

FORMAL OPINION NO 2005-60

Lawyer Changing Firms: Duty to Retain or Surrender Client Property

Facts:

While Lawyer was a member of Firm, Lawyer drafted wills and handled business matters for many clients. With the clients' consent, the original wills and certain client property (e.g., securities) were retained by Firm. After Lawyer's departure from Firm, Lawyer requested that the original wills and property of those clients be given to Lawyer.

Questions:

1. May Firm refuse to give the original wills or client property to Lawyer until receipt of notification from the clients for whom the wills were drawn or who own the property that they wish the wills or property to be given to Lawyer?

2. May Firm withhold the wills or property after receipt of such notification?

Conclusions:

1. Yes.
2. No.

Discussion:

The duty to preserve a client's will and other client property is an important one. *Cf.* OSB Formal Ethics Op No 2005-43; *In re Boothe*, 303 Or 643, 740 P2d 785 (1987). Oregon RPC 1.15-1 provides, in pertinent part:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. . . . Other property shall be identified as such and appropri-

ately safeguarded. Complete 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.

....

(d) 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.

From the plain language of Oregon RPC 1.15-1(a) and (d) and subject to the limitations noted in OSB Formal Ethics Op No 2005-43 (with respect to wills) and OSB Formal Ethics Op No 2005-48 (with respect to other client property), Firm must preserve the wills and other client property until directed by the client to send them elsewhere. Subject to any lien rights it may have,¹ Firm must, however, promptly send them as requested by the former or current client on receipt of a client's request.²

Approved by Board of Governors, August 2005.

¹ See Oregon RPC 1.16(d); OSB Formal Ethics Op No 2005-90.

² Although Firm may request written authorization from a client to send these materials to Lawyer, Firm may not require that a client physically come to Firm's office to retrieve these materials if the client directs that the material be sent or given to Lawyer.

COMMENT: For additional information on this general topic and related subjects, see *The Ethical Oregon Lawyer* § 4.2-2 (protecting the client), § 12.4-1 to § 12.4-2 (client property) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* §§ 44–45 (2000) (supplemented periodically); and ABA Model RPC 1.15(a), (d).