

LOS ANGELES COUNTY BAR ASSOCIATION PROFESSIONAL RESPONSIBILITY AND ETHICS COMMITTEE

FORMAL OPINION NO. 485

SUMMARY OF OPINION

An attorney may keep in his or her common client trust account personal "funds reasonably sufficient to pay bank charges" without violating the rule against commingling personal funds and funds received or held for the benefit of clients. The amount of personal funds held in a client trust account must bear a reasonable relationship to the amount of bank service charges incurred for the general operation of the account between the dates that the attorney reconciles the bank statement and the various journals and ledgers maintained by the attorney for that client trust account. An attorney shall not keep personal funds in a client trust account (whether a common or individual trust account) to serve as a "margin" or "buffer" against potential overdrafts, whether or not such overdrafts are caused by bank or attorney error.

AUTHORITIES

In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17

Jackson v. State Bar (1979) 25 Cal.3d 398

Silver v. State Bar (1974) 13 Cal.3d 134

California Rules of Professional Conduct, Rule 4-100

Trust Account Record Keeping Standards as Adopted by the Board of Governors on July 11, 1992.

State Bar of California (1992) Handbook on Client Trust Accounting for California Attorneys

INQUIRY FACTS

Attorney, a sole practitioner, maintains a common client trust account as required by the Rules of Professional Conduct. As a matter of practice, Attorney has kept approximately \$500.00 in personal funds in the common client trust account to ensure that client funds were not used to cover expenses such as check printing charges, charges for depositing insufficient fund checks or other bank charges. As a matter of "prudence," Attorney also maintains the balance of personal funds to provide protection against the inadvertent "use" of client funds as a result of bank accounting errors.

Attorney inquires whether he may keep \$500.00 or some other "nominal fixed sum" of personal funds in his client trust account as a "sound business practice designed to protect against minor invasion[s] of client funds" notwithstanding the rule against commingling, which was "designed to deal with the potential of a far greater abuse of client trust funds"?

DISCUSSION

Attorneys are not permitted to deposit or maintain funds belonging to the attorney or his or her law firm in a client trust account. (California Rule of Professional Conduct Rule 4-100.) An exception to this rule, however, permits an attorney to deposit and maintain in a client trust account those personal "funds reasonably sufficient to pay bank charges." (Rule 4-100(A)(1).) Thus, Attorney may keep a limited amount of his personal funds or funds belonging to his law firm in his common client trust account ^[1] to cover bank charges.

Although Rule 4-100 does not specify what amount of funds would be "reasonable," the State Bar Court in In the Matter of Respondent F upheld the hearing judge's conclusion that Attorney F's maintenance of \$121.83 in personal funds in a common client trust account for a period of five months to pay for bank

charges was reasonable, "particularly because she was planning to order new checks which ... cost \$50 to \$60." (In the Matter of Respondent F (Review Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17, 24.) Similarly, in its "Handbook on Client Trust Accounting for California Attorneys" the State Bar posits that a practitioner may keep a "small amount of money necessary to cover bank charges" in a common client trust account without violating the terms of Rule 4-100. (State Bar of California (1992) Handbook on Client Trust Accounting for California Attorneys (hereinafter, "Handbook"), p. 3.) The specific amount permissible varies from attorney to attorney and "depends on the type of bank charges [a member] expect[s] and how often [he or she] expect[s] to incur them." (Id., at p. 14.) The State Bar recommends that practitioners contact the bank(s) in which they maintain their client trust account(s) to determine the cost of each charge that might be incurred and review prior statements to determine the average amount of monthly charges. (Id.)

While check printing charges for a common client trust account clearly are bank charges for which the attorney should be liable and for which personal funds may be maintained in a client trust account, not all bank service charges should be attributed to the general overhead of the account. (Handbook, supra, at p. 16.) For instance, wire transfer charges should be debited as a cost against the funds of the client for whom such wire transfer occurred, as should "bounced check" charges for a check from a client. (Id.) At some level, an attorney will have to use his or her discretion as to the proper attribution of other bank service charges, such as insufficient check charges attributable to the deposit of a third party's check in favor of a client. In all cases, an attorney must record the bank charges in: 1) the written ledgers for each client whose funds are maintained in the common client trust account; 2) a written ledger for common bank charges; and 3) the written journal for the common client trust account. (Id., at pp. 23-24; Rule 4-100(C); Trust Account Record Keeping Standards as Adopted by the Board of Governors on July 11, 1992.) Because an attorney can determine the amount of bank charges incurred each month by reviewing the monthly bank statement and reconciling that statement with his various ledgers and journals, as required by Standard (1)(d), it is the opinion of this Committee that the amount of funds "reasonably sufficient to pay bank charges" that may be maintained in a client trust account should correspond to the amount of bank charges incurred for the general operation of the common trust account between each reconciliation. To the extent that the bank service charges incurred by Attorney for general operations of the common client trust account do not correspond to the \$500.00 of his own funds that he keeps in the account, Attorney should modify the amount of his own funds kept in the client trust account.

With regard to Attorney's practice of keeping personal funds in the client trust account to guard against bank accounting errors (presumably resulting in overdraft/insufficient fund situations), the few instances of commingling of personal and client funds permitted by Rule 4-100 do not include such a practice. Indeed, the California Supreme Court repeatedly has held that the maintenance of a personal fund "buffer" in a client trust account as a margin against overdrafts constitutes an impermissible commingling of funds. (Jackson v. State Bar (1979) 25 Cal.3d 398, 404; Silver v. State Bar (1974) 13 Cal.3d 134, 145 n.7.) Therefore, Attorney should not keep any personal funds in client trust accounts to guard against bank error or other overdraft situations; instead, Attorney must scrupulously review all overdraft notices from the bank and the monthly bank statements to guard against bank error, and refrain from writing checks against a recently deposited amount until he is certain the recent deposit has cleared. (Handbook, supra, at pp. 5-6.)

This Opinion is advisory only. The Committee acts on specific Inquiries submitted ex parte, and its opinions are based only on such facts as are set forth in the Inquiries submitted.

[¹] Because charges incurred for an individual client trust account should relate only to services for that client, there is no reason for an attorney to keep personal or law firm funds in such account. Further, any charges to such account, such as monthly service charges, should be offset by the interest earned on that account. To the extent that monthly bank charges routinely exceed the interest earned on the account, the attorney should keep that clients funds in a common account where the monthly service charge is paid by the State Bar.

