

Committee Opinion
August 14, 1989

LEGAL ETHICS OPINION 1265

TRUST ACCOUNTS: INVESTING THE
CLIENT'S ESCROW FUNDS IN
REPURCHASE AGREEMENTS.

You have indicated that Attorney A represents Development Company as well as a number of real estate purchasers of units of the development. The Development Company has instructed the attorney to explore alternate, higher-interest earning methods for investing portions of the clients' funds held in the trust account so as to defray some of the developer's cost for interest paid to purchasers on deposits which are unavailable to the developer. Generally, these are funds that are held in a trust account between eight and twelve months, for example, as in the case of a condominium under construction.

You wish to know whether it is ethically permissible for Attorney A to invest portions of the clients' funds through a Virginia bank, on an overnight basis, in Repurchase Agreements ("Repos") which are 100% collateralized by U.S. Government and Agency Securities, but not "insured" by the Federal Deposit Insurance Corporation or Federal Savings and Loan Insurance Corporation as prescribed in Disciplinary Rule 9-102(C). You believe that the overnight investment feature of the "Repos" will utilize the excess funds in the clients' trust account to their best advantage.

Disciplinary Rule 9-102(C) provides that the "bank" or "banking institution" in which an attorney opens a trust account for deposit of a client's funds must be authorized by federal or state law to do business in the state of Virginia and its deposits must be insured by an agency of the federal government. (emphasis added)

In the view of the Committee, the strict language of the rule would not permit investing clients' funds in an Automatic Investment Management service as it is not a "bank" account as defined in DR:9-102(A) and (C). The use of a cash management service which would invest clients' funds in Repurchase Agreements as an alternative to depositing such funds in "one or more identifiable bank accounts ... in which deposits are insured by an agency of the Federal Government" would be improper and violative of the Code of Professional Responsibility.

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