

**ALASKA BAR ASSOCIATION
ETHICS OPINION 98-3**

**Obligation Of Lawyer To Honor Writ Of Execution
Against Client Funds In The Lawyer's Trust Account**

The Ethics Committee was asked whether a lawyer may, consistent with the lawyer's ethical obligation, honor a writ of execution against client funds held in the lawyer's trust account. Assuming funds held in the lawyer's trust account are truly those of the client, that is, the client may direct disposition of the funds at the client's discretion, and that a valid writ and notice of attachment pursuant to A.S. 9.35.010 have been served on the lawyer, it is the opinion of the committee that nothing in the Alaska Rules of Professional Conduct (ARPC), or other ethical considerations, prevents a lawyer from honoring the requirements of the writ.

A lawyer is required to keep a client's funds or other property entrusted to the lawyer separate from the lawyer's own property, ARPC 1.15(a), and deliver it to the client and render an accounting whenever the client so directs. ARPC 1.15.(b). That obligation is limited, however, when a third party asserts a claim to the property:

When in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

ARPC 1.15(c)

Pursuant to A.S. 09.40.040, the holder of the funds of a judgment debtor (or a defendant whose property has been attached pre-judgment) must pay over such funds pursuant to requirements of the writ of execution or be personally liable to the judgment creditor for any amount wrongfully withheld. Von Gemmingen v. First National Bank, 789 P.2d 353, 356 (Alaska 1990); Willner's Fuel Distributors v. Noreen, 882 P.2d 399, 403 (Alaska 1994). No exception appears in the statutory scheme for funds held in attorney trust accounts.

See, Willner's Fuel Distributors v. Noreen, *supra*, (reversing summary judgment granted a lawyer on a claim brought by a client's judgment creditor pursuant to A.S. 09.40.040 alleging wrongful failure to pay over a client's funds in the lawyer's trust account pursuant to a writ of attachment). Funds collected by a process server pursuant to the writ of attachment must be delivered to the court issuing the writ. rule 69(f)(22), Alaska Rules of Civil Procedure.

While ARPC 1.15(c) requires that disputed property, including funds held in a trust account be "kept separate by the lawyer," pending a resolution of the dispute, A.S. 09.40.040 requires such funds to be paid to the process server. The committee believes, however, that any conflict created by these provisions is more apparent than real because the purpose of the requirement that the lawyer keep the property separate--so the property will be preserved pending an orderly resolution of the dispute--will be served equally well by paying the trust account funds to the process server who must deposit them with the court.¹ Accordingly, any suggestions that a literal reading of ARPC 1.15(c) prevents the lawyer from turning over trust account funds attached by a judgment creditor must fall to the specific requirements of A.S. 09.40.040 and ARCivP 69.

Approved by the Alaska Bar Association Ethics Committee on January 8, 1998.

Adopted by the Board of Governors on January 16, 1998.

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¹ Of course, ARPC 1.4, which requires a lawyer to keep the client reasonably informed about the status of the matter undertaken on the client's behalf, obligates the lawyer to inform the client of the service of the writ so that the client can take steps to protect the client's interests.