

TRUST ACCOUNTS: APPLICABILITY
OF RECORDKEEPING AND IOLTA
REQUIREMENTS TO ATTORNEY
SERVING AS GUARDIAN, TRUSTEE,
COMMITTEE, EXECUTOR OR
ADMINISTRATOR.

You have presented two hypothetical situations. In the first, a Virginia attorney has been appointed by a court of competent jurisdiction to serve as guardian, committee, or administrator of an estate. In the second, the attorney serves as executor or trustee pursuant to a document such as a will or trust. In each of these situations, the attorney receives, holds, and disburses funds only in her capacity as a fiduciary and solely for the benefit of the individual or entity she has been appointed or designated to serve. You state that all funds passing through the attorney's hands are fiduciary funds and, for purposes of this inquiry, attorney fees are not an issue.

You have asked the committee to opine whether, under the facts of the inquiry, a Virginia attorney who maintains accounts in his or her capacity as a guardian, trustee, committee, executor, or administrator must comply with the requirements of DR:9-102 and 9-103, and the IOLTA requirements of Paragraph 20.

The appropriate and controlling Disciplinary Rules related to your inquiry are DR:9-102(A) which states that all funds received or held by a lawyer or law firm on behalf of a client, estate or a ward, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except under certain enumerated exceptions; and DR:9-103 which articulates the record keeping requirements for client funds.

The committee is of the opinion that the plain language of DR:9-102(A), as amended effective October 1, 1993, dictates that a Virginia attorney, who maintains accounts in his or her capacity as guardian, trustee, committee, executor, or administrator, must comply with DRs 9-102 /1 and 9-103. Additionally, DR:9-103(A)(3) states that a subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in trust shall be maintained [emphasis added].

As to whether an attorney serving in the capacities enumerated above must comply with the IOLTA requirements of Paragraph 20, that question raises a legal issue the resolution of which requires a determination beyond the purview of the committee.

Committee Opinion
April 11, 1994