

ALASKA BAR ASSOCIATION
ETHICS OPINION 90-3

Disposition of Funds Held by a Lawyer
For a Client Who Cannot be Located

The Committee has been requested to give an opinion as to the proper procedure to be followed by an attorney who is unable to locate a former client for whom the attorney is holding money in his trust account.

It is the opinion of the Committee that the attorney may, after exhausting reasonable efforts to locate the client, hold the funds owing to that client in a trust account for the requisite period of time, and then dispose of the funds as abandoned property pursuant to AS 34.45.110 - .780.

The application of other provisions of the Code of Professional Responsibility should make the situation addressed in this opinion a less frequent occurrence. Rule 1.4(a) of the Rules of Professional Responsibility, which are pending before the Alaska Supreme Court, specifically provides that "A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." While there is no express counterpart under the Model Code, the obligation of an attorney to communicate with the client has historically been recognized based on other express duties, such as the duty to exercise reasonable care, skill, and diligence. Mason v. Balcom, 531 F.2d 717 (5th Cir. 1976). The duty to communicate with a client encompasses the obligation to inform the client of any expectation that funds will be received at a future time that will be payable to the client.

DR 9-102(B) imposes on attorneys specific obligations with regard to client property. That rule provides:

(B) A lawyer shall

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

Rule 1.5 (b) of the pending Model Rules modifies the duty of disbursing funds, to require that they be disbursed promptly unless delay in payment is authorized. That Rule states:

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall 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.

To minimize the possibility that an attorney will be placed in the position of holding funds for a client who cannot be located the Committee recommends, in addition to compliance with the mandates of the Code of Professional Responsibility, that attorneys notify clients, by written statements at regular intervals, of client funds remaining on deposit with the lawyer. The Committee also recommends, in the absence of a written retainer agreement, that any funds held by a lawyer to secure payment of fees or costs that might be incurred in anticipated future representation be returned to a client when no current client matters are pending and no services have been performed for the client during the preceding sixty days.

Approved by the Alaska Bar Association Ethics Committee on May 17, 1990.

Adopted by the Board of Governors on September 7, 1990.

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