

**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion No.:

Date: December 16, 2011

Topic: Attorney's duty in disbursing funds upon closing out an IOLA account, including small amounts of unaccounted for or unclaimed funds.

Digest: Attorney must return funds to entitled parties; IOLA Fund receives any interest on the account; Lawyers' Fund for Client Protection receives unaccounted for or unclaimed funds; lawyer or successor must maintain records of the account for seven years.

Rules: 1.15 [22 N.Y.C.R.R. 1200];
E.C.B.A., Op. 1 – 1/15/04;
Jud. Law § 497(6)(c)(i)

QUESTION

- (1) What duties are attendant on a lawyer, or his successor, in closing an IOLA account; and
- (2) What is the proper means of dealing with small amounts of unclaimed and unaccounted for funds in an IOLA account when the IOLA account is closed?

OPINION

Disbursement of Account Funds

Upon the closing of a lawyer's IOLA account (the "Account"), the respective funds must first be disbursed to entitled clients or third parties.¹ The respective banking institution remits interest on the Account at least quarterly² to the IOLA Fund of New York (the "Fund"); a lawyer may check with the bank to determine whether any interest is due to the Fund at the time the Account is closed.

Although Rule 1.15(f) states that funds of missing clients shall be placed in the Lawyers' Fund for Client Protection ("LFCP"), there is no explicit authority providing for the remission of

¹ See generally Rule 1.15.

² Jud. Law § 497(6)(c)(i)

other nominal, unaccounted for funds (minor accounting errors, for example). When read together, however, Rule 1.15(f)-(g) and a prior E.C.B.A. opinion suggest that any unclaimed or unaccounted for funds should be remitted to the LFCP.³

Maintenance of Account Records

In addition to properly disbursing the Account's funds, a lawyer, or a successor designated pursuant to Rule 1.15(g) or (h), shall maintain the records of the Account "for seven years after the events that they record".⁴ The Account's records "shall be located, or made available, at the principal New York State office [or other place of safekeeping] of the lawyers subject hereto, and any such records shall be produced in response to a notice or *subpoena duces tecum* issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the appropriate Appellate Division before any person designated by it."⁵

CONCLUSION

After proper disbursement of funds to clients, third parties, and interest due to the IOLA Fund, the lawyer should remit any balance of unclaimed or unaccounted for funds to:

Lawyers' Fund for Client Protection
119 Washington Avenue
Albany, New York 12210

Further, the lawyer should arrange for the safekeeping of the Account's records for seven years after the events they record.

³ See Rule 1.15(f) (lawyer must apply for court order to direct lawyer's fees from funds of a missing client, with balance going to LFCP); compare to E.C.B.A., Op. 1-1/15/04, (LFCP will accept missing client funds in an amount less than \$1,000 without a court order); see also Rule 1.15(g) (funds of a deceased lawyer may be placed into LFCP until properly disbursed).

⁴ Rule 1.15(d)

⁵ Rule 1.15(i)