

Utah Ethics Opinions

1997.

97-01. USB EAOB Opinion No. 97-01

Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 97-01

Approved January 24, 1997

Issue: What is the ethical obligation of an attorney to a client or former client, when the attorney is unable to locate the client, and the attorney is holding trust funds on behalf of that client?

Opinion: The first obligation of an attorney under these circumstances is to secure the funds on behalf of the client (fn1) as against all other possible claimants. In other words, if the funds are still held in the form of a check, the attorney should take care to endorse the check and deposit it into the attorney's trust account to insure that the funds are not eventually lost to the client simply by the passage of time or the expiration of the client's right to negotiate the instrument.

Thereafter, the attorney should keep the client's property in safe keeping, in conformity with the requirements of Rule 1.15 of the Utah Rules of Professional Conduct. Specifically, the attorney should keep the funds in a trust account for the client. If the sum is substantial, or if the period of time during which the lawyer will be unable to locate the client is expected to be lengthy, the funds should be placed in an interest-bearing account. A separate trust account may be warranted when administering these monies.

After securing the funds for the client, the attorney should make all reasonable, diligent efforts to locate the client. This includes contacting all last known addresses and telephone numbers, asking for forwarding addresses, and contacting third parties who are relatives, employees or friends of the client to attempt to reach the client. Under certain circumstances, it may even be appropriate for the attorney to seek the professional help of an investigator to locate the missing person. A rule of reasonableness should apply. Clearly, expending all of the money held in trust to locate the client is not warranted and violates the rule of safely keeping a client's property. However, for large sums, spending a substantial sum of money to locate the client in order to transfer the remaining balance may be appropriate.

(Attorney's and investigators' fees associated with the search might appropriately be paid out of the trust fund. (fn2))

If the attorney is still unable to locate the client, then the attorney should hold the funds for a substantial period of time to see if the client or former client voluntarily makes contact with the attorney. Specifically, under Utah law, property may become abandoned or unclaimed property. (fn3) After the attorney determines that the client cannot be located, an attorney should, therefore, hold trust accounts unclaimed by a client for the time period set forth in the statute. This Committee is not authorized to decide or interpret matters of law; (fn4) thus, a further interpretation of the abandoned property statutes is not proper here.

Once the property has become abandoned and is, therefore, unclaimed property within the meaning of the Utah Code, the attorney should follow the procedure for reporting and submitting abandoned or unclaimed property set forth. (fn5) Again, the exact procedure in following this statutory provision is a matter of interpretation of law, which cannot be undertaken in this opinion.

This opinion overrules Utah Ethics Advisory Opinion No. 43, issued on March 3, 1978.

Footnotes

1. References to "client" include a person who might be considered a former client.

2. See Utah Rules of Professional Conduct 1.15 cmt., which discusses the analogous situation where an attorney "is not required to remit [to the client] the portion [of funds from a third party] from which the lawyer's fee will be paid."

3. Utah Code Ann. §§ 67-4a-201 to -214 (1996).

4. Ethics Advisory Op. Comm. R. Proc. § III(b)(3).

5. Utah Code Ann. §§ 67-4a-301 to -303 (1996).

Rule Cited:

1.15