

**ALASKA BAR ASSOCIATION
ETHICS OPINION 2015-2**

Does a Lawyer Have an Obligation to Hold Client Documents or Property Delivered to the Lawyer Unsolicited?

Question Presented:

Does a lawyer have an obligation to hold documents or property that a client has delivered to a lawyer unsolicited?

Conclusion:

Generally a lawyer does not have a responsibility to hold documents or property that a client has delivered unsolicited and that are not in connection with the representation, however the Ethics Committee recommends treating such items as abandoned property and following the guidelines set forth in Alaska Ethics Opinion 90-3.

Discussion:

The safekeeping of client and third party property is governed by Alaska Rule of Professional Conduct 1.15. Although this rule is usually relied upon when discussing client funds and trust accounts, it also covers situations in which a client has left “other property” with the attorney. A lawyer has no obligation to accept or agree to accept any client property, but once he or she does, the Rule 1.15 obligations are triggered. Thus one way to avoid the application of the duties described below is to refuse to hold the items of property in question. Sometimes, however, a client or a third party such as a family member may simply leave items at the front door or front desk of the lawyer’s office. This opinion is intended to address that scenario.

There are two threshold issues to consider. First, Rule 1.15(a) states that “[a] lawyer shall hold property of clients or third persons that is in a lawyer’s possession *in connection with a representation* separate from the lawyer’s own property.” (Emphasis added.) The key here is whether the items were in connection with a representation. If they are simply personal effects such as clothes with no relationship to the representation, then there is no basis for a duty to arise with respect to that property.

The second issue is consent. Should the lawyer willingly accept that property, regardless of the relationship to the representation, then he or she has consented and takes on the duties of a fiduciary with respect to that property and the duties under Alaska Statute 34.45.220 may apply. The comments to Rule 1.15 state very clearly that the lawyer is responsible for safekeeping property, whether money or personal property, including documents. *Fla. Bar v. Grosso*, 760 So. 2d 940 (Fla. 2000) (holding client’s firearms); *In re Rathburn*, 124 P.3d 1 (Kan. 2005) (forwarding client’s mail). In these cases, the lawyer consented to hold items even though the representation did not technically concern the items held. Even if consent is given, it can be revoked by providing ample written notice to the property owner and following the standard procedures of returning client files and client monies when representation ends. If the lawyer never consented to hold, then

no duty arises. The lawyer is cautioned that consent may be inferred from the circumstances, so the lawyer should endeavor to make it as clear as possible that she or he had not consented to hold the property.

Even though the items may not be connected with the representation, and the lawyer may not have consented to hold anything – in which case no true professional obligation arises – the Ethics Committee recommends that, out of an abundance of caution and concern for the due process rights of the property owner, lawyers *may* follow the guidance set forth in Alaska Bar Association Ethics Opinion 90-3 (former rule DR 9-102(B)). This Opinion concerns the proper procedure when a lawyer cannot locate a former client for whom the lawyer is holding money in a trust account. The Ethics Committee concluded that the lawyer must exhaust reasonable efforts to locate the client, hold the funds for the requisite period of time, and then dispose of them as abandoned property pursuant to Alaska Statute 34.45.110-34.45.430. These statutes require periods of one to three years depending upon the type of property and the holder and this can impose a significant burden upon a lawyer who has not consented to hold the property and did not acquire the property for purposes of the representation, therefore the Committee recommends this only as precaution, but it is not required by any rule of professional responsibility.

Approved by the Alaska Bar Association Ethics Committee on May 7, 2015.

Adopted by the Board of Governors on May 12, 2015.