

**THE PROFESSIONAL ETHICS COMMITTEE
FOR THE STATE BAR OF TEXAS
Opinion No. 602**

October 2010

QUESTION PRESENTED

Under the Texas Disciplinary Rules of Professional Conduct, may a lawyer deliver to the Texas Comptroller of Public Accounts, and file related reports concerning, funds or other property held in the lawyer's trust account for which the lawyer is unable to locate or to identify the owner?

STATEMENT OF FACTS

A lawyer holds in his trust account funds or other property belonging to a client or a third party. After three years, despite reasonable efforts, the lawyer either is unable to locate the client or third party that is the owner of the funds or other property or is unable to determine the identity of the owner.

DISCUSSION

Rule 1.14 of the Texas Disciplinary Rules of Professional Conduct sets forth a lawyer's obligations regarding funds and other property belonging to clients or third persons. Among other requirements, Rule 1.14(a) requires that a lawyer holding such funds keep the funds in a separate trust or escrow account and that "[c]omplete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." Rule 1.14(b) provides:

"Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property."

Further, Rule 1.14(c) includes the requirement that "[a]ll funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law."

Section 72.001(e) of the Texas Property Code defines a "holder" of property as "a person, wherever organized or domiciled, who is: (1) in possession of property that belongs to another;

(2) a trustee; or (3) indebted to another on an obligation.” Section 72.101(a) of the Texas Property Code provides that, with exceptions not here relevant:

“ . . . personal property is presumed abandoned if, for longer than three years: (1) the existence and location of the owner of the property is unknown to the holder of the property; and (2) according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.”

Section 74.301(a) of the Texas Property Code states, in relevant part, that “each holder who on June 30 holds property that is presumed abandoned under Chapter 72, 73, or 75 shall deliver the property to the comptroller on or before the following November 1 accompanied by the report required to be filed under Section 74.101.” Under section 74.101(a) of the Texas Property Code, each holder of property presumed abandoned under chapter 72 (which includes section 72.101(a) quoted above) “shall file a report of that property . . .” with the Comptroller of Public Accounts. Section 74.101(c) requires that the report include, if known by the holder, certain identifying information about each person who appears to be the owner of the property or any person who is entitled to the property. Under section 74.103 of the Texas Property Code, a holder of property who is required to make such a report must keep for ten years certain records concerning reported property and persons who appear to be owners of such property.

Although this Committee does not have authority to interpret statutory law and no opinion is here offered as to the interpretation of the provisions of the Texas Property Code cited above, for purposes of this opinion the Committee assumes a Texas lawyer could reasonably conclude that in certain circumstances these provisions apply to property held in his trust account for which the owner of the property cannot be located or cannot be identified.

No provision of the Texas Disciplinary Rules of Professional Conduct limits or prohibits the transfer to the Texas Comptroller of funds or property that a lawyer reasonably believes to be “presumed abandoned” under the Texas Property Code. Any delivery of funds required by provisions of the Texas Property Code will be within the scope of Rule 1.14(b), which requires, with exceptions not here applicable, that “a lawyer shall promptly deliver to the . . . third person any funds or other property that the . . . third person is entitled to receive . . .” Accordingly, if a lawyer concludes that he holds property subject to the delivery requirements of the Texas Property Code, Rule 1.14(b) of the Texas Disciplinary Rules of Professional Conduct not only permits but requires the lawyer to deliver such funds or property to the Comptroller in accordance with the Property Code’s requirements.

With respect to the filing of reports with the Comptroller on property required to be transferred to the Comptroller under the Texas Property Code, it is necessary to consider the requirements of Rule 1.05 of the Texas Disciplinary Rules of Professional Conduct concerning confidential information relating to a lawyer’s representation of current and former clients. Rule 1.05(a) defines “confidential information” to include both “privileged information” and “unprivileged client information.” The latter category is broadly defined in Rule 1.05(a) to mean “all information relating to a client or furnished by the client, other than privileged information, acquired by the lawyer during the course of or by reason of the representation of the client.”

Much of the information called for in a report to the Comptroller under section 74.101 of the Texas Property Code appears to come within the definition of “confidential information” under Rule 1.05(a), including, for example, the name, social security number, driver’s license number, e-mail address, and last known address of the client or other person to whom the property is believed to belong.

Rule 1.05(c)(4) expressly authorizes a lawyer to reveal confidential information “[w]hen the lawyer has reason to believe it is necessary to do so in order to comply with a court order, a Texas Disciplinary Rule of Professional Conduct, or other law.” (emphasis added) Thus, if a lawyer files a report containing confidential client information that the lawyer reasonably believes is required under provisions of the Texas Property Code concerning abandoned property, filing such report would not violate the lawyer’s obligations regarding confidentiality under Rule 1.05. It must be emphasized that this authorization applies only to disclosures that are “necessary” for compliance with applicable law. Particularly in view of the general obligation imposed by Rule 1.05 for lawyers not to reveal confidential information acquired in the representation of clients unless an exception such as Rule 1.05(c)(4) applies, the lawyer must take care not to make disclosures that exceed what is required to comply with applicable law. As noted in Comment 14 to Rule 1.05, “. . . a disclosure adverse to the client’s interest should be no greater than the lawyer believes necessary to the purpose.”

CONCLUSION

Under the Texas Disciplinary Rules of Professional Conduct, a lawyer is permitted to deliver to the Texas Comptroller of Public Accounts, and to file required reports concerning, funds or other property held in the lawyer’s trust account for which the lawyer is unable to locate or to identify the owner, provided the lawyer reasonably believes that such action is required by applicable provisions of Texas law on abandoned property.