FORMAL OPINION NO. 121

Two questions have been presented regarding undistributed Trust Funds. Both questions involve the issue of the disposition of Unclaimed Trust Funds.

In the first situation, the lawyer mailed to the clients checks drawn on his Trust Account. More than one year later, the checks still have not been negotiated.

The second question arose when the lawyer found that his Trust Account contained more money than his client records showed belonged in the Trust Account.

The Idaho Rules of Professional Conduct 1.15 requires the lawyer to keep his clients' funds in a separate account maintained in the State of Idaho. The comment to the Rule, although not adopted by the Supreme Court, provides that the lawyer "should hold property of others with the care required of a professional fiduciary." Comment I.R.P.C. 1.15.

As a fiduciary, the lawyer should first determine to whom the funds belong. If they are the lawyer's funds they should be withdrawn. If they are definitely clients' funds then an attempt should be made to locate the clients and return the funds. If, after making a reasonable, but not necessarily exhaustive effort, the lawyer cannot locate the clients, the funds should be treated as Unclaimed Property.

For the purpose of complying with the Idaho Rules of Professional Conduct, the Committee believes that a lawyer who is holding unclaimed funds should comply with the Idaho Unclaimed Property Law, I.C. §14-501 et. seq. He should pay particular attention to I.C. §§14-503 & 512 with regards to what constitutes the abandonment of property in the possession of a fiduciary.

Compliance with the Idaho Unclaimed Property Law, relieves the fiduciary of any obligation, and allows the owner of the funds to reclaim any monies deposited with the State pursuant to the Law. By complying with the statute, the lawyer will have, for the purpose of the Idaho Rules of Professional Conduct, satisfied his obligation for the segregation and safe keeping of clients' funds.

JEFFREY STROTHER
Committee Chairman

FRANK HICKS
Committee Member

JOHN LOOZE
Committee Member