OBLIGATIONS OF SUCCESSOR COUNSEL ON CONTINGENT FEE MATTER WITH RESPECT TO PREDECESSOR’S CHARGING LIEN

What is the obligation of successor counsel when

- a client enters into a contingent fee agreement with a lawyer (“predecessor counsel”), and later
- terminates predecessor counsel, and
- enters into a new agreement with a different lawyer (“successor counsel”), and
- the case resolves and the proceeds are paid to successor counsel?

Under Pennsylvania law, a charging lien may arise against the recovery in favor of predecessor counsel. Five conditions must be met before a charging lien will be recognized and applied:

1. There is a fund in court or otherwise applicable for distribution on equitable principles,
2. The services of the attorney operated substantially or primarily to secure the fund out of which he seeks to be paid,
3. It was agreed that counsel look to the fund rather than the client for his compensation,
4. The lien claimed is limited to costs, fees or other disbursements incurred in the litigation by which the fund was raised, and
5. There are equitable considerations which necessitate the recognition and application of the charging lien.


Rule 1.15(f) of the Pennsylvania Rules of Professional Conduct provides:

When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

Comment [8] to Rule 1.15 states:

Third parties may have lawful claims against specific funds or other property in a lawyer’s custody such as a client’s creditor who has a lien on funds recovered in a personal injury action. . . . In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client unless the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. When there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

Philadelphia Bar Association Professional Guidance Committee Opinion 2003-4 opines that if the claim is colorable, the successor lawyer must protect it under Rule 1.15(f).

Based on the law set forth above, it is the Committee’s opinion that the successor lawyer must retain in his or her trust account sufficient monies to satisfy the quantum meruit claim of the predecessor lawyer, pending adjudication of the predecessor’s lien entitlement in a neutral forum, or an agreement among the parties as to the amount of the lien.

CAVEAT: THE FOREGOING OPINION IS ADVISORY ONLY AND IS NOT BINDING ON THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA OR ANY COURT. THIS OPINION CARRIES ONLY SUCH WEIGHT AS AN APPROPRIATE REVIEWING AUTHORITY MAY CHOOSE TO GIVE IT.