

Utah Ethics Opinions

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Utah State Bar

Ethics Advisory Opinion Committee

Opinion No. 96-05

Approved July 3, 1996

Issue: May a lawyer choose a law-related charitable institution other than the Utah Bar Foundation to be the recipient of trust-account interest that is generated in such nominal amounts that it is impractical to pay them to individual clients?

Opinion: Because the Utah Supreme Court's approval of the Utah State Bar's "interest on lawyers' trust accounts" (IOLTA) program is specifically limited to the Bar's original proposal to dedicate small-interest amounts to the Utah State Bar Foundation, a lawyer who remits interest to a different charitable institution would violate Rule 1.15 of the Utah Rules of Professional Conduct unless the Court specifically authorizes another recipient.

Discussion: It is well established that lawyers may not receive for their own purposes interest on clients' funds that are held in trust for the clients. (fn1) Due to difficulties in accounting for and assigning interest payable to clients for small deposits and short deposit times, lawyers traditionally kept such funds in non-interest-bearing accounts.

The only institutions profiting by this arrangement were the financial institutions holding the funds. Accordingly, in 1983 the Utah State Bar petitioned the Utah Supreme Court to implement an IOLTA program to permit lawyers to accrue interest on clients' trust funds that were otherwise impractical to account for and to remit those monies to the Utah Bar Foundation.

The Utah Supreme Court approved the program in *In re Interest on Lawyers' Trust Accounts*. (fn2) Prior to this order of the Court, any interest earned on monies deposited in lawyers' trust accounts had to be paid to the clients whose funds had generated the interest. There were no exceptions, even for small amounts that would require major accounting and allocation efforts. (fn3)

In the absence of such accounting, the funds had to be held in non-interest-bearing accounts, so that the lawyer would not be the beneficiary of any interest—both under the Code

of Professional Responsibility (before 1988) and the Rules of Professional Conduct (after 1987).

The Supreme Court has provided a singular exception to this general rule by authorizing the Utah State Bar to implement a voluntary IOLTA program, under which clients' funds that are nominal in amount and expected to be held for a short period of time can be channeled to an interest-bearing account, with interest payable to the Utah State Bar Foundation.

The Ethics Advisory Opinion Committee believes that the Supreme Court's authorization is for a single exception to the general principle of Rule 1.15 and has not provided a blanket or generic exception to the rule. If an individual lawyer were to have the ability to choose a law-related charitable institution other than one designated by the Supreme Court, then that individual lawyer would be exercising a measure of control over the earned interest. Such an exercise of control would amount to the receipt of a personal benefit by the lawyer, which the ethical rules prohibit. Accordingly, the Committee concludes that, in order to avoid a violation of Rule 1.15, a lawyer would need to obtain specific Supreme Court approval of a proposal to remit trust-account interest to another charity.

Footnotes

1. *In re Interest on Lawyers' Trust Accounts*, 672 P.2d 406, 407 (Utah 1983). See also Utah Rules of Professional Conduct 1.15(b) [renumbered from 1.13(b) in 1995].

2. 672 P.2d 406 (Utah 1983).

3. See, e.g., Utah Ethics Advisory Op. No. 64 (1979).

Rule Cited:

1.15