

Committee Opinion  
August 3, 1989

LEGAL ETHICS OPINION 1263

TRUST ACCOUNTS: LAWYER/LIMITED  
PARTNER DISBURSING FROM LAW  
FIRM'S ESCROW ACCOUNTS; SELF-  
REPORTING REQUIREMENT.

You have asked the Committee to consider the propriety of a lawyer disbursing money from an escrow account for his personal business under the following set of facts. There are several law firm escrow accounts which exist for various investment partnerships into which funds are paid for the benefit of the several investment partners, one of whom is also counsel and performs the legal work for the partnership. Funds are paid into the account for the benefit of the lawyer/limited partner. You have inquired if it would be ethically permissible for the lawyer to disburse money earmarked for him directly to those with whom he is conducting personal business or must the money first be disbursed to the lawyer/partner who may then pay his personal obligations out of his own personal account.

The Committee will assume that none of the partners in the various investment partnerships referred to in the inquiry consist of partners who are also clients of the law firm. Thus, the general prohibition against entering into a business transaction with a client where the lawyer and client have differing interests, and the client expects the lawyer to exercise his professional judgment therein for the client's protection, is not a consideration.

The appropriate and controlling Disciplinary Rule relative to your inquiry is DR:9-102(A)(2) which provides that the funds belonging in part to a client and in part presently or potentially to the lawyer may be withdrawn when due unless the right of the lawyer to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. The Committee believes that it would be improper for a lawyer/limited partner to leave any portion of his share of the proceeds in the trust account for future draw downs since to do so would result in commingling of personal funds with trust account funds. Also, since no funds belonging to a lawyer or law firm shall be deposited in the client's trust account except those funds reasonably sufficient to pay bank charges, it is the Committee's view that when the transaction is completed, all funds related to that transaction must be disbursed promptly to avoid any misappropriation of the same. (See DR:9-101(A)(1))

The second part of the inquiry, that which was formerly LE Op. 1263, has been incorporated in this response as it is substantially related. Since there is no self-reporting requirement in DR:1-103, the Committee opines that the duty to report the commingling or misappropriation of funds held in the law firm's escrow account must be left with the attorney having knowledge of the same; if steps have been taken to rectify this situation, then the attorney must decide if the prior violation raised a substantial question as to another lawyer's fitness to practice law. If that determination is in the affirmative, then reporting the violation is the appropriate action. (See LE Op. 977)

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