# EthicsOpinion

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## Disclosing Client's Social Security Number on Real Estate Conveyance Tax Return

### Informal Opinion 17-01

We are asked if a lawyer may complete Connecticut Department of Revenue Service ("DRS") Form OP-236, which requires a grantor, grantor's representative, or grantor's lawyer to provide, *inter alia,* the social security number(s) of the grantor(s) of a real estate transaction. Form OP-236 is to be filed with the town clerk when the deed is filed. Form 236 is in two parts. Page one, containing the grantor's social security number, is forwarded by the town clerk to DRS. Page two, which does not contain the social security number, is retained by the town clerk.

We are told that lawyers are concerned that the public may have access to social security numbers contained in Form OP-236 while the Form is in a town clerk's file. The Connecticut DRS has issued guidance stating that a willful refusal to provide a grantor's social security number on the Form may subject the grantor to a prison sentence up to one year and a fine of up to $1,000. DRS IP 2017–9. The department states that the confidentiality of social security numbers on the Form is protected by law. *Id.* The committee is not in a position to evaluate the department's assertions of its legal authority, but assumes that the department is acting within its authority.

Rule 1.6 of the Rules of Professional Conduct protects client confidences from disclosure, but permits lawyers to disclose confidential information when "impliedly authorized in order to carry out the representation" (Rule 1.6(a)) or as required "to comply with other law" (Rule 1.6 (c)(4)).

In our opinion, a lawyer may elect to complete DRS Form OP-236 in compliance with the law by supplying the client's social security number. **CL**

## A Lawyer's Obligations When Third Parties Assert Claims to Property in the Lawyer's Possession (Rule 1.15: The Safe Keeping of Property)

### Informal Opinion 17-02

The committee takes this opportunity to address the recently amended Rule 1.15 and the safekeeping of property in the lawyer's possession.

Attorneys, of course, have an unambiguous obligation to protect client funds in their possession, and violation of that obligation will generally lead to a heavy disciplinary penalty. But there also are circumstances in which an attorney will have an obligation to safeguard funds or other property that come into the lawyer's possession where a third party, and not just the client, has an interest. In regard to such obligations, Rule 1.15 (The Safe Keeping of Property) provides, in pertinent part, as follows:

- (e) 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 third person, 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.
- (f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) have interests, the property shall be kept separate by the lawyer until any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which the lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.
- (g) The word "interest(s)" as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In

the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within sixty days, the lawyer may distribute the funds in question to the client.[1]

The analysis of whether an attorney must continue to hold funds or other property in his or her possession when a client and a third person each claim an interest begins with the threshold question of whether the third party has an "interest" sufficient to trigger the obligation to hold the funds.[2] If the attorney determines that the third party has an interest within the meaning of the Rule, subsection (f) dictates that the attorney hold that portion of the funds or property subject to the dispute until the dispute is resolved.

The committee has previously identified four specific situations in which an attorney is required to hold funds or property in which a third party claims an interest: when

(1) the lawyer knows of a valid judgment concerning the disposition of the property;

(2) the lawyer knows of a valid statutory or judgment lien against the property;

(3) the lawyer knows of a letter of protection or similar obligation that is both:

(i) directly related to the property held by the lawyer; and

(ii) an obligation specifically entered into to aid the lawyer in obtaining the property; or

(4) the lawyer knows of a consensual security agreement or assignment concerning the property.

See Informal Opinions 99-06, 99-39, 01-05, 01-08, and 02-02.

The Official Commentary to Rule 1.15 now reflects similar limitations on what constitutes a valid interest within the meaning of the Rule.

The requirement that an attorney segregate and retain client funds to which a third party asserts a claim sometimes leaves attorneys in the difficult position of having to decide between compliance with the Rule 1.15 duty to safeguard funds on behalf of a third party and compliance with a client's demand to be paid what the client believes he or she is entitled to receive. The addition of subsection (g) to Rule 1.15 (in effect as of January 1, 2016) was intended to address this dilemma.

First, subsection (g) codifies within the Rule itself that "the mere assertion of a claim by a third party" is not enough to establish an "interest" within the meaning of the Rule. Second, subsection (g) provides that an attorney faced with a third party's claim to have an interest in funds held by the attorney may make a written request for documentation to substantiate the claimed "interest." If the attorney has not received such substantiation within 60 days of making the written request, he or she may distribute to the client the funds claimed to be subject to the dispute, and may do so without fear of being in violation of the Rule.[3]

The comments to Rule 1.15 provide that: "a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party." This is not to say that an attorney may never resolve a dispute. As the committee has previously written: "It is important that the lawyer not decide who should receive the funds unless both the client and the physician (or other third party), have agreed that he may do so and the lawyer has determined that he can ethically do so under Rule 1.7 and other applicable rules." Informal Opinion 01-11 (emphasis added).

If, however, an attorney determines that a third party has a valid interest in the property and the dispute cannot be resolved through the attorney's reasonable efforts, the attorney should inform the third party and the client, in writing, that: (1) the attorney may not unilaterally assume to arbitrate the dispute between the client and the third party; (2) the funds will be held in an interest bearing account until the dispute is resolved; and (3) the funds money will remain there until the attorney receives a copy of a judgment or arbitration decision

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in favor of either party or a signed stipulation or agreement.

Rule 1.15 also expressly addresses, in subsection (f), exactly what the attorney is obligated to segregate and safeguard: only that portion of the property that is subject to the dispute. For example, in an opinion concerning a question about a fee dispute, the Committee opined that the attorney was obligated to hold only the portion in dispute and not the entire amount of the fee. Informal Opinion 02-02.

Rule 1.15 does not, however, provide a basis for civil enforcement of a claimed right to property held by an attorney, nor may it properly be invoked in defense of one attorney's claim against another for recovery of a fee the attorney earned. As our Supreme Court has noted, the rules of conduct are to "'provide guidance and structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons.'" Gagne v. Vaccaro, 255 Conn. 390, 403 (2001) (quoting Scope section of the Rules of Professional Conduct). CL

## Notes

1. Subsection (g), discussed below, is a recent addition to Rule 1.15.
2. Often, a Rule 1.15(b) question will require a threshold determination of what legal right, if any, a third party has to property, often a mixed question of law and ethics. *See e.g. Silver v. Statewide Grievance Committee,* 242 Conn. 186 (1997) (dismissing appeal where certification improvidently granted). In *Silver,* Justices Berdon and McDonald concurred in the decision, but wrote separately to emphasis their disapproval of the Statewide Grievance Committee attempting to use attorney discipline "for the benefit of . . . insurance companies [claiming lien rights in personal injury settlement recoveries and] to wield the grievance process in order to accomplish what could not be accomplished through law or equity" because the claimed liens were not mature or otherwise judicially enforceable. *Id.* at 199-200.
3. Attorneys should keep in mind that duties arising from other law may impose additional obligations on a lawyer in handling other people's money. *See* Rule 1.15, Official Commentary ("The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services.").



## Highlights
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In an action brought by an insured against an insurer for uninsured motorist benefits, the defendant/insurer cannot implead a third party tortfeasor pursuant to the Contribution and Indemnification Impleader Statute, Conn. Gen. Stat. § 52-102a, which authorizes impleader only of a party "who is or may be liable for all or part of the plaintiff's claim against [the defendant]." The opinion reasons that because the plaintiff's first party claim against the UIM insurer is for breach of contract, whereas the insurer's claim against the third party defendant is in tort, the defendant is attempting to bring in the third party on a liability that is different in nature from the liability being asserted by the plaintiff against the defendant. Crespo v. Liberty Mutual Insurance Co., 65 CLR 593 (Agati, Salvatore C., J.).

An insurance broker is an agent of the insured only with respect to the procurement of coverage and not for purposes of receiving a notice of cancellation. Therefore a notice of cancellation directed to the agent and not forwarded by the agent to the insured is not binding on the insured (unless the insured has expressly authorized the agent to receive such notices). T Dev Construction, Inc. v. Fairfield Insurance Group, LLC, 65 CLR 731 (Genuario, Robert L., J.).

### Real Property

D'Amato v. Basile, 65 CLR 517 (Shortall, Joseph M., J.T.R.), holds that an agreement entered in connection with the dissolution of a real estate partnership providing that one of the two partners would pay a fixed sum to the other "if and when [an identified parcel] is transferred for and/or used for any... business, residential or other use or purpose," with the agreement to be binding on the parties' successors and assigns, violates the Rule Against Perpetuities because the interest may not vest within 21 years after the end of some life in being. This opinion holds that the party to which the payment was to be made could not enforce the obligation against the paying partner's estate following that partner's death.

A creditor can recover from the transferee of a fraudulent conveyance transaction only if the transferee still possesses the property when recovery is sought. Cadle Co. v. Cohen, 65 CLR 474 (Shortall, Joseph M., J.T.R.). The opinion holds that a creditor cannot recover under a fraudulent conveyance theory from an attorney who received and temporarily held funds transferred by a client from a bank account, even if the attorney was aware of the creditor's claim and assisted in the transfer with knowledge that the client was trying to avoid an expected bank garnishment. CL