Safekeeping client property (including filing fees)

By

Susan M. Humiston
Office of Lawyers Professional Responsibility

Reprinted from *Bench & Bar of Minnesota* – December 2020

Safekeeping client or third-party property related to a representation is a fundamental ethics obligation. Lately several cases have crossed my desk involving failure to properly handle client money. For example, in July 2020, the Minnesota Supreme Court suspended Rochester attorney Michael Quinn for 18 months due in large part to how he handled a $306 filing fee.Ftn 1 There are several lessons in this case worth your time if you handle other people's money.

Mr. Quinn accepted representation in a bankruptcy matter, quoting an $1,800 flat fee for legal work, and $306 for a filing fee. Mr. Quinn did not have his client sign a fee agreement. The client paid $2,106 upon retention and Mr. Quinn promptly deposited the funds in his business account, not his trust account. Although he prepared a petition for bankruptcy, the client ultimately changed his mind and sought a refund. Mr. Quinn failed to refund the unused filing fee, failed to account to his client for the funds, and eventually stopped communicating with his client.

I'm sure you can see the many issues of concern with the above facts. What is also true is the business account where Mr. Quinn placed and kept the filing fee fell below $306 on multiple occasions before the money was refunded. This fact significantly elevated the misconduct because this is misappropriation as the Minnesota Supreme Court, and courts throughout the country, have defined it. Everyone understands that misappropriation of client funds is serious misconduct, but does everyone understand what constitutes misappropriation? Failing to properly safekeep client money is also serious misconduct in itself, and is the path that ultimately led to Mr. Quinn's lengthy suspension. Due to the significant potential consequences, let's review the rules.

Rule 1.15, Minnesota Rules of Professional Conduct

Rule 1.15 is descriptively entitled "Safekeeping Property." It requires that all funds (whether the client's or someone else's) held by a lawyer in connection with a representation be placed in trust.Ftn 2 This fact was hopefully drummed into all of our brains in law school. When a client gives you an advance fee for legal services, it

belongs in trust with limited exceptions that I will discuss.Ftn 3 If a client gives you funds to pay to a third party on their behalf, like filing fees, those funds also belong in trust.Ftn 4 There is no exception for this latter requirement, except a modest administrative one that I will also cover.

Mr. Quinn did not follow these basic rules. The advance legal fees that his client paid, which were unearned at the time of payment, were placed in his business account along with a specifically designated filing fee. As the Supreme Court made clear, this violation is, by itself, serious misconduct. The misconduct is failing to safekeep client funds—which, because they are not in trust, are potentially at risk. As those who are familiar with the Minnesota ethics rules know, there is a way that an attorney may ethically place an advance, unearned flat fee into a business account. To do this, you must follow the requirements in Rule 1.5(b)(1), MRPC. But you must follow the rules. Just because you have a verbal flat fee agreement with your client, and tell them the fees paid in advance will not be held in trust, does not mean that you can ethically put it into your business account.

Because you are not safekeeping the fees in trust until earned, the ethics rules require you to "in advance" have a written fee agreement signed by the client—not someone else—that contains the information in the five subparts of Rule 1.5(b)(1).Ftn 5 Mr. Quinn did not have a written fee agreement with his client, so the flat fee paid in advance by his client belonged in trust until he earned the fee by completing the work.

The filing fee paid by the client was specifically identified as such. Accordingly, that sum belonged in trust too, even if Mr. Quinn had in place a compliant agreement that allowed him to treat the $1,800 flat fee as his property subject to refund. (Remember, also, that you may not ethically describe fees as nonrefundable or earned upon receipt.)Ftn 6 This requirement can present challenges if clients want to pay by a combined check or use a credit card.

An exception to the requirement that advance fees and expenses must go immediately into trust exists if the client is paying by credit card, and the service provider the lawyer uses cannot deposit monies into trust, while debiting transaction and other fees from a non-trust account. In that limited circumstance, credit card payments may be deposited into a non-trust account, but then must "immediately" be transferred to a trust account to the extent the funds are unearned (or a compliant fee agreement is not in place) or are advances for expenses.Ftn 7

Mr. Quinn testified that he placed the filing fee in his business account because he needed to pay the filing fee with his personal credit card. The Court did not credit

this argument, as Mr. Quinn could easily have placed the funds into trust and then transferred the filing fee from trust after he had separately paid the fee. Clearly, Mr. Quinn placed his own convenience in avoiding recordkeeping obligations over compliance with the rules. Had he taken that simple step in the first instance, he would not have engaged in the significantly more serious misconduct of misappropriating the filing fee.

Misappropriation

The Court has been crystal clear in numerous cases. A lawyer misappropriates funds when "funds are not kept in trust and are used for a purpose other than one specified by the client."Ftn 8 Because Mr. Quinn's business account frequently fell below $306 before he made the refund (which he did only after an ethics complaint was filed), misappropriation was clear. The Court also rejected Mr. Quinn's *quantum merit* claims regarding the filing fee. Mr. Quinn claimed that he did additional work that entitled him to convert the filing fee to earned fees. The referee found the client had made no such agreement and the Court affirmed on a clear error standard of review.

Mr. Quinn made additional mistakes in this matter that contributed to his discipline, including failure to cooperate with the Director's multiple requests for his bank records, but the gravamen of his misconduct was the filing fee misappropriation, which all happened because he failed to put the filing fee in the right place in the first instance. Misappropriation of client or third-party funds is more than deliberate theft of unearned funds from trust, the classic definition. The minute we learned that Mr. Quinn had failed to safekeep and then spent that $306, both I and the attorney handling this case knew the likely outcome, and it is fair to say we did not like it. The case law was clear, though. And just because we didn't like it did not mean it was not the correct outcome. Mr. Quinn chose to disregard fundamental and pretty straightforward ethics rules that exist to safekeep property, rules that ensure the property is protected and available to use as specified by the client.

Conclusion

Unfortunately, we are currently working on several additional cases where lawyers have placed filing fees in their business accounts, and then in the short run spent those sums other than as the client specified. Please understand that the Court's case law considers this to be serious misconduct that will lead to significant discipline, and will be prosecuted as such by this Office. Even small sums have significant consequences. Please learn from Mr. Quinn's matter. There are a number of articles and resources on our website to assist you in properly maintaining your trust account,

including articles on the most common mistakes.Ftn 9 Safekeeping client and third-party property is an important responsibility; please treat it as such, and let us know if we can assist you in meeting this obligation.

Notes:

1. *In re Quinn*, 946 N.W.2d 583 (Minn. 2020).
2. Rule 1.15(a), MRPC.
3. Rule 1.15(c)(5), MRPC.
4. Rule 1.15(a), MRPC.
5. Rule 1.5(b)(1)(i)-(v), MRPC; Rule 1.15(c)(5), MRPC.
6. Rule 1.5(b)(3), MRPC.
7. Appendix 1 to Rule 1.15(i), MRPC.
8. *Quinn*, 946 N.W.2d at 587.
9 *See, e.g.*, Susan Humiston, "Is Your Trust Account in Order," Bench & Bar (September 2016).