

APA LEARN-AT-LUNCH SEMINAR REPORT FOR SEPTEMBER 2012

Guest Speaker: Geoffrey M. Trachtenberg, Esq.

Topic: “Ethical Rule 1.15: Who Gets a Slice of the Pie?”

Reported by Kathryn Fitchett, ACP, PP, PLS, Education Chairman

At the September 12 APA Learn-at-Lunch Seminar, Geoffrey Trachtenberg, Esq., spoke, in detail, about the “ins” and “outs” of Ethical Rule 1.15. This summary is intended to only touch on the highlights.

Anyone working for an attorney works for someone who has to deal with Ethical Rule 1.15 at some point in their law practice. This rule comes into play when attorneys come into contact with any type of property in which their clients might have an interest.

The relevant sections of E.R. 1.15 for this topic are (d) and (e), which state: (d) 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 between the client and the 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; (e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property for which the interests are not in dispute.

The parts of this Rule which are unclear are: What is an “interest”? “What is a “claimed interest” or “dispute”?

E.R. 1.15 is not violated where the lawyer actually has a reasonable, good-faith belief that the third party’s claim is without substantial merit.

All settlement proceeds must go into a specific or general trust account and nothing should be disbursed until the client signs off on a disbursement sheet. All undisputed funds must be promptly disbursed. In Mr. Trachtenberg’s PowerPoint presentation, he offers a “Lien Worksheet” form which he wrote to help with this process. (See <http://www.azdocuments.com/ethics/ER115.pdf>)

The Rule is triggered by an “interest.” If there is “an interest” by a third party in any funds held by an attorney, the third party is entitled to “prompt notice” that the attorney is holding such funds and “prompt

delivery” of any undisputed funds. Assuming there is “an interest” by a third party in any funds held by an attorney, the third party may request a “full accounting” of any such funds.

All disputed funds must remain in the trust account until the dispute is resolved. An attorney may not unilaterally assume to arbitrate a dispute between the client and the third party, and may not hold the disputed funds indefinitely or until a statute of limitations runs. After a “reasonable” period of time, an attorney should file “an action,” such as a declaratory relief action or interpleader, to resolve the dispute.

Examples of E.R. 1.15 abuse may be found in Mr. Trachtenberg’s PowerPoint presentation.

Mr. Trachtenberg said he “has problems with the way this Rule is drafted.” There is an active committee to revise this ethical rule to make it more understandable. Pending changes may be found in R-11-0024 and R-12-0032, as stated in the PowerPoint slides.

Every attorney and every paralegal should be familiar with E.R. 1.15 because it affects each law practice at one time or another, no matter what type of law is practiced.

The PowerPoint presentation presented by Mr. Trachtenberg can be downloaded at <http://azdocuments.com/ethics/>. Also, if you wish to watch Mr. Trachtenberg’s entire presentation, you can contact an APA board member to find out how to rent the video of the event.



Geoffrey M. Trachtenberg is a partner in the law firm of Levenbaum Cohen Trachtenberg, PLC, an injury law firm. He manages the law firm’s California and Utah offices. Primarily, he focuses on personal injury, litigation and appeals, particularly related to motorcycle injury and wrongful death cases.

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Geoff graduated from Boalt Hall School of Law at the University of California, Berkeley. Upon graduation, he served as a law clerk to the Honorable Gary L. Taylor, U.S. District Court for the Central District of California, and then practiced with the law firm of Irell & Manella, LLP in Newport Beach, California.

Geoff is a well-recognized expert in the area of medical liens and subrogation rights. He regularly speaks on the topic at Continuing Legal Education courses and is the co-author of the Arizona Personal Injury Lien Law & Practice Guide, a comprehensive publication on state and federal third-party recovery rights. He is responsible for several published decisions which have successfully set precedent for both insurance and third-party lien and subrogation rights. He has also co-authored legislation and rules related to these rights.

You can view his entire bio at: <http://www.ltinjurylaw.com/meet-the-firm/geoffrey-m-trachtenberg>.

Lunch Anyone?

In an effort to maintain **Learn At Lunch** costs at their current level, parking is now exclusively via self-park. Parking is still gratis for everyone attending the Learn at Lunch Seminars in the Self-Park Garage at the Downtown Phoenix Sheraton. There are two levels of complimentary self-parking at the Sheraton on levels G1 and G2. Please note, if you choose to valet park the cost will be incurred by the individual.

Also, beginning November 14, 2012, everyone attending the monthly **Learn at Lunch** Seminar at the beautiful Downtown Phoenix Sheraton will enjoy a delicious plated luncheon. The Sheraton's highly trained wait staff will serve everyone a starter, an entrée, and a sweet dessert. We are looking forward to plated lunches with holiday themes, a great variety of entrées, and healthy meals to keep all of us going strong.

We look forward to seeing everyone at the upcoming **Learn at Lunches** for some great CLE opportunities and a delicious meal. See you there!

Luncheon Committee



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