In re* Cavuto, 733 A.2d 1174 (N.J. 1999) (lawyer disbarred for failing to pay client's creditor for years); *In re* Moore, 704 A.2d 1187 (D.C. 1997) (attorney disbarred for, among other things, not paying doctor after signing a letter of protection, even though attorney negotiated the debt to the doctor below the doctor's original claim).

116. *In re* Mitchell, 822 A.2d 1126 (D.C. 2003) (lawyer suspended for ninety days for failing to pay known medical creditor of his client, who was his wife, and falsely advising the creditor that funds had not been received); Tipler v. Ala. State Bar, No. 1011865, 2003 Ala. LEXIS 97 (Ala. Mar. 28, 2003) (lawyer suspended for three months for disregarding prior lawyer's claim on part of fees); *In re* Wegner, 785 N.E.2d 1100 (Ind. 2003) (lawyer suspended for thirty days for failure to notify creditor of receipt of funds and delay in paying creditor); People v. Katz, 58 P.3d 1176 (Colo. 2002) (lawyer disbarred for, among other things, taking possession of money in account set aside to pay creditors' and prior lawyers' fees); *In re* Ziman, Disc. Comm. No. 99–1931, 2002 Ariz. LEXIS 28 (Ariz. 2002) (lawyer suspended for thirty days for failure to follow agreement to pay client's prior lawyer $500 until over two years after settlement); *In re* Loosemore, 771 N.E.2d 1154 (Ind. 2002) (lawyer suspended for three years for various infractions, including failure to pay funds to medical creditor and subrogated insurer); Attorney Grievance Comm'n of Md. v. Hayes, 789 A.2d 119 (Md. 2002) (ninety-day suspension for letting trust funds drop below amount retained to negotiate with creditors); Okla. Bar Ass'n v. Parson, 57 P.3d 865 (Okla. 2002) (lawyer suspended for one year for ignoring chiropractic lien and unauthorized endorsement of check including chiropractor as joint payee); Okla. Bar Ass'n v. Stormont, 37 P.3d 795 (Okla. 2001) (lawyer suspended for eighteen months for failure to pay creditor from settlement proceeds for eight months); *In re* Quinn, 738 N.E.2d 678 (Ind. 2000) (lawyer suspended for a year for letting trust fund holding fees for client's creditors fall below level sufficient to pay the creditors, who were finally paid in full a year later); *In re* Moore, 769 So. 2d 1180 (La. 2000) (lawyer given deferred six-month suspension, subject to two years' probation, for failing to pay doctor's bills); Okla. Bar Ass'n v. Taylor, 4 P.3d 1242 (Okla. 2000) (lawyer suspended for unexcused two months' delay in notifying doctor that he received three checks payable to client, lawyer, and doctor); People v. Egbune, 58 P.3d 1168 (Colo. 1999) (six-month suspension for ignoring prior lawyer's claim of attorney lien and his inquiries about the case); *In re* Johnston, 698 N.E.2d 313 (Ind. 1998) (lawyer suspended for eight months for, inter alia, failing to pay medical creditors in a timely fashion and endangering client trust funds); *In re* Jones, 721 So. 2d 850 (La. 1998) (lawyer suspended for, among other things, retaining money from settlement for the asserted purpose of paying medical debts, then paying only a small debt, leaving others unpaid, and ignoring client inquiries about the money); Okla. Bar Ass'n v. Brown, 990 P.2d 840 (Okla. 1998) (lawyer suspended for two years for, among other things, failing to use proceeds to

cases where the violations were minor or mitigated by circumstances.[117] It is no defense to a disciplinary hearing that the infraction was unintentional[118] or due to clerical staff.[119]

satisfy Army lien, but keeping the proceeds for almost a year); *In re* Toth, 684 N.E.2d 493 (Ind. 1997) (lawyer suspended for a year for conduct including failing to notify lienholder of receipt of settlement funds and failure to set aside a sufficient amount to pay the lienholder); *In re* Shaughnessy, 556 N.W.2d (Minn. 1996) (lawyer suspended for sixty days for failing to abide by a promise to protect a lien on a client's cause of action); *In re* Hodge, 676 A.2d 1362 (R.I. 1996) (one-year suspension for failure to notify and pay medical creditor for over two years after settlement).

117. *In re* Hailey, No. 49S00–0009-DI-560 (Ind. Aug. 8, 2003) (lawyer reprimanded for delay in paying creditors, although he successfully negotiated some of their claims down, until one creditor threatened to file suit and client hired another lawyer to prod the first lawyer to pay the creditors); People v. Greene, No. 02PDJ037, 2002 WL 1611555 (Colo. O. P. D. J. June 13, 2002) (lawyer disciplined for failure to keep funds subject to Medicaid lien in separate account and for paying funds to a client that were due to a provider and subject to the provider's lien); *In re* Kirby, 766 N.E.2d 351 (Ind. 2002) (lawyer publicly reprimanded for failing to notify medical lien creditor and for paying all net proceeds of settlement to client); *In re* Shaw, 775 A.2d 1123 (D.C. 2001) (lawyer for motor vehicle accident victim was reprimanded for failing to notify client's insurer of receipt of no-fault benefits after signing agreement to reimburse insurer); Fla. Bar v. Silver, 788 So. 2d 958 (Fla. 2001) (lawyer reprimanded for unintentional failure to notify one of the creditors of receipt of settlement funds); *In re* Paras, 742 N.E.2d 924 (Ind. 2001) (lawyer reprimanded for staff errors relating to trust account, including failure to pay one client's creditor); *In re* Caldwell, 715 N.E.2d 362 (Ind. 1999) (lawyer sanctioned for failing to pay money to creditors, despite phone calls, until grievance was filed); *In re* Kinkead, 661 N.E.2d 823 (Ind. 1996) (lawyer disciplined for withholding funds to pay a creditor, but failing to pay the creditor).

118. *Silver*, 788 So. 2d at 958.

119. *Gregory*, 790 A.2d at 573; *Paras*, 742 N.E.2d at 924.