

The Supreme Court of Ohio

BOARD OF COMMISSIONERS ON GRIEVANCES AND DISCIPLINE

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OFFICE OF SECRETARY

OPINION 89-07

Issued April 14, 1989

[CPR Opinion-provides advice under the Ohio Code of Professional Responsibility which is superseded by the Ohio Rules of Professional Conduct, eff. 2/1/2007.]

SYLLABUS: Pursuant to DR 9-102, all funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein. Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

OPINION: We have before us your request for an advisory opinion on whether you may establish interest-bearing accounts for retainer fees paid by individual clients and use the interest to supplement the retainer.

Under DR 9-102(A), all funds of clients paid to a lawyer shall be kept in one or more separate bank accounts and no funds belonging to the lawyer shall be kept in those accounts. Funds belonging in part to the client, and in part presently or potentially to the lawyer, must also be deposited in a separate, identifiable bank account. Code of Professional Responsibility, DR 9-102 (A)(2).

In 1985, the State Legislature passed Ohio Rev. Code §4705.09 which deals with the interest on the trust accounts that lawyers maintain for their clients. While we will not engage in statutory interpretation, we urge you to become familiar with the requirements under that statute.

In your request letter you inquire whether it would be permissible for you to keep a retainer from a client in an interest-bearing trust account for the duration of the representation. You would continue to bill your client monthly and expect payment in a timely manner. At the conclusion of the particular representation, the retainer would be applied against any unpaid fees. The balance, including earned interest, would then be returned to the client.

The type of situation you propose is controlled by DR 9-102 (A) (2). In our view, the money advanced by the client would belong in part to the client and in part to you. Therefore, you must deposit those funds in a separate, identifiable bank account. The disposition of the interest from such an account is controlled by Ohio Rev. Code §4705.09.

This is an informal, non-binding advisory opinion based upon the questions presented and limited to questions arising under the Code of Professional Responsibility.