

**STATE BAR ASSOCIATION OF NORTH DAKOTA
ETHICS COMMITTEE
OPINION NUMBER 02-01**

The Ethics Committee received a letter request dated January 7, 2002, for an opinion regarding the disposition of a \$500 appeal bond returned from the clerk of the district court to a local law firm. Since the time of appeal, the clients have not been located and efforts to identify heirs of the original clients have been unsuccessful.

Applicable North Dakota Rules of Professional Conduct

Rule 1.15 Safekeeping Property

Ethics Presentation

Back in the 1970's and early 1980's, the subject law firm represented a number of individuals in a mineral dispute involving mineral interests in the state of Montana. Long after the case had been closed and after the actual clients had died, a \$500 appeal bond was returned to the subject law firm from the clerk of the district court in Montana. At the time the dollars were returned, the actual clients could not be located. It has been represented that the \$500 was placed into the subject law firm trust account and has been there ever since. It is further assumed that the trust account was set up pursuant to the language of Rule 1.15(d)(2).

Over the years, the subject law firm on a number of occasions would attempt to track down the clients or some living representative of the clients so the funds could be distributed from the trust account to those individuals. The subject law firm asserts that all efforts have been unsuccessful.

The representations by the subject law firm are accepted as a predicate to the ethical discussion which follows and the recommendation of this committee.

QUESTIONS PRESENTED

In that the original clients are deceased and no living representative of those individuals can be located, what is the ethical obligation of the subject law firm in the handling of the \$500 which remains in the firm trust account?

DISCUSSION

At the outset, it should be reemphasized that this committee renders its opinion on the basis of the facts reported by the requesting law firm. There has been no independent review of the underlying facts and specifically of the underlying litigation or identification of the now-deceased clients. It is simply presumed for the sake of this opinion letter that the subject law firm is correct in that the actual clients are now deceased and no heirs can be located.

The subject law firm is situated in the state of North Dakota but it appears that it was litigating a matter in Montana on behalf of residents of the state of Montana. The opinion offered here can only relate to the obligation of the subject law firm as it relates to the North Dakota Rules of Professional Conduct. No attempt has been made to analyze this matter from the perspective of the law or Rules of Professional Conduct in the state of Montana.

Under Rule 1.15, NDRPC, a lawyer does have the ethical obligation to hold property of clients in an identifiable interest bearing trust account. Specifically, under Rule 1.15(d)(1), NDRPC, a lawyer who “receives funds of clients or third persons shall maintain a pooled interest bearing trust account for deposit of all such funds received that are nominal in amount or expected to be held for a short period of time.” That ethical obligation appears to have been met in all respects by the subject law firm.

Rule 1.15(f), NDRPC, places upon the subject law firm and its lawyers the duty to “maintain or cause to be maintained on a current basis records sufficient to demonstrate

compliance with the provisions of this rule. Such records shall be preserved for at least six years after termination of the representation.”

This aspect of Rule 1.15 appears also to have been met by the subject law firm. It appears certain that six years has elapsed from the time of last representation of the “clients” who as suggested by the subject law firm are now deceased.

That brings us to the language of Rule 1.15(b) which suggests and places the duty upon the subject law firm that upon receiving funds for a client they “shall promptly notify the client or third person.” They are then obligated to “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.” At this point, the subject law firm has no client assuming their representation is correct that the clients are now deceased and they are unable to identify any heirs of these original clients using ordinary and reasonable means in making an effort to discover heirs of those clients. The Uniform Unclaimed Property Act, Chapter 47-30.1, N.D.C.C., appears applicable. The definitional provisions of N.D.C.C. § 47-30.1-01, and particularly subsection (7) defines “Holder” as follows:

7. “Holder” means a person, wherever organized or domiciled, who is:
 - a. In possession of property belonging to another;
 - b. A trustee; or
 - c. Indebted to another on an obligation.

The same statute defines “Intangible property” as follows:

9. “Intangible property” includes:
 - a. Moneys, checks, drafts, deposits, interest, dividends, and income.

N.D.C.C. § 47-30.1-12 relates to property held by agents and fiduciaries and states:

1. Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.”

Clearly, the \$500 and accruing interest has been held in excess of three years. Attempts have been made to identify and locate heirs of the original clients which has proved unsuccessful. Under the statutory definition of abandoned property and with the presumption that a lawyer holds such funds as identified here in trust and thus in a fiduciary capacity, then the property is deemed to be abandoned pursuant to the language of Chapter 47-30.1, N.D.C.C. The subject law firm does practice within the state of North Dakota and its trust account is presumptively existing within the state of North Dakota and thus the property must be delivered to the administrator as provided for under the provisions of N.D.C.C. § 47-30.1-17.

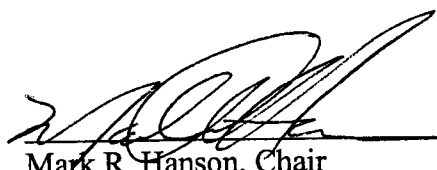
No other ethics opinions within the State Bar Association of North Dakota touch upon this subject.

Conclusion

Based upon an assumption that the statements of the subject law firm are correct and that the clients cannot be located, nor can heirs of these clients be identified using reasonable and prudent means to do so, it is opinion of this Ethics Committee that the \$500 placed into the trust account and any accrued interest not governed by Rule 1.15(b), RPC, must be delivered to the administrator of the state abandoned property office as envisioned described within N.D.C.C. Chapter 47-3.1. The property is deemed by statute to have been abandoned since it has remained unclaimed by the owner for more than three years after it became payable or distributable and thus presumed abandoned.

This opinion is provided pursuant to the North Dakota Rules for Lawyer Discipline 1.2(B) which provides “[a] lawyer who acts with good faith and reasonable reliance on a written opinion or advisory letter of the ethics opinion of the association is not subject to sanction or violation of the North Dakota Rules of Professional Conduct as to the conduct that is the subject of the opinion or advisory letter.”

This opinion was drafted by James S. Hill and was adopted unanimously by the committee on April 11, 2002.



Mark R. Hanson, Chair
State Bar Association of North Dakota
Ethics Committee