

# WITHDRAWN BY ADVISORY ETHICS OPINION 98-09

## ~~ADVISORY ETHICS OPINION 96-10~~

### SYNOPSIS:

~~Where the true owner of trust account funds cannot be identified and where the funds, totaling less than \$1,500, appear to have been abandoned, the most prudent alternative may be to arrange for the transfer of those funds to the Vermont Bar Foundation.~~

### FACTS:

~~Attorney A would like to close a long dormant IOLTA account which has an outstanding balance of less than \$1500. Attorney A assumed responsibility for the account upon dissolution of a partnership in which he had previously been a partner. Despite Attorney A's best efforts, he has been unable to identify the client(s) from whom the funds originated.~~

### QUESTION:

~~What is the appropriate course of action for disbursing excess funds held in a long dormant IOLTA account when the funds cannot be identified to a particular client or third party?~~

### DISCUSSION:

~~DR 9-102 imposes a clear obligation on all Vermont lawyers to notify a client of the receipt of client funds; segregate the funds; maintain complete records; and render appropriate accounts to the client. It is DR 9-102's dual purpose to prevent the commingling of funds and to require the maintenance of careful and complete records to avoid the exact situation which faces Attorney A. The record keeping requirements of DR 9-102 can be violated even if the funds have been segregated.~~

~~It goes without saying that Attorney A's predecessor firm did, in fact, violate the record keeping requirements of DR 9-102 by failing to adequately identify the subject funds to a particular client or clients. Nonetheless, Attorney A is now powerless to remedy that failure since the funds cannot be returned to their rightful owner(s) and the continued maintenance of the account will not serve any useful purpose, except to generate interest which can be forwarded to the Vermont Bar Foundation pursuant to DR 9-103.~~

### CONCLUSION:

~~DR 9-102 is silent as to what course of action is appropriate where, as here, the client cannot be identified either due to past clerical errors or neglect and the passage of time makes it unlikely that the client or clients will step forward to claim the funds. Thus, we are without specific guidance as to Attorney A's best course of conduct. We believe, however, that the most prudent alternative would be to arrange for the transfer of funds to the Vermont Bar Foundation. This would be consistent with the Vermont Supreme Court's clear intention to support the Vermont Bar Foundation by its adoption of DR 9-103 in 1983. While DR 9-103 authorizes only the payment of pooled interest to the Vermont Bar Foundation, we can think of no better use of the funds held by Attorney A which appear to have been abandoned.~~

~~It should be noted that this course of action, while providing a common sense solution, will not rectify the past violation of the record keeping requirements. Similarly, it will not eliminate any obligation Attorney A and his former partners may have to repay the funds, in the unlikely event that a client or third party later claims all or a portion of them.~~