

NEW HAMPSHIRE BAR ASSOCIATION
Ethics Committee Formal Opinion #1988-89/16
Disposition of Unused Client Funds When Client Cannot Be Located
March 9, 1989

RULE REFERENCES:

- *Rule 1.15
- *Rule 1.15(a)
- *Rule 1.15(b)

SUBJECTS:

- *Attorney-Client Relationship
- *Client Communications
- *Client Funds and Property
- *Trust Accounts

CODE REFERENCES:

- *DR9-102(A)(2)

STATUTORY REFERENCES:

- *RSA 471-A:8, et. seq.
- *RSA 471-C

ANNOTATION:

An attorney is obligated to make a diligent effort to locate and notify a client whose whereabouts is unknown, that the attorney is holding the client's funds. (Rule 1.15; Rule 1.15(b)).

While attempting to locate a client, the attorney must hold the client's funds in a clearly designated trust account, and maintain complete records of the funds. (Rule 1.15; Rule 1.15(a)).

Even after the lawyer is satisfied that he or she has made a diligent effort to locate the client, but that the client cannot be found, the lawyer is obligated in a fiduciary's capacity to continue to safeguard the client's funds until the statutory time period for the abandoned property statute expires. (Rule 1.15).

I. BACKGROUND:

The inquiring attorney represented an out-of-state resident before a Federal Grand Jury. Prior to representing the client, the attorney accepted a retainer to be applied toward his hourly rate charges. He successfully represented the client, and at the conclusion of the matter sought to return to the client the unused portion of the funds remaining in the trust account. At that time, he found that the client had moved and he is presently unable to locate her. The attorney wants to know what should be done with funds belonging to a client who cannot be located.

II. QUESTION:

How must a lawyer dispose of funds belonging to a client whose whereabouts are unknown?

III. RESPONSE:

An attorney's obligations with respect to the safekeeping of client funds are governed by Rule 1.15 of the Rule of Professional Conduct, which provides in part:

Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client. 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 any funds or other property that the client is entitled to receive.

Rule 1.15(b). In accordance with this Rule, the attorney is obligated to make a diligent effort to locate and notify the client that he or she is holding client funds. Some ethical opinions have held that diligent efforts to locate the client include attempting to communicate with the client through whatever addresses or telephone numbers might reasonably lead the attorney to the client, and following up reasonably on leads through other letters and telephone calls. Op. 1983-3 (New Mexico 7/25/83), ABA/BNA Lawyers Manual on Professional Conduct, 801:6001. Others require the lawyer to give notice to the client by publication. Op. 83-146 (Alabama 9/19/83), ABA/BNA Lawyers Manual on Professional Conduct, 801:1064; Op. 84-106 (Alabama 8/1/84), Id. at 801:1083. It is clear that the attorney's efforts to locate the client must be genuine and diligent under the circumstances of the specific case.

While attempting to locate the client, the attorney must continue to hold the funds in a clearly designated trust account, and maintain complete records of the funds. Rule 1.15(a). Op. 83-36 (Maryland 3/10/83), ABA/BNA Lawyers Manual on Professional Conduct, 801:4327. The attorney may place the funds in an interest-bearing account, provided that all interest earned in the account will be considered property of the client. Op. 84-106 (Alabama 8/1/84).

N. H. ETHICS OPINIONS ANNOTATED

Even after the lawyer is satisfied that he has made a diligent effort to locate the client, but that the client simply cannot be found, he is obligated in his fiduciary capacity to continue to safekeep the client's funds pursuant to Rule 1.15 and the New Hampshire Supreme Court Rules until the statutory time period set forth in the State's abandoned property statute expires, according to past decisions of this committee. For example, in NH Op. 1984-5/11, the Ethics Committee held that a lawyer must deposit funds in an identifiable bank account when a client cannot be located and it is presumed that after the expiration of 15 years the client has abandoned his right to the funds. ABA/BNA Lawyers Manual on Professional Conduct 801:5708, citing DR 9-102 (A)(2); N.H.R.S.A. 471-A:8, et. seq. See, also NH Op 82-3/9 (where an attorney died leaving money in an undesignated trust account and the attorney appointed to take over the account has exhausted all reasonable means to determine the rightful owner, the property should be disposed of in accordance with New Hampshire law regarding lost property). Other jurisdictions have adopted similar solutions to this problem. See, e.g., Op. 104 (Miss. 6/6/85), ABA/BNA Lawyers Manual on Professional Conduct 801:5109 (If it is impossible to locate the former client, the attorney must continue to hold the funds until presumed abandoned under state law, at which time the funds are to be disposed of pursuant to the State's abandoned property law).

New Hampshire's abandoned property law has been revised since NH Op 1984-5/11 was published and is now titled R.S.A. 471-C. This statute governs the length of time during which the funds must be held, and the procedures to be followed with respect to final disposition of the funds.