

Utah Ethics Opinions

1978.

43. USB EAOC Opinion No. 43

Utah State Bar

Ethics Advisory Opinion No. 43

Approved March 10, 1978

[Overruled by Opinion No. 97-01]

Summary: Clients' unused cost funds that are held by the Utah Legal Services, Inc. and have not been claimed for a reasonable period of time may be donated to the legal services program provided reasonable efforts have been made to contact the clients.

Facts: Inquiry has been made by Utah Legal Services, Inc. regarding the permissible disposition of certain monies contained in their trust fund. These monies were received from clients for payment of service, filing and other fees. Subsequently, the clients have moved or otherwise cannot be located and the funds have remained with Legal Services for several years.

Opinion: This question has never been directly considered by the ABA Committee on Professional Ethics nor by the Utah Ethics Committee. However, a related problem was addressed in informal Opinion 1391, wherein it was asked "whether it would be ethical to request clients of a legal services office, at the time they are making a deposit for costs, to sign consent forms authorizing the legal services office to keep unused client funds as a donation to the legal services program in lieu of their being escheated to the state." The opinion held that the program would not be unethical so long as a full explanation were made to the clients and there was no pressure to sign. The committee added the following as conditions:

"Further the funds should be held a reasonable time before transfer from the client trust account to the program funds and a reasonable effort should be made to locate the client. As in the case of escheated funds, if the client eventually claims his money, it should be returned to him."

The committee warned against the danger of overreaching, but felt that the dangers were lessened here, because the actions were for the benefit of the legal services program rather than an individual attorney.

We conclude that it would not be unethical for Utah Legal Services to transfer unused cost funds to its general fund

provided that: (1) the funds have been held for a reasonable length of time; (2) a reasonably diligent effort has been made to locate the clients who deposited the money; and (3) the money is returned to any client who appears to collect it.

A cautionary note - it would be advisable to check both Utah law and the Utah Legal Services charter to determine whether or not these funds must be escheated to the state. We cannot address legal questions, only those of ethical propriety.

Rule Cited: