

1. 22 NYCRR Part 130 , et al. - NYS Judicial Sanction Rules.
2. NY OCA Memorandum RE: Authority of CSF to Receive Sanctions (1990).
3. NY Abandoned Property Law, Sec. 1310.
4. 22 NYCRR Part 1200, 1.15 (f), (g).
5. NY OSC Opinion Letter Confirming NY APL does not apply to 22 NYCRR 1200, 1.15(f)(g)
6. Missing Client Memo.
7. Deceased Attorney/Successor Signatory Memo.
8. Erie County Bar Ethics Opinion (2004).
9. NYS Lawyers' Fund Amended Regulations, 7200.4(a) (2017).

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ § 130-1.1 Costs; sanctions**

22 NYCRR § 130-1.1

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR
FRIVOLOUS CONDUCT IN CIVIL LITIGATION

22 NYCRR § 130-1.1 (2006)

§ § 130-1.1 Costs; sanctions

(a) The court, in its discretion, may award to any party or attorney in any civil action or proceeding before the court, except where prohibited by law, costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, resulting from frivolous conduct as defined in this Part. In addition to or in lieu of awarding costs, the court, in its discretion may impose financial sanctions upon any party or attorney in a civil action or proceeding who engages in frivolous conduct as defined in this Part, which shall be payable as provided in section 130-1.3 of this Part. This Part shall not apply to town or village courts, to proceedings in a small claims part of any court, or to proceedings in the Family Court commenced under article 3, 7 or 8 of the Family Court Act.

(b) The court, as appropriate, may make such award of costs or impose such financial sanctions against either an attorney or a party to the litigation or against both. Where the award or sanction is against an attorney, it may be against the attorney personally or upon a partnership, firm, corporation, government agency, prosecutor's office, legal aid society or public defender's office with which the attorney is associated and that has appeared as attorney of record. The award or sanctions may be imposed upon any attorney appearing in the action or upon a partnership, firm or corporation with which the attorney is associated.

(c) For purposes of this Part, conduct is frivolous if:

(1) it is completely without merit in law and cannot be supported by a reasonable argument for an extension, modification or reversal of existing law;

(2) it is undertaken primarily to delay or prolong the resolution of the litigation, or to harass or maliciously injure another; or

(3) it asserts material factual statements that are false.

Frivolous conduct shall include the making of a frivolous motion for costs or sanctions under this section. In determining whether the conduct undertaken was frivolous, the court shall consider, among other issues the circumstances under which the conduct took place, including the time available for investigating the legal or factual basis of the conduct, and whether or not the conduct was continued when its lack of legal or factual basis was apparent, or should have been apparent, or was brought to the attention of counsel or the

party.

(d) An award of costs or the imposition of sanctions may be made either upon motion in compliance with [CPLR 2214](#) or [2215](#) or upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the conduct and the circumstances of the case.

Section statutory authority: Family Court Act, § A3, § A7, § A8; [Civil Practice Law & Rules, § 2214, § 2215](#)

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a; State Finance Law, § 97-t](#)

Added 130-1.1 on 10/31/88; amended 130-1.1 on 7/01/95; amended 130-1.1 on 10/09/97; amended 130-1.1 on 1/08/98; amended 130-1.1(a) on 6/19/98.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ § 130-1.1 Costs; sanctions**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:56 AM EDT



LexisNexis

[About LexisNexis](#) | [Terms & Conditions](#)

[Copyright](#) © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ 130-1.2 Order awarding costs or imposing sanctions**

22 NYCRR § 130-1.2

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR
FRIVOLOUS CONDUCT IN CIVIL LITIGATION

22 NYCRR § 130-1.2 (2006)

§ 130-1.2 Order awarding costs or imposing sanctions

The court may award costs or impose sanctions or both only upon a written decision setting forth the conduct on which the award or imposition is based, the reasons why the court found the conduct to be frivolous, and the reasons why the court found the amount awarded or imposed to be appropriate. An award of costs or the imposition of sanctions or both shall be entered as a judgment of the court. In no event shall the amount of sanctions imposed exceed \$ 10,000 for any single occurrence of frivolous conduct.

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a](#); [State Finance Law, § 97-t](#)

HISTORY:

Added 130-1.2 on 10/31/88; amended 130-1.2 on 7/01/95; amended 130-1.2 on 10/09/97; amended 130-1.2 on 3/01/98.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ 130-1.2 Order awarding costs or imposing sanctions**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:57 AM EDT



[About LexisNexis](#) | [Terms & Conditions](#)

Copyright © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ 130-1.3 Payment of sanctions**

22 NYCRR § 130-1.3

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR
FRIVOLOUS CONDUCT IN CIVIL LITIGATION

22 NYCRR § 130-1.3 (2006)

§ 130-1.3 Payment of sanctions

Payments of sanctions by an attorney shall be deposited with the Lawyers' Fund for Client Protection established pursuant to [section 97-t of the State Finance Law](#). Payments of sanctions by a party who is not an attorney shall be deposited with the clerk of the court for transmittal to the Commissioner of Taxation and Finance. The court shall give notice to the Lawyers' Fund of awards of sanctions payable to the Fund by sending a copy of the order awarding sanctions, or by sending other appropriate notice, to the Lawyers' Fund for Client Protection, 119 Washington Avenue, Albany, New York, 11210.

Section statutory authority: [State Finance Law, § 97-T](#)

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a](#); [State Finance Law, § 97-t](#)

HISTORY:

Added 130-1.3 on 10/31/88; amended 130-1.3 on 7/01/95; amended 130-1.3 on 10/07/99.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-1. AWARDS OF COSTS AND IMPOSITION OF FINANCIAL SANCTIONS FOR FRIVOLOUS CONDUCT IN CIVIL LITIGATION](#) > **§ 130-1.3 Payment of sanctions**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:58 AM EDT



[About LexisNexis](#) | [Terms & Conditions](#)

Copyright © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > [NY - New York Codes, Rules and Regulations](#) 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#)
> [§ 130-2.1 Costs; sanctions](#)

22 NYCRR § 130-2.1

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED
FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE

22 NYCRR § 130-2.1 (2006)

§ 130-2.1 Costs; sanctions

(a) Notwithstanding and in addition to the provisions of Subpart 130-1 of this Part, the court, in its discretion, may impose financial sanctions or, in addition to or in lieu of imposing sanctions, may award costs in the form of reimbursement for actual expenses reasonably incurred and reasonable attorney's fees, upon any attorney who, without good cause, fails to appear at a time and place scheduled for an action or proceeding to be heard before a designated court. This Part shall not apply to town or village courts or to proceedings in a small claims part of any court.

(b) In determining whether an attorney's failure to appear at a scheduled court appearance was without good cause and in determining the measure of sanctions or costs to be imposed, the court shall consider all of the attendant circumstances, including but not limited to:

- (1) the explanation, if any, offered by the attorney for his or her nonappearance;
- (2) the adequacy of the notice to the attorney of the time and date of the scheduled appearance;
- (3) whether the attorney notified the court and opposing counsel in advance that he or she would be unable to appear;
- (4) whether substitute counsel appeared in court at the time previously scheduled to proffer an explanation of the attorney's nonappearance and whether such substitute counsel was prepared to go forward with the case;
- (5) whether an affidavit or affirmation of actual engagement was filed in the manner prescribed in Part 125 of the Uniform Rules for the Trial Courts of the Unified Court System;
- (6) whether the attorney on prior occasions in the same action or proceeding failed to appear at a scheduled court action or proceeding;
- (7) whether financial sanctions or costs have been imposed upon the attorney pursuant to this section in some other action or proceeding; and
- (8) the extent and nature of the harm caused by the attorney's failure to appear.

(c) The court, as appropriate, may impose any such financial sanctions or award costs upon an attorney personally or upon a partnership, firm, corporation, government agency, prosecutor's office, legal aid society or public defender's office with which the attorney is associated and that has appeared as attorney of record.

(d) The imposition of sanctions or award of costs may be made either upon motion or upon the court's own initiative, after a reasonable opportunity to be heard. The form of the hearing shall depend upon the nature of the attorney's failure to appear and the totality of the circumstances of the case.

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a](#); [State Finance Law, § 97-t](#)

HISTORY:

Added 130-2.1 on 10/31/88; amended 130-2.1 on 11/02/89; amended 130-2.1 on 5/22/95; amended 130-2.1 on 10/09/97; amended 130-2.1 on 3/01/98.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#) > **§ 130-2.1 Costs; sanctions**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:58 AM EDT



[About LexisNexis](#) | [Terms & Conditions](#)

[Copyright ©](#) 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#) > **§ 130-2.2 Order imposing sanctions and costs**

22 NYCRR § 130-2.2

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED
FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE

22 NYCRR § 130-2.2 (2006)

§ 130-2.2 Order imposing sanctions and costs

The court may impose sanctions or award costs or both only upon a written memorandum decision or statement on the record setting forth the conduct on which the award or imposition is based and the reasons why the court found the attorney's failure to appear at a scheduled court appearance to be without good cause. The imposition of sanctions or an award of costs or both shall be entered as a judgment of the court. In no event shall the total amount of sanctions imposed and costs awarded exceed \$ 2,500 for any single failure to appear at a scheduled court appearance.

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a](#); [State Finance Law, § 97-t](#)

HISTORY:

Added 130-2.2 on 10/31/88; amended 130-2.2 on 11/02/89; amended 130-2.2 on 5/22/95; amended 130-2.2 on 10/09/97; amended 130-2.2 on 3/01/98.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#) > **§ 130-2.2 Order imposing sanctions and costs**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:59 AM EDT



[About LexisNexis](#) | [Terms & Conditions](#)

[Copyright ©](#) 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#) > **§ 130-2.3 Payment of sanctions**

22 NYCRR § 130-2.3

NEW YORK CODES, RULES AND REGULATIONS

*** THIS DOCUMENT REFLECTS CHANGES RECEIVED THROUGH JUNE 2, 2006 ***

TITLE 22. JUDICIARY
SUBTITLE A. JUDICIAL ADMINISTRATION
CHAPTER I. STANDARDS AND ADMINISTRATIVE POLICIES
SUBCHAPTER C. RULES OF THE CHIEF ADMINISTRATOR OF THE COURTS
PART 130. COSTS AND SANCTIONS
SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED
FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE

22 NYCRR § 130-2.3 (2006)

§ 130-2.3 Payment of sanctions

Payments of sanctions shall be deposited with the Lawyers' Fund for Client Protection established pursuant to [section 97-t of the State Finance Law](#).

Section statutory authority: [State Finance Law, § 97-T](#)

Statutory authority: Family Court Act, Arts. 3, 7, 8, 10, § 439; [Civil Practice Law and Rules, §§ 2214, 2215, 8303-a](#); [State Finance Law, § 97-t](#)

HISTORY:

Added 130-2.3 on 10/31/88; amended 130-2.3 on 11/02/89; amended 130-2.3 on 7/01/95.

Source: [My Sources](#) > [New York](#) > [Statutes & Regulations](#) > **NY - New York Codes, Rules and Regulations** 

TOC: [New York Codes, Rules, and Regulations](#) > [/.../](#) > [SUBPART 130-2. IMPOSITION OF FINANCIAL SANCTIONS OR COSTS FOR UNJUSTIFIED FAILURE TO ATTEND A SCHEDULED COURT APPEARANCE](#) > **§ 130-2.3 Payment of sanctions**

View: Full

Date/Time: Tuesday, June 6, 2006 - 8:59 AM EDT



[About LexisNexis](#) | [Terms & Conditions](#)

[Copyright](#) © 2006 LexisNexis, a division of Reed Elsevier Inc. All rights reserved.

Clients' Security Fund
of the
State of New York

M E M O R A N D U M

TO: Trustees February 27, 1990
FROM: F.M.
RE: Sanctions

Here is the legal memorandum of OCA's counsel. It concludes that sanctions are being property deposited in the Clients' Security Fund, rather than the State's general fund.

The result is two conflicting legal opinions with us in the middle.

FAX

February 8, 1990

TO: [REDACTED]
FROM: [REDACTED]
RE: Deposit of Financial Sanction Monies in the Clients'
Security Fund

Question

Is the Clients' Security Fund ("CSF") a legally-permissible repository for financial sanctions paid by an attorney who, pursuant to part 37 of the Rules of the Chief Judge and Part 130 of the Chief Administrator's Uniform Rules for the Trial Courts, has been cited by a court for frivolous conduct in litigation?

Answer

Yes. There is clear legal authority for routing sanction money into the CSF.

Analysis

I

The Chief Judge has promulgated a rule directing the Chief Administrator of the Courts to adopt rules providing for the imposition of costs and financial sanctions against a party or an attorney for frivolous conduct in civil litigation; and against an attorney in a criminal action who, without good cause, fails to appear at a scheduled court appearance. 22 NYCRR §37.1(a). This rule permits the Chief Administrator to require that, when ordered, financial sanctions be made payable to the CSF. Id., §37.1(c).

The Chief Administrator has implemented this directive by adopting the rules in part 130 of the Uniform Rules for the Trial Courts. 22 NYCRR Part 130. As authorized by section 37.1(c) of the Chief Judge's Rules, part 130 directs that, when financial sanctions are to be paid by an attorney, they are to be deposited with the CSF. Id., §§130-1.3, 130-2.3.

Recently, Deputy Comptroller [REDACTED] wrote Fred Miller to advise that it was the legal view of the

Comptroller's Office that deposit into the CSF of financial sanctions paid by attorneys pursuant to part 130 of our rules is not authorized by statute and is inconsistent with section 72 of the State Finance Law. He then asked that all sanction monies heretofore deposited in the CSF be transferred to the General Fund, and that, henceforth, all sanction monies Fred receives be deposited in the General Fund.

Fred responded to [REDACTED] and took the position: (1) that his enabling statute, section 97-t of the State Finance Law, authorizes the CSF to "accept money from 'any ... source, pursuant to law ...'", and therefore is not so restrictive as the Comptroller's Counsel suggests; and (2) that the term law embraces more than merely statutes, and includes other dictates having the force of law (e.g., the Rules of the Chief Judge, and of the Chief Administrator). He also indicated that he would pass the matter along to OCA Counsel for our expression of view.

II

Financial sanction funds are deposited into the CSF pursuant to directions in our court rules. The issue we face, therefore, can simply be stated: Do sections 130-1.3 and 130-2.3 of the Chief Administrator's Uniform Rules for the Trial Courts, and the specific revenue path they ordain for the disposition of sanction monies that are paid, violate provisions of the State Finance Law? In my judgment, they do not - for precisely the reasons Fred notes in his letter to Jim McGill.

Two provisions of the State Finance Law must be examined. The first, section 72, defines the purpose and extent of the State's General Fund. Subdivision one is most relevant to our inquiry. It provides that:

Notwithstanding any provision of law to the contrary, the general fund of this state shall be defined and maintained in accordance with the provisions of this section and shall account for all financial resources of the state except those required to be accounted for in other funds as defined in [the State Finance Law]. (my emphasis)

As suggested by the underscored phrase, all of the State's monies must be maintained in the General Fund except to the extent that the enabling authority for one of the State's other funds permits or requires deposit of particular monies in such fund.

This brings us to the second provision of the State Finance Law we must examine - section 97-t. This provision is the enabling authority for the CSF. In subdivision two, it

provides that:

Fifty per centum of the monies collected pursuant to the provisions of section four hundred sixty-eight-a of the [J]udiciary [L]aw, and such other monies as may be credited or otherwise transferred from any other fund or source, pursuant to law, including voluntary contributions ... shall be deposited to the credit of the [CSF] ...

This provision specifies those monies that must be deposited in the CSF. In so doing, it complements section 72(1) by supplying the statutory basis in the State Finance Law, required by that section, for placing funds in the CSF and not in the General Fund.

Section 97-t(2) recognizes the following as legitimate deposits in the CSF: (1) 50% of the attorney registration fee monies received; and (2) any other State monies that may be "credited or otherwise transferred [to the CSF] from any other fund or source, pursuant to law (emphasis added)." As Fred correctly points out, the word "law" means more than merely "statute." First, as a matter of semantics, it should be noted that there is no explicit statutory definition of "law" in the State Finance Law, the General Construction Law, or anywhere else in the Consolidated Laws, nor is there any judicial decision to be found favoring the view that statutory use of the word "law" means "statute", and nothing else. Indeed, to the extent lessons can be drawn from the Consolidated Laws, it would appear that the contrary is true. There are many statutes on the books that condition their effect upon some other provision of "statute" or of a particular "chapter", both well-understood and very narrowly-defined terms (i.e., "statute" represents an enactment of the Legislature [see, Statutes §1]; "chapter", one of the Consolidated Laws). When employed as delimiters in a statute, they leave no doubt concerning the size or character of the field they describe. The drafter of section 97-t(2), however, opted for neither of these terms, choosing instead to use the word "law" -- a word that, at least in everyday parlance, has very broad and general connotations. See, Webster's New Collegiate Dictionary, p. 651 ["law": "the whole body of (binding) customs, practices, or rules (of a community)"]; Black's Law Dictionary, rev. 4th ed., p. 1028 ["law": "that which must be obeyed and followed by citizens, subject to sanctions or legal consequences"]. It follows, logically, that it was intended that section 97-t(2)'s enabling authority for deposit into the CSF be given correspondingly broader and more general scope .

Second, as a matter of general legal understanding, not all law is statutory. The principles of the Common Law, for example, represent mandates of force equal to that of a statute. See, Statutes §1. In addition, it is well-established that administrative rules, if reasonable, carry the

force and effect of law. See, Molina v. Games Management Services, 58 NY2d 523 (1983). Thus, the juridical significance of Rules of the Chief Administrator directing that particular funds be paid into the CSF is exactly the same as that of a statute that makes the same direction.¹ This being the case, the relevant provisions of parts 37 and 130 are not ultra vires - as Jim McGill asserts - but are legal complements to section 97-t(2). Therefore, deposits made in the CSF pursuant thereto are fully consistent with section 72 of the State Finance Law and its scheme for allocating State monies in the various statutory funds.²

III

Even if the Comptroller's restrictive reading of the word "law" in section 97-t must be accepted, the assertion that no statute authorizes the courts to promulgate regulations providing for deposit of sanction moneys in the CSF may be incorrect. Specifically, such assertion ignores the provisions of section 211(1)(g) of the Judiciary Law, which authorize the Chief Judge to establish standards and administrative policies for the courts relating to "... the custody and disposition of court funds. (my emphasis)"

On its face, the language of section 211(1)(g) permits the Chief Judge to regulate what becomes of funds that are paid into a court. On one level, it can be understood as a means of begetting procedures that insure that all courts uniformly and systematically route moneys over which they assume control into the proper repositories, as required by

¹There is no hint in [REDACTED] letter that the Comptroller regards parts 37 and 130 to be unreasonable in terms of their mandates. He writes only that it is his counsel's view that no statute authorizes their promulgation, at least to the extent they require deposit of monies into the CSF.

²Interestingly, as written, section 97-t(2) clearly contemplates that there will be voluntary contributions deposited in the CSF. Yet, I can find no express statutory authority actually permitting deposit of a voluntary contribution in the CSF - an indispensable predicate to such deposits, according to [REDACTED]. To be sure, by my reading of section 97-t(2), absence of such authority creates no particular barrier: i.e., all that would be necessary to enable deposit of voluntary contributions in the CSF would be an appropriately-adopted rule of the Board of Trustees of the CSF (see, Judiciary Law §468-b(3)) or, perhaps, of the Chief Judge or the Chief Administrator.

other provisions of law. At a second level, however, it also can be understood as a means of defining legal depositaries - at least in instances where the law otherwise makes no provision therefor.

Application of this second level of meaning seems especially apposite where the authority that permits or requires the courts to collect particular monies is not statutory. In those instances, there is no way the Legislature could have anticipated such collection and, therefore, supplied directions in a specific statute for disposition of the monies it produces.³ Such a construction of section 211(1)(g) does more than simply enable the filling of procedural voids, however. It also may be an essential tool by which to achieve full realization of important programmatic objectives lying at the heart of the authority that makes the monies available. Thus, in the instance of our financial sanctions rule, it may be argued that the rule took the form it did -- viz., routing financial sanction revenues into the CSF -- because, as a matter of policy, it was felt that the public interest would best be served by insuring that these revenues were made available in some fashion that directly would further the administration of justice. Denied use of an administrative rule because of the Comptroller's narrow reading of section 97-t(2), and unable to seek remedial statutory clarification because of the Legislature's continuing intractability on the matter of sanctions, there would be no way for court administrators to accomplish this objective⁴ but for the creative use of section 211(1)(g) described here.

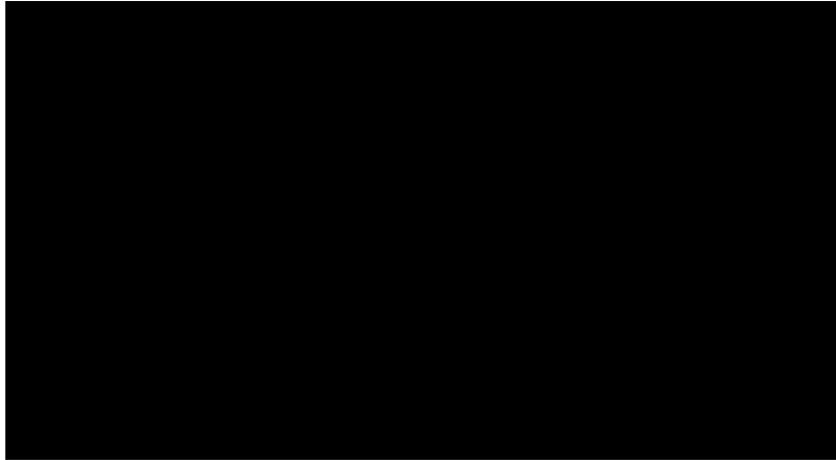
³Care must be taken here to note that this reading does not imply a license to spend monies that a court receives. The power to appropriate remains firmly and exclusively in the hands of the Legislature, and is not alienable. Const. Art. VII, §7. The reading championed here does no more than permit the courts - through their administrative officials - to dictate the destination of certain monies.

⁴Even though the fierce debate over the sanctions rules focused exclusively upon their real and supposed substantive impact upon the practice of law and the plight of litigants, the policy considerations that attach to the choice of outlet for financial sanction revenues are not trivial. For instance, if the construction of section 211(1)(g) ventured here were foreclosed and it was accepted that the CSF could not lawfully serve as a depository for such revenues, it may very well be that the rule would have been drawn to direct payment of a sanction to any person or party prejudiced by the conduct giving rise to its imposition; or to an organization that provides legal services to the poor. N.B., nowhere is it

(Footnote Continued)

Recommendation

I recommend that you write Fred Miller, advising him that OCA Counsel agrees with his position on use of the CSF as a repository for collected financial sanction monies.



(Footnote Continued)

provided that a financial sanction under our rule is State money; therefore, I can think of no legal impediment to any of these distributions. In all events, it seems most unlikely that the Chief Judge and Chief Administrator would have been content -- or would now be content -- to promulgate a sanctions rule that did no more than augment the General Fund.

New York Consolidated Laws

Abandoned Property Law - ABP § 1310 (1)

Voluntary disposition of miscellaneous property not otherwise subject to this chapter.

1. Any person or entity who holds any intangible personal property, including the proceeds of a sale of tangible property, **which is not otherwise subject to** the provisions of this chapter or **any other law regarding the disposition of unclaimed property belonging to any other person**, and which has remained unclaimed for a period of two years by the person or persons appearing to be entitled to receive such property, may request in writing, in such form and manner as the comptroller may by regulation prescribe, that the comptroller consent to receive payment or delivery of such property.

22 NYCRR 1200 - Rule 1.15

Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property; maintenance of bank accounts; record keeping; examination of records.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

☐ ARTHUR LEVITT STATE OFFICE BUILDING
270 BROADWAY
NEW YORK CITY
10007



STATE OF NEW YORK
OFFICE OF THE STATE COMPTROLLER
H. CARL MCCALL
STATE COMPTROLLER

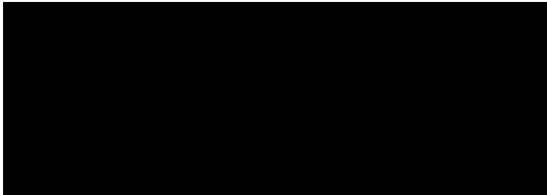
November 27, 1995

☒ A. E. SMITH STATE OFFICE BUILDING
ALBANY
NEW YORK
12236

LAWYER'S FUND FOR
CLIENT PROTECTION
STATE OF NEW YORK

DEC 11 1995

ALBANY, NEW YORK



Re: Applicability of the APL to
unclaimed funds in attorney trust
account - SF-1095/079

Dear [REDACTED]:

This is in reply to your request for a legal opinion concerning the applicability of the New York Abandoned Property Law (APL) to certain funds held in an attorney trust account.

Based upon the information provided, your Office maintains an attorney trust account at a local banking organization. A number of your clients show balances, some long standing, which your Office is now in the process of refunding. Your inquiry concerns the applicability of the APL to the balances in your attorney trust account in the name of clients for which a refund cannot be made.¹

As discussed in our telephone conversation, unclaimed funds in the attorney trust account maintained by your Office do not fall within the purview of any of the mandatory reporting provisions of the APL. The APL does, however, provide a procedure whereby a person or entity in possession of unpaid or unclaimed property, not otherwise subject to the APL or any other law regarding the disposition of unclaimed property, may request that the Comptroller consent to a voluntary disposition of such property. Section 1310 of the APL, entitled "Voluntary Disposition of Miscellaneous Property", provides in pertinent part that:

¹ Please be advised that this opinion is solely a review of the applicability of the APL to the unclaimed funds in the attorney trust account maintained by your Office and, therefore, should not be construed as an opinion with respect to the rights of the entitled parties to such funds.

Any person or entity who holds any intangible personal property, including the proceeds of a sale of tangible property, which is not otherwise subject to the provisions of this chapter or any other law regarding the disposition of unclaimed property belonging to any other person, and which has remained unclaimed for a period of two years by the person or persons appearing to be entitled to receive such property, may request in writing, in such form and manner as the comptroller may by regulation prescribe [2 NYCRR 124], that the comptroller consent to receive payment or delivery of such property.

Since the client balances in the attorney trust account maintained by your Office are not subject to the mandatory reporting provisions of the APL, to the extent that they are not within the purview of any other law regarding the disposition of unclaimed property, such funds could be the object of a request for a voluntary disposition under APL §1310.

We wish to note, however, that in researching your opinion request we discovered a Disciplinary Rule of "The Lawyer's Code of Professional Responsibility" which appears to address unclaimed client balances in an attorney trust account. Disciplinary Rule 9-102(F-1) [22 NYCRR 1200.46] provides that:

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

Since the Disciplinary Rules set forth in "The Lawyer's Code of Professional Responsibility" are mandatory² in character and as valid regulations have the force and effect of a statute, to the extent that the funds in the attorney trust account maintained by your Office are subject to Disciplinary Rule 9-102(F-1) such funds could not be the proper object of a request for a

² In a telephone conversation with Timothy O'Sullivan, Deputy Counsel for the Lawyers' Fund for Client Protection, Mr. O'Sullivan confirmed our interpretation of the mandatory nature of Disciplinary Rule 9-102(F-1).

voluntary disposition under APL §1310. Therefore, I suggest you contact Mr. Frederick Miller, Executive Director and Counsel of "The Lawyers' Fund for Client Protection", at (518) 474-8438 (Toll-free NYS 1-800 442-FUND), concerning the application of Disciplinary Rule 9-102(F-1) to the unclaimed funds in the attorney trust account maintained by your Office, or a disposition of funds thereunder.

I trust the foregoing has answered your inquiry. If you have any further questions please do not hesitate to contact this Office.

Very truly yours,



John K. Dalton
Associate Counsel

cc:



The Lawyers' Fund for Client Protection

of the State of New York

119 Washington Avenue • Albany, New York 12210

Telephone: 518/434-1935 • 800/442-FUND • Fax: 518/434-5641

www.nylawfund.org



Board of Trustees

Eric A. Seiff,
Chairman

Anthony J. Baynes

Peter A. Bellacosa

Nancy Burner

Stuart M. Cohen

Patricia L. Gatling

Charlotte G. Holstein

M E M O R A N D U M

Subject: Disposition of Missing Client And Escrow Money

Effective April 1, 2009, the new Rules of Professional Conduct replace New York's Code of Professional Responsibility. The text of the new Rule governing the disposition of missing client and escrow money is identical to the prior provisions which were found at 22 NYCRR 1200.46 (f).

Timothy J. O'Sullivan,
Executive Director

Michael J. Knight,
Deputy Counsel

Ray Wood,
Investigator

Rule 1.15 (f) of the new Rules of Professional Conduct (22 NYCRR Part 1200 (Rule 1.15 (f))) provides as follows:

Missing Clients. Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

The rule does not have official forms. To be helpful, I attach pleadings used by counsel in relevant applications to the Supreme Court under section 1200.46 (f) of the prior disciplinary rules. All pleadings will now have to refer to Rule 1.15 (f).

In the event a court directs payment of client and escrow money to the Lawyers Fund, it is important that you provide us with a copy of the application and order and all information from your files that identify the client or other beneficial owner of the funds. That information is needed in the event a claim is made to us for payment in the future.

Please feel free to call this office for assistance.



The Lawyers' Fund for Client Protection

of the State of New York

119 Washington Avenue • Albany, New York 12210

Telephone: 518/434-1935 • 800/442-FUND • Fax: 518/434-5641

www.nylawfund.org



Board of Trustees

Eric A. Seiff,
Chairman

Anthony J. Baynes

Peter A. Bellacosa

Nancy Burner

Stuart M. Cohen

Patricia L. Gatling

Charlotte G. Holstein

MEMORANDUM

Subject: Designation of Successor Signatories

Effective April 1, 2009, the new Rules of Professional Conduct replace New York's Code of Professional Responsibility. The text of the new Rule governing the designation of successor signatories is identical to the prior provisions which were found at 22 NYCRR 1200.46 (g).

Timothy J. O'Sullivan,
Executive Director

Michael J. Knight,
Deputy Counsel

Ray Wood,
Investigator

Rule 1.15 (g) of the new Rules of Professional Conduct (22 NYCRR Part 1200 (Rule 1.15 (g))) provides as follows:

(g) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

The rule does not have official forms. To be helpful, I attach pleadings used by counsel in relevant applications to the Supreme Court under section 1200.46 (g) of the prior disciplinary rules. All pleadings will now have to refer to Rule 1.15 (g).

In the event a court directs payment of client and escrow money to the Lawyers' Fund, it is important that you provide us with a copy of the application and order and all information from your files that identify the client or other beneficial owner of the funds. That information is needed in the event a claim is made to us for payment in the future.

Please feel free to call this office for assistance.



**BAR ASSOCIATION OF ERIE COUNTY
COMMITTEE ON PROFESSIONAL ETHICS**

Opinion xx1 - 1/15/04

Topic: Funds belonging to a
missing client.

Digest: Preserving Identity of
Funds and Property of
Others; Fiduciary
Responsibilities; Missing
Clients

Code: DR 9-102 F. [§1200.46]

QUESTION

What is a lawyer to do with a small sum of missing clients funds and there was no action?

OPINION

DR 9 - 102 F. prescribes

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement of Successor Signatories.

The solution is that the LAWYERS FUND for CLIENT PROTECTION will accept sums of up to ONE THOUSAND (\$1,000) DOLLARS from a lawyer with a missing client, without an order. Otherwise, the rule is instructional.

CONCLUSION

The lawyer should forward his trust check to the Lawyers Fund for Client Protection, 119 Washington Street, Albany, New York 14210.

22 NYCRR Part 7200 - Trustees' Regulations

7200.4 Powers of trustees. In the exercise of the authority granted the trustees, the trustees have the power to:

(a) receive, hold, manage and distribute 50 per centum of the monies collected pursuant to the provisions of section 468-a of the Judiciary Law **and such other monies as may be credited or otherwise transferred from any other fund or source, pursuant to law**, including voluntary contributions together with any interest accrued thereon. All deposits of such revenues not otherwise required for the payment of claims shall be secured and invested as required by the provisions of section 97-t of the State Finance Law. **For purposes of this subdivision, monies "transferred from any other fund or source" shall include monies paid to the Lawyers' Fund for Client Protection pursuant to Rules 1.15 (f) and 1.15 (g) of the Rules of Professional Conduct (22 NYCRR Part 1200), including earned interest, except that such monies shall not be available for use by the Lawyers' Fund unless the Fund is unable to ascertain the identify of the person or persons entitled to such monies or, during the five years following payment of such monies to the Fund, the Fund has been unable to locate that person or persons, and no valid claim has otherwise been made upon such monies. The Lawyers' Fund's use of such monies shall not extinguish a future valid claim to such monies by persons entitled thereto;**