



**ILLINOIS STATE
BAR ASSOCIATION**

ISBA Advisory Opinion on Professional Conduct

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This Opinion was AFFIRMED by the Board of Governors in January 2010. Please see the 2010 Illinois Rules of Professional Conduct 1.5 and 1.15. 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.

**Opinion No. 95-11
January, 1996**

Topic: Missing Clients and Attorney Fees

Digest: Absent a narrowly drawn power of attorney, Law Firm cannot negotiate a check on behalf of a missing client and must keep safe any such check.

Ref.: Illinois Rules of Professional Conduct, Rules 1.5 and 1.15
In re Walner, 119 Ill.2d 511, 519 N.E.2d 903, 116 Ill.Dec. 688 (1988)
In re Samuels, 126 Ill.2d 509, 535 N.E.2d 808, 817, 129 Ill.Dec. 43 (1989).
ISBA Advisory Opinion on Professional Conduct No. 88-4

FACTS

Law Firm represents hundreds of clients on a contingent fee basis in real estate tax rate protest litigation and assessment reduction cases for 1983 taxes. Law Firm's compensation is contingent on the refund or reduction obtained. In 1994, Law Firm received checks from County Assessor payable to clients; however, despite Law Firm's reasonable efforts (directory assistance and skip tracing), several clients cannot be located. Law Firm's fee contract does not authorize it to endorse client checks. The checks at issue are frequently under \$100.

QUESTIONS

1. May Law Firm endorse check and deposit it in Law Firm's fiduciary account, and, if so, may Law Firm pay itself the fees?
2. If Law Firm cannot endorse the check, may it hold onto the check to see whether clients can be located?
3. In the future, can Law Firm remedy this problem by having clients grant law Firm authority to negotiate checks?
4. If Law Firm has improperly endorsed checks in the past, how can Law Firm correct its past practices?

OPINION

The Illinois Supreme Court has already answered the Law Firm's first, second and third questions. In In re Walner, 119 Ill.2d 511, 519 N.E.2d 903, 116 Ill.Dec. 688 (1988), the Court held that, absent a narrowly drawn power of attorney, lawyers cannot negotiate a missing client's check, nor pay themselves a fee. (See also, ISBA Opinion No. 88-4.)

Rule 1.15 requires that Law Firm keep safe client checks; however, the Rule does not empower Law Firm to sign client names to checks absent a narrowly crafted power of attorney in the fee agreement. (See, In re Walner, 519 N.E.2d at 908 and ISBA Opinion No. 88-4.) Pursuant to Rule 1.5, Law Firm can withdraw its contingent fee from the settlement proceeds only if its clients have specifically authorized Law Firm to do so. (See, In re Walner, 519 N.E.2d at 908, and ISBA Opinion No. 88-4.) It is of no consequence that the amounts involved are frequently small because there is no "cut-rate" version of the Rules of Professional Conduct. (See, In re Samuels, 126 Ill.2d 509, 535 N.E.2d 808, 817, 129 Ill.Dec. 43 (1989)).

As to the Law Firm's fourth question, we believe that Law Firm cannot fully correct its improper past practices because Law Firm cannot undo the negotiation of the checks of its missing clients. However, Law Firm should repay, with interest, its fiduciary fund any fees that Law Firm paid itself from any improperly negotiated checks.

In the future, Law Firm should keep in contact with its clients so that Law Firm can find them when it obtains such refund checks and should obtain specific authorization to negotiate the tax refund checks.

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