

Committee Opinion
May 16, 1996

LEGAL ETHICS OPINION 1673

MISSING CLIENTS; USE OF
UNCLAIMED TRUST FUNDS TO PAY
FOR INVESTIGATION TO FIND OWNER
OF FUNDS.

You have presented a hypothetical situation in which a law firm has in trust monies that belong to clients whom the firm is unable to locate. As stated in the hypothetical, the firm is aware of Virginia Code § 55-210.1, which permits unclaimed funds to be turned over to the Commonwealth after five years of not being able to locate clients. However, the firm in the hypothetical would like to hire an investigator to try to locate the clients. Additionally in the hypothetical, you stated that the law firm would like to pay for the investigator from the monies held in the trust.

Under the facts you have presented, you have asked the committee to opine as to the propriety of a law firm using monies from a trust to locate the clients whose funds are held in the law firm's trust.

The appropriate and controlling Disciplinary Rules relative to your inquiry are DR:9-102(B)(1) and DR:2-105(A).

The Committee has previously opined that it is not improper for an attorney, who has maintained in his trust account funds for clients which the attorney has no means of contacting, to dispose of the fund through The Uniform Disposition of Unclaimed Property Act. (*See* LE Op. 832 and § 55-210.1, Va. Code.) The committee has also opined that it is not improper for an attorney to deduct from a client's funds held in trust the reasonable costs incurred for postage and telephone calls to locate that party so long as the amount of money in trust justifies the amount expended. *See*, LE Op. 1644.

In the facts you presented, the committee believes that the intent to locate the clients to give them the monies in the trust is the dispositive point in the hypothetical. Disciplinary Rule 9-102(B)(1) [DR:9-102] requires that an attorney promptly notify a client of the receipt of the client's funds or property. Thus, the committee opines that it is not improper to use monies from a trust to pay an investigator to locate promptly clients whose whereabouts are unknown. However, the committee believes the amount paid out of the trust to an investigator must be reasonable and must not deplete the client's funds held in the trust itself, lest the purpose of finding the client would be defeated. Additionally, the committee opines that the reasonableness test should also be applied by the law firm, when examining the chance that the client will be located through this method. Since the committee has previously opined that an attorney may identify clients with unclaimed trust account monies and turn the monies over to the Department of Treasury, the committee is of the opinion that the attorney may also use a reasonable amount of the trust monies to locate clients to give them the money that is in the trust. (*See* LE Op. 818, LE Op. 832 and § 55-201.1 Va. Code).

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Furthermore, the committee is of the opinion that the law firm must explain to the located client why and how any of the funds were used in the search, pursuant to DR:2-105(A) which requires that a lawyer's fee shall be reasonable and adequately explained to the client. Moreover, the committee does not believe that the instant method of locating a client is required; it only opines that the method mentioned is not improper. Due diligence is all that is required of an attorney trying to locate a client. (*See* LE Op. 1644 and § 55-210.2 Va. Code). In the hypothetical that you have given, the committee believes that using a reasonable amount of trust monies to find clients would not be improper.