

ETHICS ADVISORY PANEL
OPINION #94-25 REQUEST #484
Issued May 5, 1994

Due to the large escrow account balances customarily maintained by the inquiring attorney's firm, the depository bank provides credits against bookkeeping fees normally charged in connection with business accounts. The firm is unable to use all the credits provided to it by the bank. One of the firm's client maintains its account with the same bank. The bank suggested to both the attorney and the client that the attorney's unused credits could be credited to the client's account. The attorney seeks Panel advice regarding this proposed arrangement.

Rule 1.15 entitled "Safekeeping Property" is applicable to this matter. Rule 1.15(d) states that:

(d) A lawyer or law firm shall, subject to paragraph (f) of this Rule, deposit clients' funds, which are nominal in amount or to be held for a short period of time, in one or more interest bearing trust accounts in accordance with the following provisions:

(1) Earnings from such accounts shall not be available to a lawyer or law firm.

(2) Whether clients' funds are nominal in amount or to be held for a short period of time shall be determined solely by each attorney or law firm.

(3) Notification to clients whose funds are deposited in interest bearing trust accounts shall be necessary.

(4) Such interest bearing trust accounts may be established with any financial institution authorized by federal or state law to do business in Rhode Island, the deposits in which are insured by insurance entities regulated by the United States and/or the State of Rhode Island or any agency or instrumentality thereof. Funds deposited in such accounts shall be available for withdrawal immediately upon demand.

Pursuant to the Rule 1.15, earnings from such accounts are not available to a lawyer or law firm. The Panel does not believe that the "credits" can be transferred to the client. Earnings on clients' escrow accounts can only be used in accordance with Rule 1.15. The firm cannot use the earnings to gain an economic benefit for itself or a client.