

**Louisiana State Bar Association  
Rules of Professional Conduct Committee**

**PUBLIC Opinion 06-RPCC-009<sup>1</sup>**

March 1, 2006

**Funds or Property of Missing Client**

*When a lawyer has lost contact with a client or former client but is still holding funds or other property for that person, the lawyer is obligated to continue to safeguard those funds or property while also making reasonable attempts to make prompt delivery to that person. The effort made to locate the client to effect delivery should be proportionate to the amount at issue. In the event that reasonable search efforts have been or will be exhausted in attempting to locate the missing client, the lawyer should review and consider the Uniform Unclaimed Property Act of 1997, La. R.S. 9:151, et seq.*

What is the ethical obligation of a lawyer to a client or former client when the lawyer is holding funds belonging to the client but has lost contact with him?

**Rule 1.15**

Rule 1.15 of the Louisiana Rules of Professional Conduct (2004) requires: “...a lawyer [to] hold property of clients or third persons that is in a lawyer’s possession in connection with a

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<sup>1</sup> The comments and opinions of the Committee—public or private—are not binding on any person or tribunal, including—but not limited to—the Office of Disciplinary Counsel and the Louisiana Attorney Disciplinary Board. Public opinions are those which the Committee has published—specifically designated thereon as “PUBLIC”—and may be cited. Private opinions are those that have not been published by the Committee—specifically designated thereon as “NOT FOR PUBLICATION”—and are intended to be advice for the originally-inquiring lawyer only and are not intended to be made available for public use or for citation. Neither the LSBA, the members of the Committee or its Ethics Counsel assume any legal liability or responsibility for the advice and opinions expressed in this process.

*representation separate from the lawyer's own property...”; “...funds shall be kept in a separate account maintained in a bank or similar institution...”; “...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...”; and “...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...”* Rule 1.15 thus requires that funds in which the client has an interest be maintained in a separate bank account—i.e., a client trust account, IOLTA unless exempt<sup>2</sup>—and also requires the lawyer to promptly deliver those funds to the client.

### **Reasonable Attempt to Make Prompt Delivery**

Prompt delivery is not always feasible. When the lawyer has lost contact with the client, for example, we believe the Rule mandates reasonable<sup>3</sup> attempts to make prompt delivery.<sup>4</sup> The effort made to locate the client to effect delivery should be proportionate to the amount at issue. A letter sent to the client's last known address is an obvious starting point. Additional steps which should be considered include telephone calls to all phone numbers known or discoverable for the client, the client's family members, friends, acquaintances, co-workers or neighbors. Likewise, sending letters to all known or discoverable addresses for those same persons, seeking information about the client's current whereabouts, might be appropriate. Internet “people finder” search engines, court records, Social Security Death benefit records,<sup>5</sup> the U.S. Postal

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<sup>2</sup> Rule 1.15(f) of the Louisiana Rules of Professional Conduct (2004).

<sup>3</sup> Rule 1.0(h) of the Louisiana Rules of Professional Conduct (2004) defines “reasonable”: “... ‘reasonable’ or ‘reasonably’ when used in relation to conduct by a lawyer denotes the conduct of a reasonably prudent and competent lawyer...”

<sup>4</sup> See also Rule 1.3 of the Louisiana Rules of Professional Conduct (2004), which indicates that “...a lawyer shall act with reasonable diligence and promptness in representing a client...”

<sup>5</sup> Available on-line at <http://www.ntis.gov/products/ssa-online.asp?loc=4-0-0#limited>. At the time of publication, the cost for a single search was \$10.00.

Service<sup>6</sup> and/or driver's license/vehicle registration records might inexpensively and without major effort help to locate the missing client. It would also be prudent to periodically make renewed efforts of a similar nature to attempt to locate the missing client in order to deliver the funds, unless doing so would clearly be futile.<sup>7</sup>

If the funds being held are substantial in amount, reasonable attempts might include purchasing advertisements in a newspaper of general circulation, as curators *ad hoc* typically do, visiting the client's last known address to interview the current residents and neighbors, or even hiring a private investigator to search for the missing client. Naturally, if the expense of performing those efforts would likely equal—if not exceed—the total amount of the funds being held, such measures would not be appropriate, as they would effectively negate the value of the efforts to deliver the funds to the client.

Also, if the funds are substantial, or it is expected that the period of time during which they will be held will be lengthy, the funds may be placed in an interest-bearing account.<sup>8</sup>

### **Continue To Hold or Not?**

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<sup>6</sup> The post office serving the last known address for the missing client may be able to provide information in response to a letter from a lawyer with a legitimate need, even though such information is not generally divulged to the public.

<sup>7</sup> *Id.*, Rule 1.3.

<sup>8</sup> *Id.*, Rule 1.15. See also *Iolta Rules*, effective January 1, 1991, included as part of Rule 1.15: “...(3) *The following principles shall apply to clients' funds which are held by attorneys and firms... (b) Upon the request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients' funds or to advise clients to make their funds productive...*” It is suggested that the client or former client would choose to earn interest on such sums, if available and presented with that option.

In the event that reasonable search efforts have been or will be exhausted in attempting to locate the missing client, the lawyer should review and consider the Uniform Unclaimed Property Act of 1997, La. R.S. 9:151, *et seq.* There does not appear to be any other law, procedure or policy which would allow the lawyer to donate to charity, confiscate, or otherwise dispose of the client's funds when the client remains missing and cannot be found.