

Committee Opinion
November 18, 1991

LEGAL ETHICS OPINION 1440

PERSONAL INTEREST AFFECTING
REPRESENTATION – AVOIDING
INFLUENCE FROM OTHERS THAN
CLIENT - TRUST ACCOUNTS:
ATTORNEY ACCEPTING
CONSIDERATION FROM BANK IN
EXCHANGE FOR WITHDRAWING
TRUST ACCOUNT FROM IOLTA
PROGRAM AND CONVERTING TO
NON-INTEREST-BEARING ACCOUNT.

A law firm is offered banking concessions in exchange for maintaining non-interest-bearing trust or escrow accounts in a bank. Three instances are described: (1) the law firm is contacted by a bank and offered reduced fee or no service charge checking in exchange for removing the firm's trust and/or escrow accounts from the Virginia IOLTA program; (2) a law firm is contacted by a bank and offered a reduced rate on a commercial loan for which the firm has applied, in exchange for removing the firm's trust and/or escrow accounts from IOLTA; (3) a law firm contacts a bank and indicates a desire to convert its trust and/or escrow accounts from interest-bearing to non-interest-bearing, and the bank later contacts the firm offering reduced fee or no service charge checking and/or other bank services at reduced rates, on the condition that the firm decline to place its trust and/or escrow accounts in IOLTA.

The Committee has previously opined that it is improper for a lawyer or law firm to earn interest or receive any dividends for the lawyer's or firm's benefit on client's funds held in an attorney trust or escrow account, or to obtain a personal line of credit for himself or a third party based upon the amount of funds maintained in the attorney's trust account.

An offer by a bank of tangible or substantial consideration or reward for the opening or maintaining of deposits in attorney trust or escrow accounts is the equivalent, in practice and in effect, of the payment of interest on the deposits. Any improprieties may be cured by the consent of the lawyer's client after full and adequate disclosure. The attorney may choose to forego the benefit offered by the bank or may accept the benefit only after having received the informed consent, after full and adequate disclosure, of the true owner of the benefit, i.e., the clients. It would be improper for the law firm to accept the offers presented by the bank(s) in exchange for converting to, or maintaining, non-interest-bearing trust or escrow accounts in that bank, without the consent of the firm's clients. [DR:5-101(A), DR:5-106(A)(2), DR:9-102(D), (E), (F), and (G); LE Op. 315, LE Op. 367, LE Op. 392, LE Op. 831; Nassau County Bar Association Legal Ethics Op. 88-20 (4/6/88); ABA/BNA Law. Man. on Prof. Conduct, 901:6264.]

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