

LEGAL ETHICS OPINION 1636

TRUST FUNDS; USE OF FUNDS
RECEIVED FROM CLIENT INTENDED
AS REIMBURSEMENT FOR COSTS
AND EXPENSES INCURRED BY
FOREIGN LAW FIRM.

You have presented a hypothetical situation in which foreign law firms provide services which are used together with services provided by a Virginia attorney on behalf of a client. The Virginia attorney bills the client for services plus costs which were billed from the foreign law firm to the Virginia attorney. In some instances, the Virginia attorney uses funds received from the client for expenses or purposes other than reimbursement of costs and expenses incurred by the foreign law firm. You also indicate that it has been the practice of the Virginia attorney to place such funds received from the client into the firm's operating account, instead of the trust account.

You further indicate that in some cases, while the Virginia attorney has received funds from the client for payment of costs, up to and more than six months may pass before the Virginia attorney reimburses the foreign law firm for costs advanced on that particular client's matter.

Under the facts you have presented, you have asked the committee to opine as to the propriety of the Virginia attorney's procedure for handling funds received by a client for payment of costs billed or invoiced by the foreign law firm and whether such funds are subject to the requirements of DR:9-102 and DR:9-103 of the Code of Professional Responsibility.

The appropriate and controlling disciplinary rules relative to your inquiry are DR:9-102, which governs the handling of trust funds, and DR:9-103 which mandates certain minimum record keeping requirements with respect to trust funds.

In the facts you present, the committee believes that the funds received by the Virginia attorney from the client for the payment of costs incurred by the foreign law firm, and for which the foreign firm has not received payment by the Virginia attorney, are trust funds subject to the requirements of DR:9-102 and DR:9-103. As such, these funds should be placed in the Virginia attorney's trust account, and the record keeping requirements under DR:9-103 apply to the handling of such funds.

The committee is of the opinion that there would be no impropriety under DR:9-102 or DR:9-103 if the funds received from the client were for *reimbursement* of costs already paid or advanced by the Virginia attorney to the foreign law firm. In such case, the Virginia attorney may deposit such funds into the firm's operating account.

¹ Paragraph 7 of the fee schedule between the attorney and client states:

“As long as we are acting as attorneys for a client in any matter wherein we are awaiting specific instructions from a client, it is our general policy to take the minimum steps necessary to avoid forfeiture or abandonment of the matter involved unless instructed to the contrary, or unless we inform the the client that payment in advance is required. This may include Motions for extension, and payment of various fees and other costs for which the client will be charged. However, this general policy should not be considered or relied upon as a commitment to the client.”

Committee Opinion
April 19, 1995

The committee bases its opinion on the language in DR:9-102(A) which requires that all funds received or held by an attorney on behalf of a client, *other than reimbursement of advances for costs and expenses*, shall be deposited in one or more identifiable trust accounts. The committee believes the highlighted language refers to and creates an exception for funds paid by the client to reimburse an attorney for costs already paid by the attorney in handling a client's legal matter. In such an instance, the attorney would normally have advanced funds from the firm's operating account to pay a client's cost, or expense. Therefore, the reimbursement by the client for costs already advanced or paid by the attorney are not client funds but belong to the attorney and should be placed in the operating account, and not commingled with other client funds in the trust account. Under the facts of your inquiry, however, the Virginia attorney has not paid any funds to the foreign law firm, for costs or expenses invoiced by the latter. Therefore, the funds collected from the client are not to reimburse the Virginia attorney, but are implicitly, if not expressly for the purpose of payment to the foreign law firm. As such it is improper for the Virginia attorney to place these client funds into the operating account.

In addition, it is not proper for the Virginia attorney to use such funds for purposes other than payment to the foreign law firm for costs advanced by the latter. In fact, unless the client disputes the amount of costs incurred by the foreign law firm, upon receipt of client funds for payment of these costs, the Virginia attorney has an ethical duty to promptly pay or deliver funds designated for payment to a third party such as the foreign firm. DR:9-102(B)(4) imposes fiduciary duties when an attorney receives funds from a client designated for payment to a third party. In paying the bill submitted by the Virginia attorney, which included charges for costs advanced by the foreign law firm, the client implicitly, if not expressly, directed the Virginia attorney to pay the foreign law firm for expenses incurred in servicing the Virginia attorney's client.

The committee believes that paragraph 7¹ of the fee schedule does not change its conclusions regarding the handling of these funds. Finally, DR:9-103 does require, among other things, that for each client separate subsidiary ledgers be maintained to account for client funds received and disbursed by the Virginia attorney.

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