
**E-79-6 Disposition of unclaimed trust fund
accounts**

Questions

A. What procedure must a non-profit legal services corporation follow in liquidating its trust funds consisting of unclaimed litigation cost advances which have been made by clients who, after a reasonable effort, cannot be found?

B. May a non-profit legal services corporation, provided prior notice is given to its client, transfer unclaimed client trust funds to its general account two years after the case file has been closed, if the corporation after reasonable effort is unable to locate the owners of the funds?

Facts

A non-profit legal services corporation, currently has a savings account entitled the Client Trust Reserve which represents advances which the corporation has been unable to return. The account includes \$7,403.09 of such unreturnable funds. Some of the funds are advanced by the clients; others by the corporation itself. Since the corporation has undergone several identity and funding changes, status of the records of the sources of these funds varies considerably. Early records as to origin and disposition of funds are sketchy; no record was kept, for example, as to which clients advances have been returned. More recent records (post 1972) are in better condition, and even document attempts to return the funds. The Board of Directors had directed that a mailing be made and that newspaper notices be published notifying individuals that they could claim the funds belonging to them at the corporate offices. It was later determined that this attempt would be futile. Instead a disposition plan with the following elements was approved:

1. Staff will examine the account records to determine whether any of the owners of the funds are currently clients; if so, they shall be notified and the funds returned.
2. Of the remaining funds, \$1,000 will be retained in the account as a cushion against future claims.

3. All other funds will be transferred to a general account, and will be used to pay filing and service fees to indigent clients.

4. The corporation will at any time pay any valid claim to the funds.

The corporation also proposes the following policy for the handling of future unreturnable accounts.

1. Clients shall be notified that if the following procedure fails to locate them within two years after their respective case files have been closed, the corporation shall transfer such funds to a general account.

2. Upon the closing of an account, a check for the balance of funds remaining will be sent to the last known address of the client by certified mail.

3. A list of all clients to whom funds have not been returned will be published in an appropriate newspaper every October.

Opinion

A. Disposition of Present Fund Accumulation

(1) Corporation Funds. Apparently some corporation funds are intermingled with funds deposited by clients. Although that is in violation of Section 757.293(1), Wisconsin Statutes and Disciplinary Rule 9-102(A) of the Code of Professional Responsibility, the corporation would presumably be entitled to withdraw their funds and interest attributable to them *to the extent the corporation can document their identity*. Since these funds are not held in a fiduciary capacity, Chapter 177, Wisconsin Statutes, would not be applicable.

(2) Client Funds. Section 757.293, Wisconsin Statutes, and Disciplinary Rule 9-102, Code of Professional Responsibility, contain no provision for disposition of client funds when the whereabouts of a client cannot be determined. To the contrary, they require preservation of the identity of these funds for an indefinite period of time, if necessary. It is the opinion of this committee that the lawyer or law firm, under these circumstances, must comply with all fiduciary duties and with the Uniform Disposition of Unclaimed Property Act (Chapter 177, Wisconsin Statutes). To the extent that this opinion is inconsistent with the Informal Opinion of October 1975, where the committee required an attorney to deposit unreturnable funds into an interest bearing account for 6 years before returning them to the general trust fund, that informal opinion is overruled.

This opinion is consistent with that of the Oregon Bar in its Ethics Opinion 270 (November 9, 1974) and, we believe, with the opinions of the other Bar Associations.

B. Disposition Plan for Future Unreturnable Funds

We believe a non-profit legal services corporation stands in the same shoes as a private lawyer or law firm regarding handling of client trust accounts. Although the client population receiving services from such a corporation may be more transient than that of a private law practice, we do not find that to be a compelling reason for allowing the corporation to contract with its clients for the disposition of the funds in the event the client cannot be found. We believe the potential for abuse and overreaching is real and significant enough to disallow the plan you suggest. And in so doing, we expressly disagree with ABA Informal Opinion 1392 wherein the opposite conclusion was reached. We must note, however, that our disagreement with that opinion extends only to the fact situation before us.