

ADVISORY ETHICS OPINION 87-09

SYNOPSIS:

If a lawyer after concluding all legal services is unable to refund a client's excess retainer which remains unclaimed and abandoned for a period of seven years, the lawyer shall take the steps outlined in Chapter 13 of Title 27 pertaining to unclaimed property to dispose of these funds.

FACTS:

An out-of-state client paid a retainer to the lawyer to guarantee payment of fees and cost expected to be incurred in defending the client on a criminal charge. The lawyer, having reimbursed himself for the fees and cost associated with the client's representation, is then unable to locate the client despite diligent efforts to do so to return to him the remainder of the unused retainer. The information obtained by the lawyer in his attempts to contact the client indicate that the client had left the area without leaving any forwarding address or means by which he could be contacted. The lawyer inquires as to what should be done with these funds which still remain in the client's trust account.

ANALYSIS:

The question presented is essentially one of how a law firm should handle client's trust funds which appear to be abandoned. DR 2 110 A(3) provides that a lawyer who withdraws from employment shall refund promptly any part of a fee paid in advance that has not been earned. We are assuming for purposes of this Opinion that the legal services required of the firm have been completed and that there are no further legal services required.

Under DR 9-102, the law firm is obliged to maintain the client's funds in a trust account, properly account for these funds and deliver to the client whatever funds he is owed when requested.

Aside from these provisions the Code does not affirmatively state an attorney's ethical responsibility in the event of the abandonment of a retainer. Since the law firm is not expected to perform further legal services, these funds continue to remain the property of the client and should remain in the trust account. If these funds remain unclaimed for a period of seven years after they should have been refunded, the lawyer should take the steps outlined in Chapter 13 of Title 27 to dispose of them.