

**ETHICS OPINION NUMBER 104
OF THE MISSISSIPPI BAR
RENDERED JUNE 6, 1985
AMENDED APRIL 6, 2013**

TRUST ACCOUNTS: A lawyer holding property or monies belonging to clients with whom he has lost contact must retain and account for said funds, subject to the Mississippi Uniform Disposition of Unclaimed Property Act.

The Ethics Committee of The Mississippi Bar has been asked to render an opinion on the following fact situation:

Currently we have on deposit in our client trust funds, monies belonging to clients with whom we have lost contact. The funds consist of filing fees paid by clients and refunds of such fees received from the courts. The clients to whom the above funds are owed have moved from the addresses which we have for them in our files. Efforts to locate them by calling telephone numbers, through directory assistance, and through contacts with friends, relatives and neighbors have failed.

Rule 1.15 of the Mississippi Rules of Professional Conduct (MRPC) provides as follows:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement

with the client, a lawyer shall 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.

It is too obvious to require explanation that client trust funds and other property held by a lawyer are held by him in a fiduciary capacity. They never become the property of the lawyer. In the present fact situation, the lawyer has lost contact with his client and finds himself unable to return the funds, although he desires to do so. As a matter of ethics, the lawyer is under an obligation to hold the client's funds indefinitely and to make all reasonable efforts to locate the client in order to return the funds or property. As a matter of law, however, a different mechanism is imposed by the provisions of the Mississippi Uniform Disposition of Unclaimed Property Act, Miss. Code Ann. § 89-12-1 et seq. Section 89-12-13 provides that any money held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner has, within seven years after it became payable or distributable, accepted payment, corresponded in writing concerning the property, or otherwise indicated an interest in the property as evidenced by a memorandum or other record on file with the fiduciary. Additional conditions are imposed by Miss. Code Ann. § 89-12-17, which are not necessary for this opinion. Every person holding funds or other intangible personal property presumed abandoned under the provisions of the Act is required to report to the State Treasurer on a form prescribed by him, Miss. Code Ann. §89-12-23, and thereafter to deliver the money to the State Treasurer in accordance with the procedures of the statute, Miss. Code Ann. §89-12-29. Upon the payment or delivery of abandoned property to the Treasurer, the State of Mississippi assumes custody and is responsible for the safekeeping thereof. The person who pays or delivers abandoned property to the Treasurer in good faith is relieved of all liability for any claim which then exists or which thereafter may arise or be made in respect to the money or property paid or delivered. Miss. Code Ann. 89-12-31.

It is the conclusion of the Ethics Committee that a lawyer holding funds in his trust account is required to exercise reasonable care to maintain accurate addresses of the clients to whom such funds are owed and to pay those funds over to the client as soon as possible, in order to avoid situations as this from occurring. Nonetheless, if it is impossible to locate a former client to whom client funds are due, they must be held by the lawyer, who shall continue to make reasonable efforts to locate the client and deliver the funds to him until presumed abandoned under the Mississippi act, at which time the procedures of the act govern the disposition of the funds or other property