

**ETHICS OPINION NUMBER 243
OF THE MISSISSIPPI BAR
RENDERED APRIL 2, 1998**

PROPERTY AND/OR FUNDS OF BOTH CLIENTS AND THIRD PARTIES – Must be held by a lawyer pursuant to the provisions of Rule 1.15 of the Mississippi Rules of Professional Conduct and in the event such property is abandoned by the client or party, disposition shall be in accordance with the Mississippi Uniform Disposition of Unclaimed Property Act, § 89-12-1, et seq. of the Mississippi Code of 1972, as amended.

The Ethics Committee of The Mississippi Bar has been requested to render an opinion as to an attorney's duties with respect to funds belonging to a non-client in the following factual situation:

Attorney A was required to hold jointly owned funds belonging to his client and his client's ex-spouse pending disbursement in accordance with a subsequent order of the Chancery Court. The client's ex-spouse was represented by Attorney B. At the direction of the Court, Attorney A delivered to Attorney B and his client by check, payable jointly to Attorney B and his client, the funds as directed by the Court. Attorney B returned the check indicating he no longer represented the ex-spouse and directed the monies be sent directly to his former client, which was done. Attorney A has subsequently merged with another firm, closed the trust account on which the check was drawn, and deposited the funds on deposit in a new trust account. Attorney B's former client was notified of the account closure and advised that a replacement check would be issued. The original check was mailed approximately four years ago and has not been returned and the funds remain in the successor law firm's account.

The questions presented to the Ethics Committee are: (1) What actions should be taken by the lawyer responsible for the safekeeping of non-client funds? (2) How long must an attorney wait for checks to clients and/or non-clients to be negotiated before taking action? and (3) Is the action the attorney should take different if the funds are payable to a client as opposed to a non-client?

An attorney's duties with respect to safekeeping the property of both clients and third persons are set forth in MRPC Rule 1.15 which generally provides that the lawyer must maintain funds in a separate account and identify and appropriately safeguard other property. In addition, the lawyer must keep complete records and promptly notify a client or third person of receipt of such funds or property and, in the absence of competing claims to the property, promptly deliver the same to the client or third person entitled to receive the funds or property and, upon request, promptly render a full accounting regarding the funds or property.

The comment to Rule 1.15 notes that any lawyer holding property or monies belonging to clients with whom he has lost contact must retain and account for said funds, subject to the Mississippi Uniform Disposition of Unclaimed Property Act, § 89-12-1, et seq., of the Mississippi Code of 1972, as amended. It is the opinion of the Committee that the attorney's obligations are governed by statute and, further, that it makes no difference whether the funds or property belong to a client or third party. The obligations are the same in both cases (See prior Ethics Opinions No. 98 rendered October 5, 1984; No. 104 rendered June 6, 1985, and No. 178 rendered December 7, 1990). The length of time property must be retained is governed by statute and may vary according to the nature of the property.