

**ETHICS ADVISORY PANEL**  
**GENERAL INFORMATIONAL OPINION NO. 6**  
**Issued June 30, 1993**

The Panel has received several inquiries concerning the proper ethical conduct for an attorney who is unable to find his/her client. Typically, these inquiries recite that the client had one or more initial consultations concerning the client's claim. Later, usually before a court action has been commenced, the attorney's efforts to communicate with the client elicit no response. The time for filing a complaint under the applicable statute of limitations may be about to expire.

Rule 1.17 permits a lawyer to terminate representations "if withdrawal can be accomplished without material adverse effect on the client" or for a number of other reasons including:

"(4) the client fails substantially to fulfill an obligation to lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(5) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client."

We do not discuss here the lawyer's withdrawal, on account of the client's fraudulent or criminal conduct or the client's pursuing an objective the lawyer considers to be repugnant or imprudent, all of which are also covered by Rule 1.17. Rather, we focus here on the lawyer's obligations in respect of the "missing client."

The Panel believes that the lawyer must exercise diligent efforts both to locate the missing client and to protect the missing client's interests within the scope of the retention agreement. That duty to the client must be balanced against the lawyer's right to terminate his representation for good cause, including the client's failure to cooperate and to pay the lawyer's fees or expenses.

Diligent efforts to locate the missing client may include mailing letters to, telephoning and personally visiting the client's last known address, making inquiries in the client's neighborhood and of the client's family and acquaintances, and searching public records such as motor vehicle and voter registrations and telephone company and post office records. See Ethics Advisory Panel Opinions # 93-1 (Mar. 31, 1993) and # 91-82 (Dec. 5, 1991); Connecticut Ethics Opinion 89-8 (Feb. 16, 1989); Virginia Ethics Opinion # 897 (Apr. 1, 1987). Diligent efforts to locate the missing client will vary with the circumstances and the lawyer's knowledge about the missing client. Greater or different efforts will be required if, for example, the client is known

to be incapacitated or not literate in the language used by the lawyer. (Ethics Advisory Panel Opinion # 90-21) (May 31, 1990).

Unless the lawyer holds client funds that may be applied for such purpose, the lawyer should not be expected to expend substantial funds in locating the missing client. Silva v. Perkins Machine Co., 622 A.2d 443 (R.I. 1993) ("To require [the attorney] to finance the costs of [the] litigation would impose an unfair financial burden of the attorney . . . "). Thus, we do not share the view expressed by one state ethics panel that the lawyer should retain a private investigator to locate a missing client. See California Ethics Opinion 1989-111 (undated).

Diligence in protecting the client's interest requires at a minimum that the lawyer preserve the client's claim. Thus, unless the lawyer was expressly instructed not to institute a court action without the client's further authorization, the lawyer should file a complaint to prevent the imminent running of the statute of limitations. See Virginia Ethics Opinion 1173 (Oct. 24, 1988); California Ethics Opinion 1989-111 (undated); South Dakota Ethics Opinion 92-6 (July 16, 1992). However, the lawyer may not settle the client's claim without express authority from the client. Connecticut Ethics Opinion 89-8 (Feb. 16, 1989); Oregon Ethics Opinion 1991-93; Utah Ethics Opinion # 78 (undated).

After instituting a court action, the lawyer may move for permission to withdraw. California Ethics Opinion 1989-111 (undated); Oregon Ethics Opinion 1991-93 (withdrawal after appeal filed); Utah Ethics Opinion # 78 (undated); South Dakota Ethics Opinion 92-6 (July 16, 1992); Virginia Ethics Opinion # 1173 (October 24, 1988). Such a motion submitted early in the proceeding at a non-critical stage and describing the lawyer's effort to locate the client should be granted. See Silva v. Perkins Machine Co., *supra*; Town of North Smithfield v. Susan Marie Builders Inc., (1991). The Panel cautions, however, as do the Rules of Professional Conduct, that even if good cause exists for withdrawal, the lawyer must continue to represent the missing client when ordered by a tribunal. Rule 1.17(c).

Finally, to effect withdrawal, the lawyer must again take reasonable steps to notify the client of withdrawal. Rule 1.17(d) requires that the client be afforded time for employment of other counsel, that all papers and property be surrendered and that all unearned fees be refunded. We believe that such requirements can be satisfied only by mailing appropriate notices to the client's last known address or addresses with a proffer of the subject property and funds. If the client does not claim the property or funds, the files should be retained by the lawyer for seven years. See RIGL § 8-14-2, Ethics Advisory Panel Opinion 92-10 (January 14, 1992), and the funds may be retained in the lawyer's segregated clients' account subject to the State's escheat laws, See RIGL § § 33-2. 1-1 et seq., or deposited in the registry of the appropriate court. The proposed disposition of the property and funds should be described in the final lawyer's notice of withdrawal to the client, which should be clear and unequivocal as to the lawyer's intended course of action. See Cardat v. Luff, 262 S.E. 2d 889 (W.Va. 1980).