

ADVISORY ETHICS OPINION 1998-09

SYNOPSIS:

This Opinion withdraws Opinion 96-10 issued by the Professional Responsibility Committee, which held that where the true owner of IOLTA trust account funds could not be identified, the requisite time period having passed, the prudent alternative was the transfer of the funds to the Vermont Bar Foundation, subject to repayment in the event the client later made claim to the funds.

FACTS:

In Opinion 96-10 the facts were recited as follows:

“**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.”

(Although the client’s failure to claim the funds treated in 96-10 may have been totally the result of the attorneys in question failing to keep complete records to allow for identification and notice to the client-true owner, the Committee’s attention has been drawn to the Unclaimed Property Act, 27 V.S.A. Chapter 13, which states that all fiduciaries are required to report and remit all personal property that has been unclaimed for five years to the state treasurer pursuant to 27 V.S.A. §1215, §1220 and §1222.)

CONCLUSION:

The Committee therefore withdraws Opinion 96-10 and suggests that all attorneys who hold property as fiduciaries within the definition of that term in 27 V.S.A., Chapter 13, should comply with the Unclaimed Property Act.