



# ISBA Professional Conduct Advisory Opinion

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**Opinion No. 15-03**  
**September 2015**

**Subject:** Client Funds and Property

**Digest:** A lawyer who leaves a practice may leave the other members of his firm with unclaimed wills after he leaves. If, after a diligent search, the other lawyers cannot locate the individuals to whom those wills belong, the lawyers should file those wills with the Secretary of State Deposit of Wills.

**References:** Illinois Rule of Professional Conduct 1.3

Illinois Rule of Professional Conduct 1.7

Illinois Rule of Professional Conduct 1.8

Illinois Rule of Professional Conduct 1.9

Illinois Rule of Professional Conduct 1.15(a)

Illinois Rule of Professional Conduct 1.15(d)

755 ILCS 5/6-1

755 ILCS 15/1

15 ILCS 305-5.15

53 Illinois Administrative Code 400

## **FACTS**

Attorney A practices in a three member firm. One of the other partners practiced in trusts and estates. That partner is now leaving the state and will be going on retired status in Illinois with no intention to service Illinois clients. Attorney A and the remaining partners will not engage in trusts and estates law and have several wills left in their possession.

## QUESTIONS

What are the ethical obligations for an attorney when storing original wills?

## ANALYSIS

Maintaining and storing a will while awaiting probate creates many ethical obligations for attorneys. Even if an attorney stores a client's will, the will remains the property of the client. Illinois Rule of Professional Conduct 1.15(a) governs safekeeping of property and states that tangible property held by a lawyer shall be identified and appropriately safeguarded. If a client wishes to retrieve his or her property RPC 1.15(d) requires a lawyer to 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." Attorneys should be aware of any continuing attorney/client relationship that may remain when creating a will. If the testator remains a client, RPC 1.7 (Conflict of Interest: Current Clients) and 1.8 (Conflict of Interest: Current Clients: Specific Rules) may apply. If the testator is a former client, see RPC 1.9 (Duties to Former Clients).

An attorney has certain obligations under 755 ILCS 5/601 to file wills once a testator passes away. As that statute states: "Immediately upon the death of the testator any person who has the testator's will in his possession shall file it with the clerk of the court of the proper county and upon failure or refusal to do so, the court on its motion or on the petition of any interested person may issue an attachment and compel the production of the will."

If neither Attorney A nor the remaining partners wish to retain the original wills in their possession, other alternatives must be explored. Even the most diligent of attorneys may encounter circumstances in which the testator cannot be located, even after a diligent search. For these circumstances the Illinois Secretary of State's Office created the Deposit of Wills program. 53 Illinois Administrative Code 400 sets out the requirements for the Deposit of Wills program which include diligent searches for the testator, depositing the will, and receiving a receipt for the will. The complete list of the requirements and further explanation can be found in 53 Ill. Admin. Code 400.

Attorneys should have a succession plan in place for whoever takes over their practice. Comment 5 to IPRC 1.3 suggests the following: "To prevent neglect of client matters in the event of a sole practitioner's death or disability, the duty of diligence may require that each sole practitioner prepare a plan, in conformity with applicable rules, that designates another competent lawyer to review client files, notify each client of the lawyer's death or disability, and determine whether there is a need for immediate protective action." Some attorneys prefer to store wills in a safety deposit box. These are fairly secure as the lessor bank can only open the box after satisfactory proof of death of the lessee. 755 ILCS 15/1 requires the lessor to remove any will found in a safe deposit box and deliver it to the circuit court for the county in which the lessee resided prior to his death or the clerk of the circuit court in which the safe deposit box is located.

## CONCLUSION

When storing a will, an attorney must keep in mind the rules regarding safekeeping client's property and confidentiality. Wills can be especially tricky as it is not always known if the testator is living or if another will has been created. The Secretary of State's Deposit of Wills offers a solution for an attorney if they are unsure of the testator's status after a diligent search. This opinion is not comprehensive; an attorney in this situation should consult the statutes mentioned above.

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