

Committee Opinion
July 24, 1990

LEGAL ETHICS OPINION 1372

TRUST ACCOUNT – COMINGLING:
CIRCUMSTANCES UNDER WHICH
ATTORNEY WOULD NOT BE
REQUIRED TO MAINTAIN OPEN
CLIENT TRUST ACCOUNT.

You have advised that there has been no transaction in your "attorney's" account, presumably your trust account, for the past five years. You further indicate that your practice is confined to estate work and you only have client's money in your possession when you are the fiduciary in an estate. In those cases, you open a separate account to accommodate those funds.

You have asked the Committee to consider whether it is necessary for you to maintain an open trust account in view of the circumstances in which you operate.

The appropriate and controlling disciplinary rule is DR:9-102(A), which requires in pertinent part that:

All funds of clients paid to a lawyer ..., other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts ... and no funds belonging to the lawyer ... shall be deposited therein except as follows:

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer ... must be deposited therein, but the portion belonging to the lawyer ... may be withdrawn when due unless disputed portion shall not be withdrawn until the dispute is finally resolved.

The Committee has earlier opined that it is not improper for an attorney to deposit directly into the attorney's general operating account or the attorney's personal bank account all funds received from clients which are earned undisputed attorney's fees and which do not constitute funds belonging in part to a client and in part, present or potentially, to the lawyer or law firm. (See LE Op. 585.) The Committee believes that the cited Legal Ethics Opinion is dispositive of the question you raise. Therefore, the Committee is of the opinion that, assuming your practice is such that you do not receive any proceeds related to clients' actions, such as personal injury or real estate settlement funds, and assuming further that you do not receive any advance fees, part of which would obviously be unearned at the time of receipt, it would not be necessary for you to maintain an open trust account. (See also LE Op. 510) The Committee cautions, however, that, should an occasion arise when you do come into possession of client funds or advance fees, it would then be necessary that a trust account be opened immediately to accommodate such monies.

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Legal Ethics Committee Notes. – Rule 1.15 applies whenever a lawyer holds money as a fiduciary.