



**COLORADO SUPREME COURT
Office of Attorney Regulation Counsel**

Trust Account Manual

Disputes Over Funds in a Trust Account

Disputes With A Client

If there is a dispute between the lawyer and his or her client regarding the ownership of the money in a trust account, then the lawyer should keep the money in trust until there is a resolution of the claims. If there is no resolution, the lawyer should suggest means for prompt resolution of the dispute, such as arbitration.

Such a situation occurs, for example, where a lawyer receives an advance retainer of \$2,500. A dispute can arise between the lawyer and the client if the lawyer believes that he or she is entitled to take out \$1,500 from the advanced retainer in the trust account, but the client has a different point of view, claiming that the lawyer did not do any work. Faced with such a dispute, the lawyer cannot take out the \$1,500. Rather, he or she must leave the money in trust and must suggest means for prompt resolution of the dispute, such as fee arbitration. (In the fee arbitration situation, the lawyer would probably withdraw under Colo. RPC 1.16; however, he or she is still obligated to resolve the dispute while holding the money in trust.)

If a portion of the amount held in trust is not disputed, then the lawyer should disburse that amount to whomever it is owed.

Disputes With Third Parties

If a lawyer holds money of a third-party in his trust account, and a dispute arises between over what should be done with that money, then the lawyer must keep the disputed amount of money in the trust account and take steps to resolve the dispute in a timely manner. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and third party.

Third Party Claims to Funds in a Trust Account

Third parties, such as a client's creditors, may have just claims against funds in a trust account. Life can get even more difficult for a lawyer when the lawyer's client disagrees with the third party as to how the money should be distributed. Because the lawyer is a fiduciary to the third

party as well as to his or her client, the lawyer may have a duty to protect such third-party claims against wrongful interference by the client. Therefore, the lawyer may refuse to surrender the funds or property to the client. When a lawyer has been notified that a third party has an interest in money the lawyer holds or will hold for the benefit of a client, the lawyer must either honor that interest or explicitly and timely inform the interested party of his or her intent not to honor the interest. This situation arises most commonly when medical providers notify a lawyer that their medical expenses should be paid out of any settlement for the client.

If the dispute between the client and the third party claimant cannot be negotiated or mediated, then the lawyer will have to file an action in the district court and deposit the disputed funds in the registry of the court. The lawyer must act in a timely fashion to get the dispute resolved.