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(FINAL)

ETHICS ADVISORY PANEL
OPINION #93-57, REQUEST #383
Issued July 28, 1993

An attorney inquires as to whether it is permissible for a lawyer to maintain a certain amount of his/her own monies in a client trust account to establish a minimum balance so that bank service charges can be avoided.

Rule 1.15 entitled "Safekeeping Property" addresses this inquiry. Paragraph (a) states that:

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. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven (7) years after termination of the representation as provided under Rule 1.16.

Rule 1.15(a) embodies the general anticommingling principle of the predecessor Model Code. There is however no exception under Rule 1.15(a) permitting the deposit of funds to pay bank service charges as was provided under the Model Code in DR 9-102(a)(1). Pursuant to the Comment to Rule 1.15, clients' funds shall be kept in one or more trust accounts, separate from the lawyer's own personal or business funds.

The Panel believes that the anticommingling principle of Rule 1.15(a) can be complied with under the following conditions. A lawyer may maintain his/her own monies in a client trust account in an amount sufficient to avoid bank service charges provided, however, that the amount of the lawyer's funds may not exceed that amount which is necessary to avoid bank service charges and further provided that the funds so deposited are not used by the lawyer for any other purpose.