



STATE OF ARKANSAS
ATTORNEY GENERAL
LESLIE RUTLEDGE

Opinion No. 2016-019

July 25, 2016

The Honorable Andrea Lea
State Auditor
500 Woodlane Street, Suite 230
Little Rock, AR 72201

Dear Auditor Lea:

This is my opinion on your question about the relationship between Rule of Professional Conduct 1.15(c) and the Unclaimed Property Act:

[S]hould unclaimed funds in [a lawyer's trust] account be turned over to the Arkansas Access to Justice Foundation in accordance with Rule 1.15 or should [they] be escheated to the state in accordance with Arkansas's Unclaimed Property Act?

RESPONSE

In my opinion, funds in a lawyer's trust account are subject to Rule 1.15(c) and must be paid to the Arkansas Access to Justice Foundation when the conditions of the Rule have been met.

DISCUSSION

Lawyers commonly hold money that belongs to clients or prospective clients. Under Rule of Professional Conduct 1.15(b), a lawyer must hold such money in a trust account, separate and apart from the lawyer's own funds. On occasion, when time comes to pay the money, the lawyer is unable to locate or identify the owner.

Unclaimed Property Act

The Unclaimed Property Act (the “Act”)¹ governs property owned by one person and held by another.² Property so held, and unclaimed by the owner for a specified time, is deemed to have been abandoned.³ A person holding abandoned money must deliver it to the Auditor of State.⁴ The Auditor, on behalf of the State, assumes custody and responsibility for the safekeeping of the property for the owner’s benefit.⁵

Rules of Professional Conduct

The Rules of Professional Conduct, adopted by the Arkansas Supreme Court, set forth lawyers’ professional responsibilities and regulate their professional conduct.⁶ Rule 1.15(c) (the “Rule”)⁷ governs certain money held in a lawyer’s trust account. It provides that “[w]hen a lawyer ... cannot, using reasonable efforts, identify or locate the owner of funds in [a] trust account for a period of at least two (2) years, [he] shall pay the funds to the Arkansas Access to Justice Foundation” (the “Foundation”).⁸

¹ Ark. Code Ann. §§ 18-28-201 to -231 (Repl. 2015).

² The Act is of general application; it is not specific to holders who are lawyers.

³ See Ark. Code Ann. § 18-28-202.

⁴ See Ark. Code Ann. § 18-28-208(a).

⁵ See Ark. Code Ann. §§ 18-28-210(b), -215(c)(1); National Conference of Commissioners on Uniform State Laws, *Uniform Unclaimed Property Act (1995) With Prefatory Note and Comments*, 1 (“This Act retains the custodial features of [earlier uniform unclaimed property acts]. Thus, the State does not take title to unclaimed property, but takes custody only, and holds the property in perpetuity for the owner”).

⁶ See Rules of Professional Conduct, Preamble: A Lawyer’s Responsibilities.

⁷ The Rule was adopted in November 2015. See *In re Amendment of Arkansas Rule of Professional Conduct 1.15 and Administrative Order No. 22 – IOLTA Program Relationship with Eligible and Member Institutions*, 2015 Ark. 420.

⁸ Unlike the Act, the Rule does not appear to contemplate a custodial, safekeeping arrangement; rather, funds paid to the Foundation apparently become the Foundation’s own property, subject to an obligation to repay an owner identified and located within two years of payment. See Rule of Professional Conduct 1.15(c)(2).

Superficially at least, it may appear that the Act and the Rule require a lawyer to pay the same money both to the Auditor and the Foundation.⁹ To the extent they are so interpreted, it is my opinion that a lawyer must observe the Rule, to the exclusion of the Act.

The Arkansas Constitution provides that “[t]he Supreme Court shall make rules regulating the practice of law and the professional conduct of attorneys at law.”¹⁰ In my view, a rule dictating disposition of money in lawyers’ trust accounts clearly regulates both the practice of law and lawyers’ professional conduct. Under Arkansas Supreme Court precedent, a legislative enactment is not given effect to the extent it conflicts with or limits the Supreme Court’s authority to regulate lawyers.¹¹ Giving it such effect would amount to a breach of the separation of powers doctrine as currently interpreted by the Arkansas Supreme Court.¹²

It is therefore my opinion, in response to your particular questions, that the Arkansas Supreme Court would conclude that funds in a lawyer’s trust account must be paid to the Arkansas Access to Justice Foundation in accordance with Rule 1.15(c), when the conditions of the Rule have been met.

Sincerely,



LESLIE RUTLEDGE
Attorney General

⁹ On closer examination, it is not clear that any particular funds could actually become subject to payment under both the Act and the Rule. Under the Act, money held in a lawyer’s trust account would, in most or all cases, be deemed abandoned if unclaimed by the owner for “three (3) years after the owner’s right to demand the [money] or after the obligation to pay or distribute the [money] arises, whichever first occurs...” Ark. Code Ann. § 18-28-202(a)(14). The Act does not require payment to the Auditor until another four to 16 months have passed. *See* Ark. Code Ann. §§ 18-28-207(d), -208(a). The Rule, in contrast, has a two-year period, which presumably begins when the owner “is entitled to receive” payment. *See* Rule of Professional Conduct 1.15(a)(5). And once the two years have passed, the lawyer is likely obligated to pay the money to the Foundation promptly. *See id.* It seems likely that, absent extraordinary facts, the Act’s three-year period (beginning when “the owner’s right to demand the [money] or [when] the obligation to pay or distribute the [money] arises”) and the Rule’s two-year period (beginning when the owner “is entitled to receive” payment) will commence at substantially the same time. Thus a lawyer will normally be required under the Rule to pay the money to the Foundation well over a year before he would be required to pay the money to the Auditor under the Act.

¹⁰ Ark. Const. amend. 28.

¹¹ *See, e.g., Ligon v. Davis*, 2012 Ark. 440, 424 S.W.3d 863.

¹² *See* Ark. Const. art. 4, §§ 1, 2; *see also, e.g., Ball v. Roberts*, 291 Ark. 84, 722 S.W.2d 829 (1987).