

DIGEST OF ETHICS ADVISORY PANEL  
OPINION 90-21, REQUEST #100  
Issued May 31, 1990

An attorney seeks Panel advice as to what he ought to do with certain client funds under the circumstances he describes.

The attorney advises the Panel that approximately ten years ago he filed a law suit on behalf of his client, Mr. X to collect on a one thousand dollar debt owed to Mr. X by Mr. Y. the attorney states that he obtained judgment against Mr. Y, an execution issued and that execution was recorded against Mr. Y's real estate.

Several weeks ago the attorney indicates that he was contacted by the attorney for Mr. Y, requesting the amount of the pay off on the lien, including all interest and costs in order to clear title to the property for immediate sale. The attorney states that he attempted to contact Mr. X by telephone and learned that there is no current phone listing in his name. The attorney mailed a letter to Mr. X's last known address and it was returned "addressee unknown." The attorney indicates that he has requested a postal check on Mr. X but has not yet received a response.

The attorney advises the Panel that he accepted the pay-off of the lien, signed a release of the lien on the real estate and requested the funds be held in an escrow account pending disbursement of the proceeds of sale. The attorney asks the Panel, first, if there are any further steps he needs to take in connection with his search for Mr. X. Second, the attorney asks what he should do with the funds due to Mr. X if he cannot locate him.

The Panel takes the position that the attorney's attempts to contact Mr. X by telephone and telephone company records, by mail, and by postal check satisfy his obligations to exercise diligence in locating Mr. X under the circumstances. The Panel's response to this portion of the inquiry would, of course, differ under different circumstances. If the attorney knew Mr. X to be mentally incapacitated, for example, greater efforts would be required on the attorney's part to satisfy his obligation to contact Mr. X. If the attorney is unable to locate Mr. X by the methods he has described, the funds due to Mr. X should be paid into the Registry of Court pursuant to District Court Civil Rule 67.

Ethics Advisory Panel advice is protective in nature. There is no requirement that an attorney abide by a Panel opinion, but if he or she does, he or she is fully protected from any charge of impropriety.