

A Safe Solution for Attorneys Stuck with Abandoned Client Funds

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Reprinted from *Minnesota Lawyer* (November 14, 1997)

Most lawyers are aware that client funds are to be handled carefully, accounted for accurately and returned promptly upon the client's request. Few are aware, however, of their obligations when the client trust funds remain in the lawyer's trust account and the client is nowhere to be found.

Lawyers faced with this problem have suggested or questioned a number of solutions. Should the lawyer or law firm simply retain the client's funds in the trust account indefinitely? Donate them to a worthy charity? Disburse the remaining funds to the client's family member, relative, or business associate? Can the lawyer transfer the funds to the Minnesota Client Security Fund or Lawyer Trust Account Board? Might the lawyer simply pay the funds to him or herself and then repay the funds if the client ever resurfaces in the future? None of these alternatives appears unreasonable. Yet, this list does not include the solution suggested by the majority of ethics authorities.

So what should a lawyer do when a client fails to respond to communications concerning client funds remaining in his or her trust account?

Most authorities agree that the lawyer should first make a reasonably diligent effort to locate or contact the client. These efforts might include: (1) sending letters by regular and certified mail to the client's last known address(es); (2) checking with the postal service for a forwarding address; (3) checking with directory assistance in the area of the client's last known address for a new phone number; (4) contacting the client's known family members, relatives, acquaintances, employer or business associates unless disclosure of such information to these individuals is likely to substantially prejudice or embarrass the client; and (5) maybe even checking the Internet white pages for a new address, phone number or e-mail listing.

Regardless of what efforts are undertaken, all attempts to locate the client should be documented and thereafter retained in the client's file. Moreover, the unclaimed or abandoned client funds must remain in the lawyer's trust account while attempting to locate the client.

In those rare instances where the search is fruitful and the client is located, the lawyer's obligation is clear--return the client's funds. But what happens when the search for the long-lost client is unsuccessful?

Few lawyers care to retain the abandoned client funds in their trust account forever, thereby requiring them to be accounted for each and every month when the account is thereafter reconciled. Even if the lawyer is willing to retain the funds indefinitely, this solution is only temporary unless the law firm is one of the few which end up doing business forever. So when and where can lawyers safely transfer abandoned client funds without fear of client retribution and/or professional discipline scrutiny?

Unclaimed property statute

Lawyers hold client funds in a fiduciary capacity. Therefore, it is not surprising that most ethics authorities recommend that after an unsuccessful search for the client, lawyers should handle abandoned client trust funds in accordance with the controlling jurisdiction's unclaimed property statute.

In Minnesota, the applicable statute is Minn. Stat. 345.32, which defines "abandoned funds" as those belonging to an owner (i.e., client) who the lawyer has been unable to contact or locate for at least three years. *See* Minn. Stat. (a) (1) through (5). Client funds meeting this definition may be transferred to the Commissioner of Commerce along with a report indicating the client's name and last known address. *See* Minn. Stat. § 345.41 and .43. A copy of this report also should be placed in the client's file. The funds should be transferred to the Commissioner in the form of a check written on the lawyer's trust account.

Annually the Commissioner of Commerce publishes a list of abandoned property in "an English language newspaper of general circulation in the county" where the last known address is located. Minn. Stat. 345.42. After transferring the abandoned funds, the lawyer is no longer obligated to continue efforts to locate the client.

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