

# BOYCE, MURPHY, McDOWELL & GREENFIELD

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COPY

Re: Request for Ethics Opinion 93-6

Dear

You have requested an opinion from this Committee regarding the following factual scenario:

## FACTS

Client hired Attorney A to represent him. Attorney A associated with Attorney B. Client apparently verbally agreed to the joint representation. There is a written contingent fee agreement between Attorney B and Client. There is also a letter confirming the agreement between Attorney A and Attorney B concerning the joint representation on this file and other files that Attorney A and Attorney B are associated. For some unexplained reason, at some later point, Attorney C substituted for Attorney B. Attorney C verbally agreed with Client to continue the same fee agreement that Client had with Attorney B. Attorney C also verbally agreed to pay Attorney B's previously incurred fees, costs, and expenses at the conclusion of the case. Attorney C also verbally agreed with Attorney A upon a similar, continuing co-counsel agreement as had existed between Attorney A and Attorney B. Client again apparently verbally agreed to the joint representation by Attorney A and Attorney C.

The case was settled by Attorney C. The settlement check was made payable to Attorney C and Client. Client has demanded payment from Attorney C and will not agree to pay either Attorney A or Attorney B's costs or expenses.

Based on these facts, the issue presented is what Attorney C's obligation is with respect to the disbursement of the settlement funds.

OPINION

It is the opinion of this Committee that under Rule 1.15 Attorney C must disburse to Client those funds that are not in dispute and retain the portion in dispute separate until the dispute is resolved. See, Rule 1.15(c). This dispute will have to be resolved by some entity other than this Committee. This Committee does not resolve fee disputes between lawyers or between lawyers and clients.

This Committee is also concerned with the lack of written agreements or documentation presented by these facts. The problem which is before this Committee could likely have been avoided or, at the very least, its ultimate resolution simplified had there been written agreements with Client regarding the terms of the joint representation. Even though Client hired Attorney A, there is no written contingent fee agreement between Client and Attorney A as required by Rule 1.5(c). The written contingent fee agreement between Attorney B and Client makes no reference to the joint representation with Attorney A and does not address the payment by Client of Attorney A's costs or expenses. No new agreement was prepared when Attorney C substituted for Attorney B. Further, although the facts you presented indicate that Client agreed to the joint representation, there is no indication that any written agreement was signed by Client agreeing to the joint representation and the payment of costs and expenses of Attorney A or Attorney B. See, Rule 1.5(e).

Sincerely,

BOYCE, MURPHY, MCDOWELL & GREENFIELD

Michael S. McKnight, Chairman  
Ethics Committee