

THE PHILADELPHIA BAR ASSOCIATION  
PROFESSIONAL GUIDANCE COMMITTEE  
Opinion 2015-1  
(April 2015)

The Inquirer's law firm represents the Executrix of the estate of a Pennsylvania attorney who died in late 2013. The attorney's interest in his law firm, a professional corporation (the "Firm"), passed to his Estate. The deceased attorney, as president of the Firm and 100% owner, maintained control over the IOLTA account of the Firm. As part of the efforts to wind up the administration of the Firm in order to dissolve it, the Inquirer examined firm records related to funds remaining in the IOLTA account to determine how those funds should be distributed.

The Inquirer located and distributed approximately \$34,000.00 to various clients. After a diligent review of records and speaking to firm personnel, the Inquirer identified an additional \$34,000.00 of funds in the IOLTA account that could not be distributed to the appropriate party because there was limited or no information. The Inquirer claims that the funds likely are attributable to client matters more than two decades old for which the firm possessed no records. Given this, the Inquirer believes it was unlikely the firm will ever be able to obtain additional information regarding the rightful owners of the funds.

Before contacting the Committee, the Inquirer contacted the Pennsylvania IOLTA Board to request its guidance regarding how these funds should be distributed. The IOLTA Board declined to offer specific advice on how to disburse the funds but told the Inquirer that no funds in an IOLTA account should be treated as general corporate funds for disbursement to the firm's owner(s) unless the firm can establish that it earned those funds, and they were just awaiting distribution. Further, the IOLTA Board stated that attorneys are prohibited from placing or keeping their own funds in an IOLTA account and therefore, any presumption that the funds belonged to the attorney should not stand.

The Inquirer then requested an opinion as to the ethical propriety of the following proposed procedure:

1. The Firm would, in addition to such other notices as are required by statute, publish notice in at least three newspapers of general circulation in the market area in which the Firm practiced (The Philadelphia Inquirer, The Times Herald of Norristown, and the Bucks County Courier Times) that it intends to dissolve, and that anyone having claims against it, pursuant to 15 Pa.C.S.A. § 1975, should present those claims to her or the Firm's attorneys for determination;
2. Upon presentation of any valid claim, all creditors of the corporation, including anyone who can establish proof that their funds were among the unidentified

funds being held in the IOLTA account, will be paid out of the funds of the corporation, or the remaining IOLTA funds, as appropriate;

3. Upon satisfaction of all such claims, any remaining funds of the corporation, including the unidentified funds remaining in the IOLTA account, will be paid over to the Firm, and distributed to the Estate as the sole shareholder in the dissolution; and
4. The Estate will enter into a Refunding Agreement (similar to a Release and Refunding Bond given by an estate beneficiary in the probate context), in which the Estate will agree to repay to the corporation (or directly to a creditor) any amount found to be owed pursuant to a later-made claim against the Firm or a claim to ownership of some portion of the funds in the IOLTA account.

The Committee has determined that the procedure proposed by the Inquirer would violate Pennsylvania Rule of Professional Conduct 1.15 (the “Rules) “Safekeeping Property.”

Rule 1.15 provides in part that,

(a) ...

(8) *Nonqualified Funds*. Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order or other negotiable instrument, which are not Qualified Funds.

(9) *Qualified Funds*. Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(10) *Rule 1.15 Funds*. Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer’s status as such. When the term “property” appears with “Rule 1.15 Funds,” it means property of a client or third person which the lawyer receives in any of the foregoing capacities.

...

(h) A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.

(i) A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

It is clear from these provisions of Rule 1.15, particularly Rule 1.15h, that the Rule's intent is that only funds which belong to a third party (including a client) should be deposited in an IOLTA account and that the presumption when in an IOLTA account is that a third party has an interest in those funds. Since the inquirer is unable to establish any interest in the funds by the decedent, and since it is clear that \$34,000 was not deposited by the decedent attorney for purposes of meeting bank fees,<sup>1</sup> the funds in the IOLTA account belong to third parties and must be treated accordingly.

The proper way to address the inquirer's dilemma is for him to file a report with the Pennsylvania State Treasurer's Office pursuant to the Pennsylvania Disposition of Abandoned and Unclaimed Property Act (72 P.S. §§ 1301.1-1301.29). The Treasury Department maintains custody of unclaimed property until it is claimed by the rightful owner, and there is no time limit within which the owner must claim their property.

Other state bar associations facing a similar situation are of the same opinion. See Colorado Bar Association Ethics Committee Opinion 95 ("Funds of Missing Clients"), adopted November 20, 1993; State Bar of California Standing Committee on Professional Responsibility and Conduct Formal Opinion No. 1975-36.

CAVEAT: The foregoing opinion is advisory only and is based upon the facts set forth above. The opinion is not binding upon the Disciplinary Board of the Supreme Court of Pennsylvania or any other Court. It carries only such weight as an appropriate reviewing authority may choose to give it.

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<sup>1</sup> See Rule 1.15h allowing deposit of an attorney's own funds to cover account expenses