



**ILLINOIS STATE  
BAR ASSOCIATION**

# **ISBA Advisory Opinion on Professional Conduct**

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**This Opinion was AFFIRMED by the Board of Governors in May 2010. Please see the 2010 Illinois Rule of Professional Conduct 1.15 with its Comment [3]. This opinion was affirmed based on its general consistency with the 2010 Rules, although the specific standards referenced in it may be different from the 2010 Rules. Readers are encouraged to review and consider other applicable Rules and Comments, as well as any applicable case law or disciplinary decisions.**

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**Opinion Number 88-15  
May 10, 1989**

Topic: Payment of Attorney's Fees from Client Trust Funds

Digest: An attorney may transfer funds which he is holding in trust for his client to pay the attorney's fees after reasonable notice to the client and consent by the client.

Ref: Rule 9-102  
ISBA Opinion Nos. 703 & 534  
In re Ushijima, 119 Ill.2d 51, 518 N.E.2d 73, 115 Ill.Dec. 548 (1987).

## **FACTS**

Attorney was paid a retainer in a criminal case. Upon conclusion of the case, client owed attorney an additional amount in excess of \$4000 above the retainer. As part of the sentence, defendant was ordered to serve some jail time. Before going to jail, the defendant asked the lawyer to hold \$3500 for him. The lawyer is holding this money in a trust account. While incarcerated, the defendant asked the lawyer to withdraw certain monies for the defendant, which the lawyer did. A balance of \$2563.94 remains in the trust account. Although the defendant is out of jail, he has not claimed the balance in the trust account nor has he paid the attorney any more money. The

attorney states that the client does not contest the amount of money which he owes to the attorney.

#### QUESTION

May the attorney withdraw the monies which he is holding for his client as payment toward his attorney's fee?

#### OPINION

The attorney may transfer funds which he is holding for his client to pay the attorney's fees provided the attorney gives written notice to the client of his intention to withdraw the money and the client affirmatively consents in writing or otherwise.

Although the Code does not require consent in writing, the Illinois Supreme Court's opinion in In re Ushijima, 119 Ill.2d 51, 518 N.E.2d 73 (1987), suggests that writing is preferable. In that case, relevant to the present question, an attorney's authority to withdraw funds from a trust account to pay attorney's fees was disputed and the Court noted that the Hearing Board of Attorney Registration and Disciplinary Commission had concluded that the authority should have been in writing.