

# Unclaimed Property Issues

## *Use All Means Possible to Find Whereabouts of Your Client, PA Rules Say*

**C**onsider the following scenarios: 1. You send a distribution check to a client. It's never cashed and now you can't locate the client. 2. You have funds of a client, such as unused costs or unearned retainer in your escrow account, or tangible personal property of a client, but cannot locate the client to return it.

What are your duties under substantive law in Pennsylvania? Do you have any ethical duties under the Rules of Professional Conduct? If you conclude that finding the client and transferring the funds or assets, in order to close out your file, is part of your competent representation of the client, then you certainly have duties under R.1.1, Competence, and R.1.3, Diligence, to thoroughly, actively and timely exert best efforts to ascertain the current whereabouts of your client.

Postmaster letters, telephone and Internet searches are some of the tools available for location information. There are numerous Internet sites, most free although some requiring registration, that can be utilized for searching individuals and businesses, including a Social Security site that shows deaths. If your file has the client's date of birth, last known address and/or Social Security number, the search may be even more fruitful.

Does anyone remember that Pennsylvania has an escheat statute and a law for the disposition of abandoned and unclaimed property? It's in Title 72, Taxation and Fiscal Affairs, beginning at Section 1301.1.

While it is not the purpose of this article to examine that statute in detail, suffice it to say that it is clearly applicable to many of the scenarios given, and states time frames and gives other provisions as to turning over property to the state treasury.

When funds are turned over to the



state treasury the money stays there for a while before it escheats, to give people notice and time to assert a claim on the money via the web or otherwise. Note that the state treasury will only take things of monetary value, such as bank accounts, stocks and bonds, and mutual funds, and not tangible personal property.

The various state and local guidance and ethics committees have opined that funds belonging to a client must be turned over to the commonwealth in accordance with the statute. Attorneys who transfer those funds to an operating account and take as additional fees, or who use those funds for other purposes, such as miscellaneous costs, may be violating the statute, which has criminal sanctions. Nor is turning the money over to a law-associated nonprofit, such as the Philadelphia Bar Foundation or Community Legal Services, acceptable,

despite the laudatory purpose.

There is also a possibility of disciplinary action, misconduct under R. 8.4., for violating Rule 1.15, an attorney's duty to safeguard funds. However, there are no reported cases in Pennsylvania sanctioning a lawyer publicly for violation of the unclaimed property law. Anecdotally, it is said that there may have been some private punishment meted out when lawyers took client funds after a less-than-diligent search.

Attorneys should become familiar with the statute and think carefully about what to do when they control client property in these situations. ■

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