

Committee Opinion
May 18, 1989

LEGAL ETHICS OPINION 1238

LAW FIRM – TRUST ACCOUNTS:
SEGREGATION OF FUNDS WHERE
MULTISTATE FIRM HAS OFFICE IN
VIRGINIA AND TWO OTHER
JURISDICTIONS.

You have asked three questions with regard to a multi-jurisdictional law firm whose attorneys practice primarily in the District of Columbia but which maintains offices in the nearby jurisdictions for local court appearances and, on occasion, for interviewing clients. All bank accounts maintained by the law firm are held in the District of Columbia; however, the firm does advise Virginia clients on Virginia matters, and appears in Virginia courts on behalf of Virginia clients.

You wish to know whether the firm must segregate the retainer funds received from Virginia clients from those retainers received from District of Columbia clients, assuming that under the Code of Professional Responsibility in the District of Columbia, retainers may immediately become the property of the lawyer.

The appropriate and controlling rule relative to your inquiry is DR:9-102(A) which provides that funds paid to the lawyer, other than advances for costs and expenses, shall be deposited in one or more bank accounts maintained in the state in which the law office is situated. "Bank" or "banking institution" has been defined in DR:9-102(C) to mean any bank or savings and loan association authorized by Federal or State law to do business in the State of Virginia and in which deposits are insured by an agency of the Federal Government. Therefore, the Committee opines that, in addition to the prohibition against the commingling of client funds with funds belonging to the lawyer except as provided in DR:9-102(A)(1) and (2), a law firm maintaining offices in Virginia and engaging in the practice of law on behalf of Virginia clients on Virginia matters must maintain any retainer funds generated by the Virginia clients in a separate bank account, in a bank or banking institution authorized to do business in Virginia.

You have further inquired whether the interest earned on retainers from Virginia clients may be applied to the District of Columbia IOLTA (Interest on Lawyer's Trust Account).

If the attorney has not established the administrative procedures to compute and pay the pro rata net earnings on trust account funds directly to his clients, those earnings are subject to periodic, or at least quarterly, remittance to the Virginia Law Foundation pursuant to DR:9-102(E)(1) and (2).

Under DR:9-102(E), a bank authorized to do business in Virginia which has agreed to comply with the procedures to remit periodically the interest or dividends earned on a client's trust funds to the Virginia Law Foundation is obviously not authorized to transfer any portion of that interest to another state's IOLTA program.

Finally, you have asked if there is any requirement that the bank accounts related to the Virginia clients be physically located in Virginia?

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No. It appears from the facts of your inquiry that the majority of the attorney's firm's business is generated in the District of Columbia and as long as a bank is authorized to do business in Virginia and the bank's deposits are insured by an agency of the Federal Government, it does not have to be physically located in Virginia. Since the law firm has offices in both the District of Columbia and in Virginia, a bank located in the District of Columbia, that is authorized to do business in Virginia and is insured by the Federal Government, would satisfy the requirements under DR:9-102(A) and (C).

The Committee would also direct your attention to LE Op. 695 and LE Op. 724 which provide that an attorney whose office is in the District of Columbia but who generates the majority of his practice from Virginia clients can satisfy his obligations under Canon 9 by maintaining an attorney-client trust account in a bank or savings and loan association in the State of Virginia that will agree to comply with the provisions of DR:9-103(B)(1), pursuant to DR:9-102.

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