

Committee Opinion
October 30, 1984

LEGAL ETHICS OPINION 614

TRUST FUNDS – TRUST ACCOUNTS –
PRESERVING IDENTITY OF CLIENT’S
FUNDS.

1. It is improper for an attorney to immediately disburse non-real estate settlement funds pursuant to the provisions of Code §§ 6.1-2.10 through 6.1-2.15 of the Code of Virginia (1950), as amended. LE Op. 183 permits only such immediate disbursement in real estate settlements and only authorizes disbursement so long as the requirements of the Wet Settlement Act are satisfied. The provisions of DR:9-102(B)(3) and (4) impose on an attorney the duty to wait until the depository bank has credited the deposited funds to the attorney's trust account before disbursement to a client out of the trust account. Otherwise, in the absence of “cleared” funds an attorney would be disbursing funds belonging to another client.

2. DR:9-102(A) requires that all funds of clients paid to a lawyer or a law firm, other than any advances for costs and expenses, shall be deposited in one or more identifiable bank accounts. Accordingly, the failure to deposit settlement proceeds to the appropriate firm account before subsequent disbursement is improper.

3. It is improper to disburse cash to a client from settlement proceeds pursuant to the deposit slip “less cash received” item for the same reasons set out in response to inquiry number 2.

4. Ethical Consideration 9-5 [EC:9-5] proscribes payment to a client from a firm's general account for settlement proceeds deposited to the firm's trust account. Accordingly, it is improper for a law firm, upon receipt of a check issued to both the firm and a client, to deposit the check with the client's endorsement to the firm's trust account and pay out of the firm's general fund an amount equal to the amount due the client with the intent of reimbursing the general account from the trust account when the funds are credited by the depository bank.

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