

**ETHICS OPINION NUMBER 178  
OF THE MISSISSIPPI BAR  
RENDERED DECEMBER 7, 1990**

**TRUST ACCOUNTS** - Funds held in an attorney's trust account of which proper ownership cannot be determined should be disposed of pursuant to the Mississippi Uniform Disposition of Unclaimed Property Act.

The Ethics Committee of the Mississippi State Bar has been requested to render an opinion on the following facts:

An attorney's trust account has accumulated a balance of approximately \$500.00 over several years of law practice. The attorney has been unable to determine where the excess funds came from and to whom such monies may properly belong. All monies determined to belong to clients have previously been refunded. The approximate \$500.00 balance represents funds of which ownership cannot be traced.

The question presented to the Ethics Committee is what the attorney should do with the excess trust account balance.

M.R.P.C. Rule 1.15 Safe Keeping Property, sets forth the standard of care to be followed by attorneys in regard to property (monies) of clients that is in the attorney's possession in connection with representation. Rule 1.15(a) provides that:

A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with representation separate from the lawyer's own property. Funds shall be kept in a separate account. . Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of representation."

Rule 1.15(a and b) requires that a lawyer maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render appropriate accounts to his client regarding them.

Opinion No. 104 of the Mississippi State Bar rendered June 6, 1985, addressed similar circumstances as to those presented hereinabove. Since the attorney requesting the opinion cannot make an accurate determination as to how or why the excess funds were deposited in his trust account, it must be presumed that the funds deposited in

his trust account were "funds of clients and not funds to which the attorney would be entitled personally." If this presumption cannot be rebutted, the excess funds never become the property of the lawyer.

Taking into consideration M.R.P.C. Rule 1.15 and Opinion No. 104, as well as the attorney's inability to determine proper ownership of the excess funds in his trust account, the attorney is bound as a matter of law and ethics to dispose of such funds under the provisions of the Mississippi Uniform Disposition of Unclaimed Property Act, Mississippi Code of 1972, Annotated and Amended, Section 89-12-1, et seq.