Supreme Court of Ohio Clerk of Court - Filed March 22, 2022 - Case No. 2022-0155

IN THE SUPREME COURT OF OHIO

BUTLER COUNTY BAR ASSOC.,	:	
		Case No. 2022-0155
Relator,	:	
v.	:	On Certified Report by the Board of Professional Conduct of the
DENNIS MAHONEY, ESQ.	:	Supreme Court of Ohio
Respondent.	:	

MERIT BRIEF OF *AMICUS CURIÆ*, OHIO ASSOCIATION FOR JUSTICE, IN SUPPORT OF RESPONDENT, DENNIS MAHONEY

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INTRODUCTION

The Board of Professional Conduct ("Board") decision suggests Rule 1.15(e) of the Ohio Rules of Professional Conduct is not limited and applies to any third-party creditor that demands payment from a lawyer holding client funds. The Board decision contradicts the definitions provided in division (d) of Rule 1.15 and is contrary to the express language of Rule 1.15, the history of Rule 1.15, the Ohio Supreme Court amendments to Rule 1.15, Ohio Advisory Opinion 2007-7 interpreting the prior, more expansive language of Rule 1.15, and the manner in which other jurisdictions and courts have interpreted other versions of Rule 1.15.

Rule 1.15(e) does not and should not apply to every third person claiming an interest in client funds held by a lawyer. The claim must be a "lawful interest." Rule 1.15(d). This means that the "third person's interest shall be one of which the lawyer has actual knowledge." *Id.* This also means that, "for purposes of this rule," third person interests addressed by Rule 1.15(e) shall be limited to: 1) a statutory lien; 2) a judicial decision ordering that a third person to be paid from the client funds; or 3) a written agreement by the client or the lawyer stating that a third person will be paid directly from the client funds held by a lawyer. *Id.* The Ohio Supreme Court approved this language when it amended Rule 1.15 in 2009 to address this very situation and to clarify that the entire Rule, including division (e), shall be limited to three distinct and identifiable third person lawful interests.

IDENTIFICATION OF AMICUS CURIÆ

The Ohio Association for Justice ("OAJ") is a statewide association of attorneys whose mission is to preserve the legal rights of all Ohioans by protecting their access to the civil justice system. Members of OAJ seek to preserve access to the courtroom and to promote public confidence in the legal system.

OAJ and its members have been active participants in the review, modification and application of Rule 1.15 since the Rules of Professional Conduct were adopted in 2007. OAJ respectfully submits this brief to provide historical reference of the review, modification and application of the Rule and to propose the proper application of that Rule in this matter.

Based upon a request from OAJ, Advisory Opinion 2007-7 was issued by the Board of Commissioners for Grievance and Discipline, which advised that a narrow, limited type of third person interests applied to Rule 1.15. The Board advised: "Not every claim of a third person triggers a lawyer's safekeeping duty, only a lawful claim that a lawyer knows of is an interest subject to protection under Rule 1.15." See Advisory Opinion 2007-7, Syllabus. The Advisory Opinion limited the third person reach of division (d) & (e) to "lawful claims," and attempted to define or explain what a "lawful claim" is for purposes of the Rule.

The Advisory Opinion advised that a "lawful claim" for purposes of Rule 1.15 (d) and (e) are claims like a valid statutory lien; a valid judgment; a written agreement signed by the client promising payment from the settlement funds; a letter from the lawyer to a medical provider promising to pay the provider from the settlement funds (*i.e.*, Letter of Protection); a written agreement between the client and health insurer promising to reimburse the health insurer from the settlement funds; or a secured claim from a creditor that is specific to the funds held by the lawyer. *Id*. at p.5. *See*, *also*, Johnson, Vincent R. (2018), "The Limited Duties of Lawyers to Protect the Funds and Property of Nonclients," *St. Mary's Journal on Legal Malpractice & Ethics*: Vol. 8: No. 1, Article 2, 69-75.

Advisory Opinion 2007-7 clarified that Rule 1.15 does not apply to every third person who may demand payment by a lawyer holding client funds. Moreover, the Advisory Opinion

expressly states: "When a lawyer knows a third person's claim is not a lawful claim, a lawyer's ethical duty is to notify the client and to promptly deliver the funds to the client." *Id*. at Syllabus.

Advisory Opinion 2007-7 was interpreting the *prior* version of Rule 1.15 (d) & (e), modeled after ABA Rule 1.15 which contained very broad and general language about third person interests.

In 2009, the Ohio State Bar Association and Ohio Board of Commissioners on Grievance and Discipline ("the Board") petitioned the Ohio Supreme Court to change the language in Rule 1.15 and Comment 4 to specify and identify the types of third person interests impacted by Rule 1.15(d) & (e). The Court adopted these changes, in large part, because of concerns of grievances like the case at bar. The Court was advised that third-party creditors like chiropractors and health insurance companies were demanding that lawyers pay them directly from their client's personal injury settlement funds, and filing grievances when they were not paid. The Court specifically changed the language in Rule 1.15 and Comment 4 to ensure that lawyers had a clear understanding of the limited types of third person interests that trigger subdivisions (d) and (e) of Rule 1.15. For Rule 1.15 to apply to a third person claim, the lawyer must have "actual knowledge" of the lawful claim. If the lawyer has actual knowledge, the types of third person interests implicated by Rule 1.15 **shall be limited to** a statutory lien, a judgment or written contract from the client or lawyer with the third person, providing an interest in the funds held by the lawyer. Rule 1.15(d).

STATEMENT OF FACTS

Neither Open MRI of Eastgate nor Chiropractic Wellness Center held a third person interest defined by Rule 1.15. Further, there is no evidence that Respondent had actual knowledge of a lawful claim from either third person at the time the client funds were disbursed.

STATEMENT OF THE CASE

Before disbursing any settlement funds, Respondent deposited the settlement funds into his law firm's IOLTA account as required by Rule 1.15(a). Respondent prepared a settlement statement as required. The statement identified Rule 1.15 third persons who were to be paid directly from the settlement funds as well as those third persons who would not be paid from the settlement funds. Respondent's client signed the settlement statement.

The settlement statement demonstrated that Respondent complied with Rule 1.15(d)-(e) by paying two third persons with lawful interests, that is, Medicaid and SMP Advanced Funding, directly from the settlement funds. Both entities had the type of third person lawful interests identified in Rule 1.15(d). Medicaid has a statutory lien on personal injury settlements. *See* R.C. 5160.37. SMP Advanced Funding had agreement in writing signed by the client stating SMP would be paid from the settlement funds. Respondent had actual knowledge of the SMP Advanced Funding agreement. The settlement statement also identified third persons who did not have a Rule 1.15 lawful interest and would not be paid from settlement funds. This demonstrates the Respondent's understanding of and compliance with the requirements of Rule 1.15.

The settlement statement identified two other entities: Open MRI of Eastgate and Chiropractic Wellness Center. Respondent complied with Rule 1.15(d)-(e) regarding Open MRI of Eastgate and Chiropractic Wellness Center. Neither third person had the limited type of lawful interest identified by Rule 1.15(d)-(e). As a result, the Respondent properly complied with the client's instructions to not pay these third persons and to disburse the settlement funds to the client.

The Complaint in this matter asserts in Count One that Respondent violated Rule 1.15(e):

> Mr. Mahoney received Moody's settlement check, deposited it into his firm's IOLTA account, knew the Chiropractic Wellness and Open MRI claimed interests in those settlement funds for their medical services, and failed to hold those funds until Moody's disputed payment obligations to Chiropractic Wellness and Open MRI was resolved.

See Complaint at 17. Respondent did not, however, violate Rule 1.15(e) because neither Chiropractic Wellness nor Open MRI held a Rule 1.15 third person lawful claim.

Relator has not alleged and the Board did not find that Respondent had actual knowledge of any "lawful claim" by either third person as that term is defined in Rule 1.15(d) for purposes of the Rule. Although the Board held that Respondent was aware of the medical expenses incurred by his client, this knowledge does not transform such medical expenses into lawful claims for purposes of Rule 1.15. The Board appears to have defined "lawful claim" as any claim that is not illegal. However, this Court and the Board defined "lawful claim" in Rule 1.15(d) and in Advisory Opinion 2007-7. Even if the client had signed a document with the chiropractor agreeing to pay any remaining bill from a settlement for personal injuries, that evidence alone does not impute actual knowledge of the signed written agreement to her lawyer.

ARGUMENT

On February 1, 2007, the Ohio Supreme Court enacted the Ohio Rules of Professional Conduct, which were based on the ABA Model Rules of Professional Conduct ("ABA Rules"). Even before February 2007, significant concerns were raised about how to interpret Rule 1.15 (d)-(e), particularly in the context of personal injury matters where third-party creditors like health insurers claim a subrogation interest as well as medical providers or chiropractors demanded payment directly from personal injury lawyers holding settlement funds.

After the Board issued Advisory Opinion 2007-7, third parties like chiropractors and subrogation health insurance companies continued to threaten lawyers with grievances if the

lawyers did not pay their clients' debts directly from the settlement funds of their clients, even when they did not have the type of third person "lawful claim" identified in Advisory Opinion 2007-7. As a result, the Ohio State Bar Association convened a Special Committee on July 1, 2008 to study Rule 1.15 ("OSBA Special Committee"). The OSBA Special Committee was comprised of a broad range of attorneys including attorneys who represent injured plaintiffs, civil defendants, insurance in-house counsel, physicians, attorneys who regularly defend grievances as well as a representative from the Office of Disciplinary Counsel.[1] After analyzing the language in Rule 1.15 (d) and (e); the history of ABA Rule 1.15; and, how in other states applied ABA Rule 1.15, the OSBA Special Committee voted unanimously to seek a change to the language of Rule 1.15.

The OSBA Special Committee contacted the Board to propose changes. The Gov. Bar R. V Committee of the Board analyzed the issue. After initially rejecting the OSBA recommendations, the Gov. Bar R. V Committee and then the Board agreed to propose an amendment to comment 4. On June 30, 2009, a small group from Gov. Bar R. V and OSBA met at the Supreme Court to "foster the development of an agreed-upon amendment for consideration by the Court." That group included the Assistant Administrative Director of the Ohio Supreme Court, the Secretary to the then Board of Commissioners on Grievances and Discipline, the Chair of the Gov. Bar R. V Committee, the President of the OSBA, OSBA Bar Counsel and the undersigned. The changes to the Rule had been posted for comment in the interim. During that meeting, all of the comments submitted were reviewed, the concerns of the Gov. Bar R. V Committee were discussed and the language of Rule 1.15 (d) and (e) and Comment 4 that are the current version today were finalized.

[1] Counsel signing this brief on behalf of OAJ was one of the members of the OSBA Special Committee.

The Board agreed to recommend revisions to the Ohio Supreme Court. The Board suggested modifying Comment 4, which would clarify that that Rule 1.15(d) and (e) are limited to only specified third person interests. The OSBA Special Committee argued the actual text of Rule 1.15 should be amended to specifically identify the types of third person interests implicated by all parts of Rule 1.15. Without identifying the types of third person interests affected by Rule 1.15, lawyers and third persons would continue to disagree and needless litigation and possibly grievances would follow.

The issues and concerns of Gov. Bar R. V and the OSBA were reviewed by the Supreme Court together with the proposal for resolving those issues and concerns. The Ohio Supreme Court, by unanimous decision, agreed to change both the language of Rule 1.15 and Comment 4 to clarify the Rule and identify the limited third person interests implicated by Rule 1.15(d) and (e). This was achieved by stating in division (d), that "for purposes this rule," the types of third person interests "shall be limited to" to only three types of interests.

Revised Rule 1.15 and revised Comment 4 became effective on January 1, 2009. The original text of Rule 1.15(d) follows:

> 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 or a third person, *confirmed in writing*, 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. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

The language adopted by this Court in 2009 which modified 1.15(d) follows and is in bold typeface:

> Upon receiving funds or other property in which a client or third person has a **lawful** interest, a lawyer shall promptly notified the client or third person. **For purposes of this rule, the third person's interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final**

> **judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property.** Except as stated in this rule of otherwise permitted by law or by agreement with the client or third person, *confirmed in writing*, 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. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.

When this Court modified the language to identify the three types of limited third person interests implicated by the Rule 1.15, the Court specified the three types of interests in division (d). The text of division (d) expressly states it is identifying the type of third person interests applicable to **all divisions** of Rule 1.15, not just division (d). The plain language of Rule 1.15(d) states that it is "[f]or purposes of this rule."

The definitions and limitations of the third person interests identified in Rule 1.15(d) apply to division (e) of Rule 1.15, not just division (d). If the limiting language only applied to division (d), the language would say, "For purpose of this **division**." Instead, the Ohio Supreme Court's new language states: "for purposes of this *rule*."[2]

Moreover, Comment 4 to Rule 1.15 was drafted to provide further clarity.

> Divisions **(d) and (e)** address situations in which third persons may claim **a lawful interest** in specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect third-person interests of which the lawyer has actual knowledge against wrongful interference by the client. When there is no dispute regarding the funds or property in the lawyer's possession, the lawyer's ethical duty is to promptly notify and deliver the funds or property to which the client or third person is entitled. When the lawyer has **actual knowledge** of a dispute between the client and a third person who has a **lawful interest** in the funds or property in the lawyer's possession, the lawyer's **ethical duty** is to notify both the client and the third person, hold the disputed funds in accordance with division (3) of this rule until the dispute is resolved, and consider whether it is necessary to file an action to have a court resolve the

[2] There are many examples in the Ohio Rules of Professional Conduct in which certain language applies only to a specific division while other language applies to the entire rule. For example, Rule 3.6(b) states in part, "Notwithstanding division (a) of this rule and if permitted by Rule 1.6, a lawyer may state any of the following…"

> dispute. The lawyer should not unilaterally assume to resolve the dispute between the client and the third person. **When the lawyer knows a third person's claimed interest is not a lawful one, a lawyer's ethical duty is to notify the client of the interest claimed and promptly deliver the funds or property to the client**.

(Emphasis added.) The goal was to strike a balance between "lawful claims" by third persons to specific funds held by the lawyer for the client and the lawyer's duty to promptly deliver the client's funds to the client. Comment 4 coupled divisions (d) and (e) because they were intended as written to be read together. Unfortunately, the Board's decision in this case divided these two divisions in contravention of the clear language in division (d) and the language of Comment 4. See ¶ 29-31 of the Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct ("the issue in this matter is not whether payment should have been made under Prof. Cond. R. 1.15(d), but whether funds should have been held in trust because Respondent knew of the existence of divergent claims interested to those funds, *i.e.*, the existence of a dispute, until the dispute is resolved, under Prof. Cond. R. 1.15(e)."). If the Board's decision were taken to its logical conclusion, lawyers would be required to hold back all settlement funds pertaining to the matter, including, but not limited to, unpaid medical bills for which no judgment was secured and credit card bills used to pay those medical bills. Simply stated, it does not stand that those bills, while not illegal, are not "lawful claims" as defined in Rule 1.15.

1. The Ohio Supreme Court Judicially Limited the Reach of Rule 1.15.

Although this Court has not had occasion to address the amended language to Rule 1.15 (d) or Comment 4, the Court addressed the original, broader language Rule 1.15. In 2014, two years before the Court adopted the amendments as issue herein, the Court confirmed that the prior, broader language in Rule 1.15, was limited and did not apply to all third person interests.

In *Cincinnati Bar Assoc. v. Alsfelder*, 138 Ohio St.3d 333 (2014), the Ohio Supreme Court briefly touched on prior Rule 1.15 and the type of third person interests affected by the prior text of the Rule. In *Alsfelder*, the lawyer was involved in a grievance because of billing issues. The Grievance Committee investigators asked the lawyer to provide an accounting of work performed, invoices and payments received. The lawyer declined. The Grievance Committee argued the lawyer violated the prior version of Rule 1.15(d) by refusing to produce accounting documents. The Grievance Committee relied upon the last sentence of Rule 1.15(d), which states: "Upon request by the client or *third person*, the lawyer shall promptly render a full accounting regarding such funds or other property." Emphasis added. *Id.* at 337. To the Court, the Grievance Committee argued it was a "third person" under Rule 1.15(d).

This Court rejected the argument of the Grievance Committee. Rather than simply dismiss the charge, the Court clarified that the language, even in the original text of Rule 1.15, did not apply to *every* third person.

> The third person discussed throughout Prof. Cond. R. 1.15(d) ***is not any third person***, but the third person who has a lawful interest in funds or other property in the lawyer's possession. To interpret the rule otherwise would permit any third person to request—and be entitled to receive—an account of funds or property held by a lawyer. Here, the facts that relator subpoenaed Alsfelder's account records and that Alsfelder failed to comply are simply not relevant in the context of an alleged violation of Prof. Cond. R. 1.15(d).

Emphasis added. The third person referred to in Rule 1.15 must be the type of third person interest defined by Rule 1.15(d). That was the interpretation of the Rule by this Court before the revisions to Rule 1.15 and Comment 4. The revisions or Rule 1.15 and Comment 4 were made by the Supreme Court for the specific reason of limiting and identifying the specific types of third person interests implicated by Rule 1.15(d)-(e).

2. Ohio Law does not create a Duty for Lawyers to pay Clients' Creditors.

Rule 1.15 did not create substantive law in Ohio. Rule 1.15 states that a lawyer may have a duty to third parties under the substantive law. A lawyer has neither a legal duty nor ethical right to pay creditors of a client unless there is statutory right to those specific funds, a written agreement to pay creditors from settlement funds procured or a court order to pay the creditor from the specific settlement funds. Several Ohio cases explain how or when a lawyer can *create* a duty to pay a client's creditors by agreement.[3] However, absent such action by the lawyer, Ohio law does not impose a duty on a lawyer to pay general creditors of his client.

In *Williams v. Blair*, for example, a creditor Albert Williams ("Mr. Williams") obtained a personal injury judgment against Betty Blair ("Ms. Blair") in the amount of $25,000. 8th Dist. Cuyahoga Case No. 80822, 2003-Ohio-4399 (Aug. 21, 2003). The judgment was not paid. In a separate action, Attorney William Smith ("Attorney Smith") obtained a wrongful death settlement based upon the death of Ms. Blair's son. Mr. Williams obtained a garnishment order

[3] *See, e.g., Dickey v. Burick*, 161 Ohio App.3d 224, 226, 2005-Ohio-2601, 829 N.E.2d 1242 (5th Dist.) (Lawyer obligated to pay third party where lawyer and client signed letter sent to third party that stated in part: "The undersigned attorney(s) of record for the above patient does (sic) hereby agree to observe all the terms and conditions of the above lien and agree(s) to withhold such sums from any settlement, judgment or verdict as may be necessary to protect the said doctor named above."); *Sharon Regional Physician Servs. v. Giannini*, 7th Dist. Mahoning Case No. 00CA41, 2001-Ohio-3233 (Lawyer obligated to pay third party by sending letter stating: "Please be advised that in consideration of your office's forbearance of collection proceedings, upon settlement or judgment of this matter and the receipt of any proceeds in this regard, this office shall make direct payment on the sum due and owing for these services prior to any distribution of proceeds to the client."); *Shiepis Clinic of Chiropractic v. Stevenson*, 5th Dist. Stark Case No. 1995CA00343, 1996 Ohio App. LEXIS 3707, *1 (July 8, 1996) (Lawyer obligated to pay third party based upon letter sent to third party stating: "The undersigned, being attorney of record for the above patient does hereby agree to observe all the terms of the above and agrees to withhold such sums from any settlement, judgment or verdict as may be necessary adequately to protect the said doctors named above."); *Solon Family Physicians v. Buckles*, 96 Ohio App.3d 460, 463, 645 N.E.2d 150 (Cuyahoga 1994) (Lawyer obligated to pay third party from settlement funds based upon letter from lawyer stating: "This letter serves to confirm that this office will protect any outstanding bill for your services to the above referenced individual and we will see to it that your fee is paid promptly from the proceeds of the settlement.").

over Ms. Blair's settlement funds from the wrongful death claim involving her son. The garnishment order was presented to Attorney Smith. Attorney Smith sent a letter to Mr. William's attorney stating: "It is agreed that Betty Blair shall pay the sum of $25,000 from the proceeds that she personally receives from the Wrongful Death Settlement in the Estate of Michael Pipkins…, when said funds become available for distribution." When Mr. Williams was not paid, he sued Attorney Smith arguing Attorney Smith had a duty to pay the obligation as a surety for his client.

The court held Attorney Smith had no duty to pay the third-party creditor of his client Ms. Blair. The court held: "The law requires an express agreement to create a suretyship, it will not be implied. Therefore, the examination of the precise wording of contractual language is crucial to a determination whether creation of a suretyship was intended." *Id*. at P16. In this case, the agreement was for Ms. Blair to pay her debt from the settlement proceeds and when Attorney Smith received Ms. Blair's settlement proceeds, he would pay that debt. However, Attorney Smith never obtained Ms. Blair's settlement proceeds. For reasons not explained in the decision, the wrongful death defendant paid Ms. Blair directly and never provided her settlement proceeds to Attorney Smith. Because Attorney Smith did not obtain Ms. Blair's settlement funds, he could not pay them. Attorney Smith did not become a surety for Ms. Blair through this arrangement.

Similarly, in *Ohio State Univ. Hosps v. Evans*, 5th Dist. Licking Case No. 95 CA 00019, 1995 Ohio App. LEXIS 4682, *3-4 (Sept. 21, 1995), a personal injury lawyer sent a letter entitled "letter of protection" asking a hospital to not pursue collection actions against his injured client and indicating the hospital bill would be paid from the proceeds obtained from funds obtained through the victims of crime claim and from underinsured motorist funds already in a

trust account. When the lawyer collected the settlement funds, the client demanded the money be disbursed to him. The client did not pay the hospital. The hospital sued the lawyer for the amount owned by the client. The court held the lawyer could not be liable for the amounts owed by the client because the language in the lawyer's letter did not create a surety.

3. Ohio Advisory Opinions Pre-Dating Ohio's Adoption of the Rules of Professional Conduct Confirm the Limited Ethical Duties to Third Persons.

Advisory Opinions from Ohio that pre-date Rule 1.15 address the tension for lawyers when a client instructs the lawyer not to pay third parties. These opinions generally advised lawyers to abide by the client's instructions unless the lawyer knows there is a signed agreement with the third person promising the third person will be paid from the client funds held by the lawyer.

For example, the Board issued Advisory Opinion 95-12 addressing a lawyer's duty to pay medical providers when a lawyer obtains possession of settlement funds. Consistent with Ohio case law, Advisory Opinion 95-12 made it clear that a lawyer has no duty to creditors unless the lawyer knows of a written agreement between a client and creditor in which the client agreed to pay the creditor from those funds held by the lawyer. The Opinion stated:

> In conclusion, this Board advises that it is improper for an attorney to follow a client's instructions to pay all settlement funds to the client when the attorney is aware that the client entered an agreement with the physician to pay medical expenses out of the proceeds of a settlement and the attorney with client consent promised the physician to do so. The attorney should hold the disputed portion of the funds until entitlement is established through mediation, arbitration, or if necessary, through a request to the court.

Advisory Opinion 95-12. This Advisory Opinion is consistent with, and relies upon, Ohio law holding that lawyer's duty to creditors arises upon a written agreement specifically stating the third person will be paid from the settlement funds obtained by the lawyer.

Similarly, an Advisory Opinion from the Cleveland Bar Association indicates a lawyer is not required to pay third parties or hold settlement funds when a person claims a right to be paid, which seems spurious or unlikely to prevail if pursued.

> As indicated by the words "which the client is entitled to receive" at the end of DR 9-102 (B)(4), Attorney A's duty to release the funds is clearer when the third party's claim is weak. On the other hand, when the third party's claim is stronger, the duty is less clear, and a court reviewing Attorney A's actions may be tempted to consider other factors.
>
> Attorney A cannot rely on how a future court will view the strength of the third party's claim or the surrounding circumstances, however, and should release the proceeds to the Client unless Attorney A himself has an understanding with the Client waiving the Client's right to order Attorney A to pay the proceeds to the Client or the third party has obtained a court order requiring Attorney A to retain the proceeds or pay the third party.

See also footnote 3 suggesting a letter of protection with a doctor who agreed to provide treatment and be paid from the proceeds of the law suit may trigger an obligation to pay the doctor from the settlement proceeds. The basis for Advisory Opinion 87-3 is rooted in the strong duty the lawyer has to his client.

> There are few ethical breaches which impact more negatively on the integrity of the legal profession than the misuse of a client's funds. The lawyer is not his client's financial guardian. He certainly cannot undertake to see that his client's bills are paid. Such a practice would destroy immediately the trust and confidence so essential to the attorney—client relationship; the client would insist that the money collected by paid to him directly; and the entire system of collection by counsel would break down.

Bar Association of Greater Cleveland Professional Ethics Committee, Opinion 87-3 (quoting *Office of Disciplinary Counsel v. Morton*, 5 Ohio St.3d 206, 208, 450 N.E.2d 275 (1983); ABA Comm. on Professional Ethics and Grievances, Formal Op. 163 (1936)).

CONCLUSION

Respondent did not violate Rule 1.15(e) of the Ohio Rules of Professional Conduct because neither had a third person "lawful claim" as defined in Rule 1.15. Rather, both medical

providers were general creditors. Furthermore, there is no evidence that Respondent had actual knowledge of lawful claims of either of those third persons. Rule 1.15 specifies that the definitions of Rule 1.15(d) apply to the Rule, which necessarily includes division (e). Amicus Curiæ respectfully disagrees with the reading of the Relator that division (d) should be read as lawful claims to be paid out and that division (e) should be read as claims that are not illegal to be held. This reading contravenes the decisions of this Court, the Advisory Opinions issued by the Board, and Ohio common law.

For the past twelve years, lawyers in Ohio have been relying on the plain language of Rule 1.15. Balancing lawful claims against clients' rights is challenging and the clarity provided by the 2009 amendments to Rule 1.15 (d) and Comment 4 was well-received and applied consistently. Ohio lawyers should be able to rely on the express language of any Rule of Professional Conduct.

For these reasons, the Amicus Curiæ respectfully requests that the decision of the Board of Professional Conduct be reversed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Merit Brief of Amicus Curiæ, The Ohio Association for Justice in Support of Respondent was served by electronic mail pursuant to Civ.R. 5(B)(2)(f) on this 22nd day of March 2022 to the following:

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