Utah Ethics Opinions

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64. USB EAOC Opinion No. 64

Utah State Bar

Ethics Advisory Opinion No. 64

Approved September 21, 1979

Summary: An attorney is permitted to place trust funds in an interest bearing account so long as he doesn't retain the interest proceeds.

Comments: This opinion has been substantially modified by the Utah Supreme Court's approval of the IOLTA program. See In re Interest on Lawyer's Trust Accounts, 672 P.2d 406 (1983).

Facts: The question addressed in this opinion is the propriety of an attorney placing trust monies in an interest-bearing account and either retaining the money earned in interest for himself or remitting the same to the appropriate client.

Opinion: There seems to be little question that an attorney may not himself receive benefit of interest on trust monies. Informal Decision 545 (1962) of the American Bar Association directed itself to this question. The Committee held as follows:

"It is the opinion of this committee that a lawyer who received money in his capacity as a lawyer, under circumstances that required him to account to another for such money, would be acting in violation of Canon 11 should he place the money in an interest bearing account and keep for his own use the interest earned on such account, unless he was specifically authorized to keep the interest for his own use."

Canon 11 provided that trust money of a client "in possession of a lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him." Canon 11 was supplanted by the current Canon 9, DR 9-102(A), providing as follows:

"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 except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) 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to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is resolved."

Nothing in the present Canon 9 appears to remove the prohibition against an attorney receiving any benefit from trust monies in his possession. A later opinion of the ABA again dealt with this problem in Informal Opinion 991 (1967). In this opinion a law firm had an agency account and proposed to put trust funds into a savings account. Interest earned would be used to defray expenses of handling the account. Again, the ABA Committee found that the trust money should never be utilized by an attorney. Furthermore, the Committee held that an attorney could not invest trust funds and retain the income earned for any purpose whatsoever.

The question of whether or not interest on such an account can be earned and remitted to the client does not appear to be addressed by any of the canons or opinions thereunder. Therefore, it would presumably be permissible provided that the client were notified ahead of time of this arrangement and proper accounting was kept. Indeed, there may be circumstances where the attorney has a fiduciary duty to discuss with the client possible means of investment of large amounts of trust monies.

Rule Cited:

Informal Descion 545