Exhibit B, Part 2

be given electronically, to the extent practicable, in accordance with the January 23, 2003 order establishing notice procedures entered in the Chapter 11 Cases to (i) those parties who have filed requests for notices and whose electronic addresses remain current and operating, and (ii) to such other holders, if any, who have requested notice and provide the Trustee with addresses for electronic notice.

3.9 Compliance with Laws. Any and all distributions of Distribution Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

ARTICLE IV

THE TRUSTEE

4.1 Generally. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Liquidating Trust and not otherwise, except that the Trustee may deal with the Distribution Assets for his own account as permitted by Section 4.7 hereof.

4.2 Responsibilities of Trustee. Subject to Section 9.1 hereof, the Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Distribution Assets, make timely distributions and not unduly prolong the duration of the Liquidating Trust. In so doing, the Trustee will exercise his reasonable business judgment in liquidating the Distribution Assets. The liquidation of the Distribution Assets may be accomplished, in consultation with or at the direction of the Trust Committee, through the sale of Distribution Assets (in whole or in combination), including the sale of any Litigation Claim or through the prosecution or settlement of any or all Litigation Claims or through such other method(s) as the Trustee shall determine. In connection therewith, the Trustee will have the power to prosecute for the benefit of the Liquidating Trust all claims, rights, and Litigation Claims transferred to the Liquidating Trust, whether such suits are brought in the name of the Liquidating Trust, the Debtors or otherwise for the benefit of the holders of Liquidating Trust Interests. Any and all proceeds generated from such Distribution Assets shall be held by the Liquidating Trust. Except as expressly set forth herein, the Trustee shall have discretion to pursue or not to pursue any and all claims, rights or causes of action, as he determines are in the best interests of the holders of the Liquidating Trust Interests and consistent with the purposes of the Liquidating Trust, and shall have no liability for the outcome of his decision. The Trustee may incur any reasonable and necessary expenses in liquidating the Distribution Assets.

4.3 Liability of Trustee; Indemnification. None of the Trustee, his designees or professionals, or any duly designated agent or representative of the Trustee shall be liable for the act or omission of any other agent or representative of the Trustee, nor shall the Trustee, his designees or professionals be liable for any act or omission taken or omitted to be taken in his capacity as the Trustee, designee or professional, other than acts or omissions resulting from their individual and respective willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. The Trustee may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with his attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, omitted to be

taken, or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Trustee shall not be under any obligation to consult with his attorneys, accountants, financial advisors, or agents, and his determination not to do so shall not result in the imposition of liability on the Trustee or, as applicable, his designees, unless such determination is based on willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. The Liquidating Trust shall indemnify and hold harmless the Trustee, his designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions with respect to the Liquidating Trust or the implementation or administration of the Plan; provided, however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts.

4.4 Reliance by Trustee. Except as otherwise provided in Section 4.3 hereof:

(a) the Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by him to be genuine and to have been signed or presented by the proper party or parties; and

(b) Persons dealing with the Trustee shall look only to the Distribution Assets to satisfy any liability incurred by the Trustee to such person in carrying out the terms of this Trust Agreement, and the Trustee shall have no personal obligation to satisfy any such liability.

4.5 Investment and Safekeeping of Distribution Assets. The right and power of the Trustee to invest Distribution Assets, the proceeds thereof, or any income earned by the Liquidating Trust, shall be limited to the right and power that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d), is permitted to hold, pursuant to the Treasury Regulations.

4.6 Authorization to Expend and Reserve Distribution Assets. The Trustee may expend and reserve the Distribution Assets necessary (i) to meet contingent liabilities and to maintain the value of its non-cash assets until such assets are liquidated, (ii) pay reasonable administrative expenses of the Debtors and the Liquidating Trust that are the Liquidating Trust's responsibility under the Plan and that have not been paid (including professional fees and expenses), or have not been Allowed as of the Effective Date but which subsequently are Allowed (including, but not limited to, the expenses of the Liquidating Trustee and professional fees and expenses), (iii) fund the distribution to holders of Disputed Claims if and to the extent such Disputed Claims subsequently are Allowed and (iv) satisfy other liabilities incurred by the Liquidating Trust in accordance with the Plan; provided, that, in no event shall the funding of the GUC Claims Reserve or any other reserve for Disputed General Unsecured Claims or Disputed Patient Refund Claims reduce the amount of Cash to be paid to the holders of the NCFE Claim.

4.7 Expense Reimbursement and Compensation.

(a) The Distribution Assets shall be subject to the claims of the Trustee, and the reasonable costs and expenses of the Liquidating Trust, including the reasonable fees and expenses of the Trustee and his retained professionals, and shall be paid out of the Distribution Assets. Subject to the prior approval of 2/3 of the Trust Committee or Final Order of the Court, the Trustee shall be entitled to reimburse himself out of any available Cash in the Liquidating Trust, for his reasonable and actual out-of-pocket expenses and for any and all loss, liability, expense, or damage which the Trustee, designee or professional may sustain in good faith and without willful misconduct, gross negligence, or fraud in the exercise and performance of any of the powers and duties stated in furtherance of, this Trust Agreement. The Trustee shall return any such advances made in connection with any loss, liability, expense, or damage determined by a court of competent jurisdiction to be sustained in bad faith or with willful misconduct, gross negligence, or fraud. As compensation for the performance of his duties, the Trustee will be entitled to reasonable compensation as determined by the Trust Committee. The Trustee may be compensated on a *nunc pro tunc* basis, prior to the Effective Date. Such costs and expenses shall be considered administrative costs of the Debtors' estates.

(b) If the Cash in the Liquidating Trust shall be insufficient to compensate and reimburse the Trustee, including any professionals retained by the Trustee for any amounts to which they are entitled hereunder, then the Trustee is hereby authorized to reduce to Cash that portion of the Distribution Assets necessary so as to effect such compensation and reimbursement.

4.8 No Bond. The Trustee shall serve without bond unless otherwise approved by a majority of the Trust Committee.

4.9 Confidentiality. The Trustee shall, during the period that he serves as Trustee under this Trust Agreement and for a period of twelve (12) months following the termination of this Trust Agreement, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Distribution Assets relates or of which he has become aware in his capacity as Trustee, except as otherwise required by law.

ARTICLE V

SUCCESSOR TRUSTEE

5.1 Removal. The Trustee may be removed, without cause, by the unanimous affirmative vote of the Trust Committee Representatives at a meeting of the Trust Committee called for the purpose of removing the Trustee. The Trustee may be removed, with cause, by the affirmative vote of 2/3 of the Trust Committee Representatives at a meeting of the Trust Committee called for the purpose of removing the Trustee, provided that in such a case the Trustee or a Trust Committee Representative may seek, within 10 business days after such action to remove the Trustee for cause, an order of the Court preventing the Trustee's removal for cause. Such an order shall be effective to prevent the Trustee's removal only if it is entered within 30 days after the 2/3 affirmative vote to remove the Trustee for cause. The term "cause" shall mean (a) the willful failure to obtain the authority of or act at the direction of the Trust

Committee pursuant to Section 9.1 of this Trust Agreement with respect to a material matter; (b) persistent inattention to his duties under this Trust Agreement; (c) acts amounting to gross negligence or willful misconduct and thereby causing a detriment to the Liquidating Trust; (d) misappropriation of any opportunity of the Liquidating Trust; (e) dishonesty; (f) fraud; (g) misappropriation of funds for personal gain or in violation of any law, judgment, decree, order of any governmental authority; (h) a material breach of this Trust Agreement; or (i) being indicted or similarly charged by applicable governmental authorities with, or being convicted of, a felony. Such removal shall become effective on the date action is taken by the Trust Committee Representatives, unless challenged by the Trust Committee Representative or Trustee, in which case removal will become effective if no order staying removal is entered within 30 days from the date of the subject removal vote.

5.2 Resignation. The Trustee may resign by giving not less than ninety (90) days' prior written notice thereof to the Trust Committee. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice, and (ii) the appointment of a successor by a majority of the Trust Committee Representatives and the acceptance by such successor of such appointment. If a successor Trustee is not appointed or does not accept its appointment within ninety (90) days following delivery of notice of resignation, the Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

5.3 Appointment of Successor Trustee. In the event of the death (in the case of a Trustee that is a natural person), dissolution (in the case of a Trustee that is not a natural person), resignation pursuant to Section 5.2 hereof, incompetency, or removal of the Trustee pursuant to Section 5.1 hereof, (i) within the first six months after the Effective Date, the successor Trustee shall be Neil Demchick and (ii) thereafter a 2/3 vote of the Trust Committee Representatives may appoint a successor Trustee, provided that the Successor Trustee is acceptable to the Committee Trust Representative and the Reorganized Debtors, in each case which consent shall not be unreasonably withheld. Such appointment shall specify the date on which such appointment shall be effective. Every successor Trustee appointed hereunder shall execute, acknowledge, and deliver to the Bankruptcy Court and to the retiring Trustee an instrument accepting the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor Trustee, without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Trustee; provided, however, that a removed or resigning Trustee shall, nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Liquidating Trust all the estates, properties, rights, powers, and trusts of such predecessor Trustee.

ARTICLE VI

REPORTS TO HOLDERS OF LIQUIDATING TRUST INTERESTS

6.1 Securities Laws, Tax and Other Reports to Holders of Liquidating Trust Interests.

(a) Securities Laws. Under section 1145 of the Bankruptcy Code, the issuance of Liquidating Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933, as amended, and applicable state and local laws requiring registration of

securities. If the Trustee determines, with the advice of counsel, that the Liquidating Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

(b) Other Reporting. As soon as practicable after the end of each calendar year beginning with the calendar year ending December 31, 2004, and as soon as practicable upon termination of the Liquidating Trust, the Trustee shall make available upon request to each holder of Liquidating Trust Interests appearing on his records as of the end of such period or such date of termination a written report including: (i) financial statements of the Liquidating Trust for such period, and, if the end of a calendar year, a report (which, in consultation with or at the direction of the Trust Committee, may be prepared by an independent certified public accountant employed by the Trustee) reflecting the result of such agreed upon procedures relating to the financial accounting administration of the Liquidating Trust as proposed by the Trustee; (ii) a description of any action taken by the Trustee in the performance of his duties which materially affects the Liquidating Trust and of which notice has not previously been given to the holders of Liquidating Trust Interests; (iv) the status of the claims and causes of action assigned to the Liquidating Trust; and (v) a description of the progress of converting Distribution Assets to Cash and making distributions to holders of Liquidating Trust Interests and any other material information relating to the Distribution Assets and the administration of the Liquidating Trust. The Trustee may post any such report on a web site maintained by the Trustee in lieu of actual notice to holders of Liquidating Trust Interests (unless otherwise required by law).

(c) Annual Plan and Budget. If instructed by the Trust Committee by majority vote, the Trustee shall prepare and submit to the Trust Committee for approval an annual plan and budget at least 30 days prior to the commencement of each fiscal year of the Liquidating Trust, provided, however, that the first such report shall be submitted no later than 60 days after the Effective Date of the Plan date hereof. Such annual plan and budget shall set forth in reasonable detail: (i) the Trustee's anticipated actions to administer and liquidate the Distribution Assets, including those actions pursuant to Sections 3.2 and 4.2 of this Trust Agreement; and (ii) the anticipated expenses, including professional fees, associated with conducting the affairs of the Liquidating Trust. Such annual plan and budget shall be updated and submitted to the Trust Committee for review and approval on a quarterly basis, and each such quarterly update shall reflect the differences between the anticipated actions described in the annual report and actual operations of the Liquidating Trust to date. All actions by the Trustee must be consistent with the plan and budget, as updated on a quarterly basis.

(d) Tax Reporting. If instructed by the Trust Committee by majority vote, within seventy-five (75) days following the end of each calendar year, the Trustee shall submit to each holder of a Liquidating Trust Interest appearing on his records during such year a separate statement setting forth the information necessary for such holder to determine his share of items of income, gain, loss, deduction, or credit and will instruct each holder to report such items on its federal income tax returns (and state and local tax returns, as applicable) or to forward the appropriate information to the beneficial holders with instructions to report such items on their federal income tax returns (or state and local tax returns, as applicable).

ARTICLE VII

TERMINATION OF LIQUIDATING TRUST

7.1 Termination of Liquidating Trust. The Trustee and the Liquidating Trust shall be discharged or dissolved, as the case may be, at such time as (i) all Disputed Claims have been resolved, (ii) all Distribution Assets have been liquidated, and (iii) all distributions required to be made by the Trustee under the Plan have been made, but in no event shall the Liquidating Trust be dissolved later than five (5) years from the Effective Date unless the Court, upon motion within the six (6) month period prior to the fifth (5th) anniversary (and, in the case of any extension, within six (6) months prior to the end of such extension), determines that a fixed period extension (not to exceed three (3) years, together with any prior extensions, without a favorable letter ruling from the Internal Revenue Service that any further extension would not adversely affect the status of the Liquidating Trust as a liquidating trust for federal income tax purposes) is necessary to facilitate or complete the recovery and liquidation of the Distribution Assets or the dissolution of the Debtors. The Trustee shall not unduly prolong the duration of the Liquidating Trust and shall at all times endeavor to resolve, settle, or otherwise dispose of all claims that constitute Distribution Assets and to effect the distribution of the Distribution Assets to the holders of the Liquidating Trust Interests in accordance with the terms hereof and terminate the Liquidating Trust as soon as practicable. Prior to and upon termination of the Liquidating Trust, the Distribution Assets will be distributed to the holders of Liquidating Trust Interests, pursuant to the provisions set forth in Section 3.6 hereof. If any Distribution Assets are not duly claimed, such Distribution Assets will be redistributed to all other holders of Liquidating Trust Interests receiving Distribution Assets pursuant to Section 3.6 hereof. Thereafter, if there are still any Distribution Assets not duly claimed, such Distribution Assets will be disposed of in accordance with applicable law.

ARTICLE VIII

AMENDMENT AND WAIVER

8.1 Amendment and Waiver. Any substantive provision of this Trust Agreement may be amended or waived by the Trustee, upon notice and unanimous approval of the Trust Committee Representatives or by approval of the Court. Technical amendments to this Trust Agreement may be made, as necessary to clarify this Trust Agreement or enable the Trustee to effectuate the terms of this Trust Agreement, by the Trustee in each case with approval by majority of the Trust Committee Representatives. Notwithstanding this Section 8.1, any amendments of this Trust Agreement shall not be inconsistent with the purpose and intention of the Liquidating Trust to liquidate in an expeditious but orderly manner the Distribution Assets in accordance with Treasury Regulations Section 301.7701-4(d) and Section 3.1 hereof.

ARTICLE IX

9.1 Authority of the Trust Committee. In connection with the administration of the Liquidating Trust, the Trust Committee shall oversee, and, if approved by 2/3 of the Trust Committee Representatives, direct the Trustee on any of the matters set forth in this Trust Agreement, including, without limitation, the matters set forth in Sections 3.2 and 4.2 hereof.

Notwithstanding the prior sentence, the Trustee, upon the advice of counsel, may refuse to follow any direction that conflicts with law, this Trust Agreement or the Plan.

9.2 General Unsecured Claims Issues. Notwithstanding anything to the contrary in Section 9.1 above, the Committee Trust Representative shall have the sole ability to direct the Trustee or approve of the Trustee's actions concerning the treatment, prosecution or other resolution of General Unsecured Claims.

9.3 Compensation of Trust Committee Representatives. Each Trust Committee Representative shall be compensated for his-time expended in Trust matters at the hourly rate such person charges for services to his/her other clients, plus reasonable and actual out-of-pocket expenses. If such Trust Committee Representative does not normally charge an hourly rate, the rate shall be set at $300.00 hour, or as otherwise determined by the Trustee and the other Trust Committee Representatives. All Trust Committee Representative compensation (fees and expenses) shall be paid solely from Distribution Assets.

9.4 Removal. The NCFE Entities may remove an NCFE Trust Representative at any time, with or without cause, and the Committee may remove the Committee Trust Representative at any time, with or without cause. Such removal shall become effective on the date action is taken by the NCFE Entities or the Committee, as applicable.

9.5 Resignation. A Trust Committee Representative may resign by giving not less than fifteen (15) days' prior written notice thereof to the Trustee and the other Trust Committee Representatives. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor pursuant to Section 9.6 below.

9.6 Appointment of a Successor Trust Committee Representative. In the event of the death (in the case of a Trust Committee Representative that is a natural person), dissolution (in the case of a Trust Committee Representative that is not a natural person), removal pursuant to Section 9.4 hereof, incompetency or resignation of a Trust Committee Representative pursuant to Section 9.5 hereof, the NCFE Entities shall appoint a successor to any NCFE Trust Representative, and the Committee shall appoint a successor to any Committee Trust Representative. Such appointment shall specify the date on which such appointment shall be effective. Every successor Trust Committee Representative appointed hereunder shall execute, acknowledge and deliver to the Trustee and other Trust Committee Representatives an instrument accepting the appointment under this Trust Agreement and agreeing to be bound thereto, and thereupon the successor Trust Committee Representative without any further act, deed, or conveyance, shall become vested with all rights, powers, trusts, and duties of the retiring Trust Committee Representative; provided, however, that a resigning Trust Committee Representative shall, nevertheless, when requested in writing by the Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trust Committee Representative under the Liquidating Trust all the estates, properties, rights, powers and trust of such predecessor Trust Committee Representative.

9.7 Liability of Trust Committee Representative; Indemnification. None of the Trust Committee Representatives, his designees or any duly designated agent or representative of the Trust Committee Representative shall be liable for the act or omission of any other agent or

representative of the Trust, nor shall the Trust be liable for any act or omission taken or omitted to be taken in his capacity as Trust Committee Representative, other than acts or omissions resulting from the Trust Committee Representatives willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. Each Trust Committee Representative may, in connection with the performance of his functions, and in his sole and absolute discretion, consult with attorneys, accountants, financial advisors and agents of the Trust, and shall not be liable for any act taken, omitted to be taken or suffered to be done in accordance with advice or opinions rendered by such Persons. Notwithstanding such authority, the Trust Committee Representative shall not be under any obligation to consult with said attorneys, accountants, financial advisors, or agents, and his determination not to do so shall not result in the imposition of liability on the Trust Committee Representative or, as applicable, his designees, unless such determination is based on willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts. The Liquidating Trust shall indemnify and hold harmless the Trustee, each Trust Committee Representative and its designees, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of, and shall provide appropriate insurance covering (if approved by the Trust Committee), all liabilities, losses, damages, claims, costs, and expenses, including, but not limited to, attorneys' fees and costs arising out of or due to their actions or omissions, or consequences of such actions or omissions with respect to the Liquidating Trust or the implementation or administration of the Plan; provided, however, that no such indemnification will be made to such Persons for such actions or omissions as a result of willful misconduct, gross negligence, bad faith, self-dealing, breach of fiduciary duty, or ultra vires acts.

ARTICLE X

MISCELLANEOUS PROVISIONS

10.1 Intention of Parties to Establish Liquidating Trust. This Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

10.2 Preservation of Privilege and Defenses. Any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Liquidating Trust shall vest in the Trustee and his representatives, and the Debtors and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

10.3 Laws as to Construction. Except to the extent the Bankruptcy Code or Bankruptcy Rules are applicable, this Trust Agreement shall be governed by, and construed and enforced in accordance with, the federal laws of the United States and, to the extent there is no applicable federal law, the domestic laws of the District of Columbia, without giving effect to the principles of conflicts of law thereof. All references to the masculine shall include both the masculine and feminine.

10.4 Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provisions of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

10.5 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if personally delivered or sent by mail, postage prepaid, or by telecopy addressed to the person for whom such notice is intended as follows (or such other address as may be designated by notice given in accordance with this Section 10.5):

If to the Trustee: Sam J. Alberts, Esq.
1333 New Hampshire Avenue, N.W.
Washington, D.C. 20036

with copies to:

Martin Cohen
FTI Consulting
1201 I Street, NW
Suite 400
Washington D.C. 20005

David Coles
Alvarez & Marsal, LLP
101 East 52nd St.
New York, NY 10022

Jerry Carter
Healthcare Management Resources, LLC
P.O. Box 1709
Hendersonville TN 37077

If to a holder of a Liquidating Trust Interest:

To the name and address set forth on the registry maintained by the Trustee.

10.6 Headings. The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or any term or provision hereof.

10.7 Relationship to the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and therefore this Trust Agreement incorporates the provisions of the Plan. To that end, the Trustee shall have full power and authority to take any action

consistent with the purpose and provisions of the Plan, and to seek any orders from the Court in furtherance of implementation of the Plan and this Trust Agreement. If any provisions of this Trust Agreement are found to be inconsistent with the provisions of the Plan, the provisions of this Trust Agreement shall control.

10.8 Resolution of Bankruptcy Avoidance Actions. The Trust Committee shall adopt guidelines regarding the Trustee's authority and discretion to prosecute, settle or otherwise resolve any claims or causes of actions under Sections 542 through 553 of the Bankruptcy Code assigned to the Trust. With respect to any settlement or other resolution of a Bankruptcy Avoidance Claim, the Trustee is to make all efforts to structure the recovery on such claim to eliminate any Bankruptcy Code Section 502(h) replacement claim. In addition, the Trustee is to endeavor to eliminate, or if complete elimination cannot occur, reduce to the maximum permissible extent any Allowed Claim that might otherwise be held by any such Bankruptcy Avoidance Action defendant or target. The Trust Committee is authorized to approve all settlements or other resolutions. The Trust Committee is permitted to adopt any guidelines concerning the governance of avoidance actions, provided that such guidelines do not conflict with the terms set forth in this paragraph and are adopted by 2/3 affirmative vote of the Trust Committee of which one affirmative vote is required to be from the Committee Trust Representative.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

DOCTORS COMMUNITY HEALTHCARE CORPORATION

By: _____
Name:
Title:

GREATER SOUTHEAST COMMUNITY HOSPITAL CORPORATION I
PACIN HEALTHCARE-HADLEY MEMORIAL HOSPITAL CORPORATION
MICHAEL REESE MEDICAL CENTER CORPORATION
PACIFICA HOSPITAL OF THE VALLEY CORPORATION
PINE GROVE HOSPITAL CORPORATION

BY: DOCTORS COMMUNITY HEALTHCARE CORPORATION, as agent for each of the foregoing entities

By: _____
Name:
Title:

_____
[_____], as Trustee

By: _____
National Century Enterprises, Inc. (on behalf of itself and the other NCFE Entities)
Name:
Title:

By: _____
Official Committee of Unsecured Creditors
Name:
Title:

BY: DOCTORS COMMUNITY HEALTHCARE CORPORATION, as agent for each of the foregoing entities

By: _____
Name:
Title:

_____
[_____], as Trustee

By: _____
National Century Enterprises, Inc. (on behalf of itself and the other NCFE Entities)
Name:
Title:

By: _____
Official Committee of Unsecured Creditors
Name:
Title

By: LIST SUBJECT PARTIALLY RELEASED PARTIES AND ALL MUST SIGN

Attachment 2

Home > For Lawyers > Ethics > Legal Ethics > Opinions

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For Lawyers
For the Public

Opinion 333

Surrendering Entire Client File Upon Termination of Representation

Upon the termination of representation, an attorney is required to surrender to a client, to the client's legal representative, or to a successor in interest the entire "file" containing the papers and property to which the client is entitled. This includes copies of internal notes and memoranda reflecting the views, thoughts and strategies of the lawyer.

Applicable Rules

- Rule 1.8(i) (Imposing lien on attorney work product)
- Rule 1.16(d) (Surrendering files upon termination of representation)

Inquiry

A law firm previously represented a bank in a variety of matters. After the firm's representation in those matters ended, the Federal Deposit Insurance Corporation ("FDIC") was appointed as receiver for the bank. The FDIC's outside counsel has requested access to all of the firm's files regarding the bank. The firm has provided access to all client files with the exception of a small folder containing individual attorney handwritten notes and several internal memoranda reflecting attorneys' thoughts, impressions and strategy ideas. Outside counsel for the FDIC claims to be entitled to all of the bank's files - including the firm's opinion work product - by virtue of the FDIC's statutory assumption of all rights, titles, powers and privileges of the insured depository institution. The FDIC's counsel has never articulated why the particular material that the firm is withholding is necessary for its investigation of the bank's failure. Instead, it argues simply that the FDIC, as the bank's successor in interest, is entitled to these documents.

Discussion

D.C. Rule 1.16 provides that "[i]n connection with any termination of representation, a lawyer shall take timely steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled . . . The lawyer may retain papers relating to the client to the extent permitted by Rule 1.8(i)." D.C. Rule 1.16(d). D.C. Rule 1.8(i) creates a narrow exception to the general rule that clients are entitled to their files by allowing a lawyer to secure unpaid fees or expenses by placing a lien "upon the lawyer's own work product, and then only to the extent that the work product has not been paid for." D.C. Rule 1.8(i).[1] The Comment to D.C. Rule 1.8 states, "If the

client has paid for the work product, the client is entitled to receive it, even if the client has not previously seen or received a copy of the work product." D.C. Rule 1.8, Comment [9].

The Committee has recognized that the surrender of all files to the client at the termination of a representation is the general rule and that the work-product exception applicable to liens for unpaid fees or expenses should be construed narrowly. *See* D.C. Ethics Op. 250 (1994); D.C. Ethics Op. 230 (1992). Work product "immunity" is a doctrine of evidence law, which may shield attorney work product from discovery by opposing counsel; it does not shield that same attorney work product from the attorney's own client.

Indeed, the Committee has explicitly recognized that the District of Columbia has rejected the "end-product" approach of some jurisdictions[2] - where the client only owns the pleadings, contracts, and reports that reflect the final result of the attorney's work - in favor of the majority, "entire file" approach, "which does not permit a lawyer to acquire a lien on any of the contents of the client file except that portion of work product within the file that has not been paid for." D.C. Ethics Op. 283 n.3 (1988); *see also* D.C. Ethics Op. 168 (1986) (for purposes of determining what needs to be turned over to a former client or substitute counsel, the "entire contents of a client's file" includes "all notes, memoranda and correspondence constituting 'work product'"); *Sage Realty Corp. v. Proskauer Rose Goetz & Mendelsohn LLP*, 91 N.Y.2d 30, 34, 689 N.E.2d 879, 666 N.Y.S.2d 985 (N.Y. 1997).

D.C.'s approach has been embraced by the Restatement (Third) of *The Law Governing Lawyers* (2000), which states that, "On request, a lawyer must allow a client or former client to inspect and copy any document possessed by the lawyer relating to the representation, unless substantial grounds exist to refuse." *Id.* at § 46(2). An attorney must surrender all papers and property *to which the client is entitled*. This requires the attorney to consider carefully the contents of the "file," ensuring that it contains all material that the client or another attorney would reasonably need to take over the representation of the matter, material substantively related to the representation, and material reasonably necessary to protect or defend the client's interests. An attorney would not be required to surrender material that relates solely to the prior management of the case (such as material concerning which of the firm's lawyers were assigned particular research projects) or to matters that are completely unrelated to the substance of the representation.

Conclusion

For these reasons, at least so far as the D.C. Rules of Professional Conduct are concerned, nothing in the matter at hand would justify withholding the relevant file from counsel for the FDIC.[3]

Inquiry No: 05-10-05
Adopted: December 20, 2005
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1. **[Return to text]** Although not relevant here, D.C. Rule 1.8(i) also provides that, even when payment has *not* been made, work product cannot be withheld (i) when the client has become unable to pay, or (ii) when withholding the lawyer's work product would present a significant risk to the client of irreparable harm.
2. **[Return to text]** A minority of courts and state bar legal ethics authorities distinguish between the "end product" of an attorney's services - e.g., filed pleadings, final versions of documents prepared for the client's use, and correspondence with the client, opposing counsel and witnesses - and the attorney's "work product" leading to the creation of those end product documents, which remains the property of the attorney (*see, e.g., Federal Land Bank v. Federal Intermediate Credit Bank*, 127 F.R.D. 473, *aff'd in part and rev'd in part on other grounds*, 128 F.R.D. 182 (S.D. Miss. 1989); *Corrigan v. Armstrong, Teasdale, Schlafly, Davis & Dicus*, 824 S.W.2d 92 (Mo. Ct. App.); Alabama State Bar, Formal Ethics Op. RO 86-02; Arizona State Bar Comm. on Rules of Prof'l Conduct, Op. No. 92-1; Illinois State Bar Assn., Op. No. 94-13; North Carolina State Bar Ethics Comm., RPC 178 (1994); Rhode Island Supreme Ct. Ethics Advisory Panel, Op. No. 92-88 (1993); Wisconsin Ethics Opinion E-82-7 (1998)).
3. **[Return to text]** This assumes, of course, that the FDIC, is, as a matter of federal law, in effect the "client" and is entitled to any property or files to which the bank would be entitled if it were still the firm's client .

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