

Final

**Rhode Island Supreme Court Ethics Advisory Panel
Opinion No. 2011-04 Request No. 990
Issued November 10, 2011**

FACTS

The inquiring attorney seeks an advisory opinion about the entitlement to and the disbursement of funds in an escrow account that was opened in 1997 and which has not been used since 2008. The account was used by the inquiring attorney's law firm as the primary escrow account for funds related to closing real estate loans and other real estate matters.

The inquiring attorney is not certain who is entitled to the funds. However, he/she believes that funds totaling \$52,000 "belong to others," and the remainder represents either fees of the firm from real estate closings, or monies of the firm from over funding real estate files due to title company audits. The inquiring attorney states that the firm was busy closing real estate transactions and disbursing payoffs and other time sensitive disbursements, and did not take the time to disburse funds belonging to the firm. He/she further represents that due to the rapid pace of business, there was a lack of regular reconciliation of the account. The firm converted from one financial software product to another product in 2004, and again in 2008. At the conversion in 2008, financial information related to years prior to 2004 was inadvertently deleted. In 2008, the firm opened a separate escrow account for real estate escrows going forward, and kept open the original escrow account containing funds related to prior real estate transactions. The firm wants to close the original escrow account which now contains \$122,000.

ISSUE PRESENTED

The inquiring attorney seeks the Panel's opinion about the entitlement to and disbursement of funds in an unused escrow account containing \$122,000, a portion of which he/she believes belongs to the law firm, and a portions of which belong to others.

OPINION

The law firm must maintain the funds in an IOLTA account until the questions of ownership of the funds are resolved. At such time as it is determined that the law firm is entitled to certain of the funds, the firm may disburse those funds to the firm's business account. As to the remaining funds, the inquiring attorney must maintain them in an

IOLTA account until persons or entities who are entitled to the funds are identified, at which time the law firm must disburse the funds to those persons or entities.

REASONING

Whether and to what extent the inquiring attorney's law firm is entitled to the funds in the unused escrow account are substantive law questions outside the area of legal ethics and discipline, and outside the jurisdiction of the Panel. Further, it is outside the purview of the Panel's jurisdiction to address past noncompliance with obligations under Rule 1.15 of the Rules of Professional Conduct entitled "Safekeeping property" or other Rules of Professional Conduct.

The inquiring attorney must make all reasonable efforts to establish which funds belong to others and which funds are the property of the inquiring attorney. The unfortunate deletion of financial information relating to the funds in the original escrow account presents a serious challenge. Obtaining archived financial statements from the firm's financial institutions, and software and computer forensic audits are suggestions.

Until the questions of what portion of the funds belong to the law firm, and what portion belongs to others are resolved, the law firm must maintain the \$122,000 in an IOLTA account pursuant to Rule 1.15 of the Rules of Professional Conduct. At such time that it is determined that the law firm is entitled to certain of the funds, the law firm may disburse those funds to the firm's business account. As to the remaining funds, the inquiring attorney must retain them in an IOLTA account until the persons or entities who are entitled to the funds are identified, at which time the attorney must disburse the funds to those persons or entities.