



ISBA Professional Conduct Advisory Opinion

Opinion No. 15-02
May 2015

Subject: Client Funds and Property

Digest: A lawyer may deposit his own funds into a client trust account to pay bank service charges on that account, and should pay himself back such funds when they are no longer necessary for that purpose. Unidentified funds contained in a client trust account must, after one (1) year from the discovery of the unidentified funds, be remitted to the Lawyers Trust Fund of Illinois. Unclaimed funds contained in a client trust account should, after five (5) years, be remitted to the State as abandoned property.

References: Illinois Rules of Professional Conduct, 1.15(b);
ISBA Opinion 845 (November 1984 (reaffirmed July 2010));
ARDC Client Trust Account Handbook (2011, Revised, May 2015).

FACTS

A small law firm is closing its doors after more than thirty (30) years in practice. Upon its formation, it had established a client trust account into which it deposited one thousand dollars (\$1,000.00) of its own money to cover bank charges, presumably a minimum balance fee. Such sum remains in the account. There is also approximately six hundred dollars (\$600.00) in the account as to which the firm either cannot identify or cannot locate the clients or persons to whom it belongs.

QUESTIONS

1. Can the firm pay itself back the money which it previously deposited?
2. What should be done with the remaining funds as to which the firm cannot determine or locate the owner(s)?

ANALYSIS

A. Repayment of Law Firm Deposits from Client Trust Account

While the Rules of Professional Conduct generally prohibit any commingling of client and law firm funds in a single account, an exception exists whereby “[a] lawyer may deposit the lawyer’s own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.” Rule 1.15(b) Comment [2] to such Rule further states that “[w]hile normally it is impermissible to commingle the lawyer’s own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account.”

The ARDC’s Client Trust Account Handbook (2011, Revised May 2015) makes clear that among the bank service charges for which a lawyer may deposit his own funds into a Client Trust Account is a minimum balance fee necessary to open or maintain the account. Such funds remain the property of the attorney, and not only may, but should be withdrawn when they are no longer necessary to maintain the account. To do otherwise would constitute an improper commingling of funds. Thus, the inquiring law firm should pay itself back the funds which it deposited at such time as they are no longer necessary to maintain the account.

B. Disposition of Client Funds Where Ownership Cannot be Determined or Owner Cannot be Located

The inquiring law firm’s client trust account also contains approximately six hundred dollars (\$600.00) as to which ownership cannot be determined or the owner cannot be located. The law firm asks what should be done with such funds.

This question is answered by the Supreme Court’s very recent amendment to Rule 1.15 of the Rules of Professional Conduct. Pursuant to the newly stated paragraph (i) to the Rule, which was enacted on April 7, 2015 and takes effect on July 1, 2015, the determination of what to do with such funds differs depending on whether the owner of such funds is unidentifiable (“unidentified funds”) or is instead identifiable but cannot be located or leaves the funds unclaimed (“unclaimed funds”).

In the first instance, where the funds contained in an IOLTA account cannot be documented as belonging to a client, a third person, or the lawyer or law firm, the amended Rule provides that the lawyer must make periodic efforts to identify and return the funds to the rightful owner and that, if after twelve (12) months from the discovery of the unidentified funds the owner of the funds cannot be identified or returning the funds will not succeed, the funds must be remitted to the Lawyers Trust Fund of Illinois. The amendment further provides in such instance that a lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.

The amendment to the Rule further states that no charge of ethical impropriety or other breach of professional conduct shall attend a lawyer’s exercise of reasonable judgment under the new paragraph (i). A newly stated Comment [8] to Rule 1.15 elaborates that the amendment provides a mechanism for a lawyer to remove unidentified funds from an IOLTA account where,

in the lawyer's reasonable judgment, further efforts to account for them after a period of twelve (12) months are not likely to succeed.

However, the same Comment [8] makes clear that the aforesaid procedure relates only to "unidentified funds" for which no owner can be ascertained. To the contrary, "unclaimed funds" contained in a client trust account; i.e., funds whose owner is known but have not been claimed or the owner cannot be located, are to be handled according to applicable statutes including the Uniform Distribution of Unclaimed Property Act (765 ILCS 1025, et. seq.). Pursuant to such statute, and consistent with the ISBA's prior Opinion 845 (November 1983 (reaffirmed July 2010), as well as the ARDC's aforesaid Client Trust Account Handbook, such unclaimed funds should be maintained in the firm's client trust account while all reasonable efforts are made to locate the clients or third persons to whom the funds belong. Such efforts, as described in the ARDC Handbook, will vary in each case, but would typically include the lawyer's checking with the post office for forwarding addresses; the sending of a letter to the person's last known address by regular and certified mail; an attempt to contact the person's relatives, employers, neighbors and friends; the publishing of notices in places where the person might frequent; the use of an investigator; and a check with the Social Security Administration. Should such efforts prove unsuccessful, the unclaimed funds would be deemed abandoned after five (5) years in accordance with the Unclaimed Property Act, and should then be remitted to the Unclaimed Property Division of the Illinois State Treasurer, essentially escheating such property to the State.

But what of unidentified funds that have not been the subject of a search by the attorney for the period of a year, or unclaimed funds that are determined to have been held in the account for a period of less than five (5) years and are thus not yet the subject of a presumption of abandonment under Illinois law? In such instances, we believe that the funds should continue to be held in the client trust account until the end of the applicable time period, at which time they can be submitted to the Lawyers Trust Fund as unidentified funds or to the State as unclaimed funds. In the present instance, this would mean the inquiring law firm, although discontinuing its practice, should nonetheless continue to maintain its client trust account until such time as all such funds have aged to the point where they can be remitted to the Lawyers Trust Fund or to the State. In such instance, the firm's initial deposit of a minimum balance fee would also likely have to remain on deposit until such time as the account can be closed.

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