

FORMAL OPINION NO 2005-48

[REVISED 2010]

Trust Accounts: Unclaimed Client Funds in Trust

Facts:

Lawyer represented Client in obtaining a judgment against Defendant. When the judgment was obtained, it was not enforced because Defendant had no assets.

Some years later, Defendant delivered money to Lawyer to satisfy the judgment. Lawyer placed the funds received in Lawyer's trust account but was unable to contact Client, notwithstanding a diligent effort to do so.

Question:

What should Lawyer do with the sum held in trust for Client?

Conclusion:

See discussion.

Discussion:

Oregon RPC 1.15-1 provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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(d) 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.

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Oregon RPC 1.15-2 provides, in part:

(b) All client funds shall be deposited in the lawyer's or law firm's IOLTA account unless a particular client's funds can earn net interest. . . .

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client's benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

(1) a separate account for each particular client or client matter; or

(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

(1) the amount of the funds to be deposited;

(2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) the rates of interest at financial institutions where the funds are to be deposited;

(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client's benefit, including

service charges imposed by financial institutions, the cost of the lawyer or law firm's services, and the cost of preparing any tax-related documents to report or account for income accruing to the client's benefit;

(5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and

(6) any other circumstances that affect the ability of the client's funds to earn a net return for the client.

(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.

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(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer's firm.

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Lawyer is obligated to promptly notify Client and place the funds in a trust account upon receipt. If the funds are of sufficient quantity to justify placing them in an interest-bearing trust account for Client's benefit, Lawyer must do so.

Pursuant to Oregon RPC 1.15-1, Lawyer must continue to hold the funds in trust until the funds can be delivered to Client or are deemed abandoned and subject to the Uniform Disposition of Unclaimed Property Act (ORS 98.302–98.436). Pursuant to ORS 98.332(1), funds held by a fiduciary are presumed abandoned unless the owner has, within two years after it becomes payable or distributable, “increased or decreased the principal, accepted payment of principal or income, corresponded in writing concerning the property, or otherwise indicated an interest as evidenced by a memorandum on file with the fiduciary.”

The Act requires Lawyer to “exercise reasonable diligence” to determine the whereabouts of Client and, when possible, to communicate with Client and take necessary steps to prevent abandonment from being presumed. This same duty is implicit in the duty under Oregon RPC 1.15-1 to safeguard Client's property.

Once the funds are presumed abandoned, Lawyer must comply with the provisions of the Act regarding reporting to the Department of State Lands and payment of the abandoned funds to the Oregon State Bar. Abandoned funds in a Lawyer Trust Account are continuously appropriated solely for funding legal services provided through the Legal Services Program established by ORS 9.572.

After funds from the Lawyer Trust Account have been paid to the Oregon State Bar as required by the Act, Lawyer should continue to take steps reasonable under the circumstances to try to locate Client and must maintain reasonable records sufficient to permit Client to make a claim for the return of property for the period permitted by the Act.

Approved by Board of Governors, February 2010.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* chapter 12 (lawyer trust accounts and client property) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 43–46 (2000) (supplemented periodically); and ABA Model RPC 1.15.