

## ETHICS OPINION

RO-90-08

**Unclaimed client trust funds-lawyer's obligation to ascertain true owner, escheatment of unclaimed funds which appear to be lawyer's fees to lawyer**

### SUMMARY OF THE QUESTION:

I practiced law from 1971 through 1985 and maintained a trust account at a local bank. I assumed a judicial office in 1985 and had a balance remaining in my trust account of \$1,200.00. I continued to receive statements on that account. The account is now dormant. I have some 1,500 files accumulated which are now boxed and stored in my home. My old office has been leased to another attorney who had access to these files and handled inquiries from former clients. That arrangement ceased in October of 1987 and during the period from 1985 to 1987 no inquiries were received relating to any trust funds by that lawyer or by me. The amount accumulated in my account is somewhat confusing because I normally operated a zero balance accounting method disbursing funds from the account upon receipt. I have had several secretaries to work for me over the years and each kept books differently but I cannot reconstruct the various events of many years of practice. I cannot find where the balance came from other than the fact that these are probably attorney's fees and expenses paid into the account but not disbursed to me. I feel that I have made a good faith effort to locate the claimants to these funds including advertising in a local newspaper for three consecutive weeks. No claims or inquiries have been received and I would now like to close out this account and transfer these funds into my personal account. Please advise as to whether I may do so.

### ADDITIONAL INFORMATION:

Attached to the request is a letter from the attorney that leased the former law office stating that there had been no inquiries as to funds held in the escrow account and also attached is a copy of the trust bank account showing a balance of \$1,224.10 as of December 30, 1989, and a copy of a legal notice published in the local newspaper for three consecutive weeks in November of 1988.

ANSWER:

In addressing a similar situation, the Disciplinary Commission opined that where funds cannot be attributed to a particular client, and where a reasonable and good faith effort has been made to determine the ownership of the funds, and where the funds have been held as long as necessary to assure that no unidentified client could make a successful claim against the account, an attorney might distribute those funds to the attorney's estate. (The Alabama Lawyer, January 1989, p. 49). The Commission quoted with favor ethics opinions from several different states holding that after reasonable and good faith attempts to ascertain ownership of the funds and after holding the funds long enough to make sure that no unidentified client could make a claim against the funds within any applicable statute of limitations, the funds could be distributed to the attorney's personal account or, in the case considered by the Commission, to his estate.

Accordingly, having made a good faith effort and having exercised reasonable care to notify the former clients of the existence of the funds and having established a mechanism for the retrieval of the funds and having allowed sufficient time to expire, the Commission is of the opinion that you may now place these funds in your personal account.

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DISCUSSION:

Attached hereto is a copy of an article from The Alabama Lawyer,  
January 1989, in lieu of further discussion.

AWJ/vf

3/12/90

# Opinions of the General Counsel

by Robert W. Norris, General Counsel

## QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and undertook to wind up the practice and distribute the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account, but the balances did not reconcile with the bank account. After several years A was able to determine the clients who owned the various accounts, and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should A make in order to close the account?

## ANSWER:

There are two categories of funds in the account. The first category involved those funds that cannot be attributed to a particular client. After a reasonable and good faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, A may distribute the funds to the solo practitioner's estate. The second category of funds in the account are those that can be attributed to a client but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

## DISCUSSION:

Attorney A first should make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to insure that no unidentified client could make a claim against the funds within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account could properly be funds deposited to pay service charges [DR 9-102(A)(1)] or to avoid any possibility of a shortage in the account or fees earned but not withdrawn [DR 9-102(A)(2)].

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner." The commission held that:

"Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available we suggest that

the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, Code of Alabama, 1975."

In this case the commission assumed that the funds were client funds and were "not earned attorney's fees which [the attorney] deposited in a trust account pursuant to the provisions of DR 9-102(A) and failed to withdraw therefrom." The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are client funds by reasonable, diligent and good faith efforts, including public notice in a newspaper of general circulation and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account are those that can be attributed to a client but the whereabouts of the client are unknown. In this situation Attorney A does not have the option of distributing the funds to the deceased attorney's estate because the money clearly does not belong to the deceased attorney. In situations such as this, numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under state law at which time the funds must be turned over to the state.

The Office of General Counsel and the Disciplinary Commission have, in a number of opinions, held that where funds in a trust account may be attributed to a client but the location of the client is not known, some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited funds. The opinions also hold that although other proceedings may be available, the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, Code of Alabama, 1975, (RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146 and RO-84-106).

In situations where the client is known but cannot be found, the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

Consequently, in the case at hand, we hold that attorney A must take every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced, as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful, then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, Code of Alabama, 1975.