

FORMAL OPINION #122

The Committee has been asked the following question with regard to client trust accounts (CTA):

Is it permissible to maintain a set amount of the lawyer's money in the CTA in order to pay bank service charges and/or to establish a minimum account balance in order to avoid service charges?

Such a practice is apparently widespread, and formerly was authorized by the Idaho Code of Professional Responsibility:

DR 9-102 Preserving Identity of Funds and Property of a Client

- A. * * * and no funds belonging to the lawyer or the law firm shall be deposited [in the CTA] except as follows:
1. Funds reasonably sufficient to pay bank charges may be deposited therein.

The Idaho Rules of Professional Conduct were adopted November 1, 1986, and those Rules do not provide for such a "pad" in the CTA:

IRPC 1.15 Safekeeping Property

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. * * *

The official "Code Commentary" to the ABA Model Rules of Professional Conduct makes it clear that the change was intentional:

The provision in DR 9-101(A)(1) that a lawyer may withdraw amounts necessary to pay bank charges without prior consent is not continued.

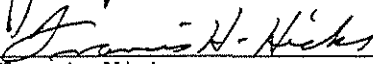
The "problem" of bank service charges would not affect IOLTA accounts, as those accounts specifically authorize service charges to come "off the top" of monies forwarded to the IOLTA Program.

For non-IOLTA accounts, a variety of banking options appear to be available. Some banks do not make service charges for CTAs. Others debit a lawyer's office operating account for the service charge. Still others permit lawyers to set up a second, parallel account from which service charges may be deducted (for lawyers who prefer to keep their operating and trust accounts in different banks).

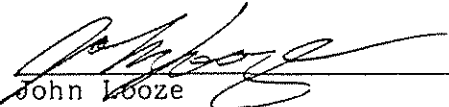
In light of the banking options available, and because the language of IRPC 1.15 is precise and without exception, it is the opinion of the Committee that a lawyer may not maintain a trust account "pad," and that lawyer monies may not be maintained in the CTA.



Jeffrey Strother, Chairman



Frank Hicks



John Looze