



ETHICS DOCKET

Propriety of Business Structure; Utilizing Third Parties to Provide Nonlegal services; Deposit of fixed fees into Operating Account

ETHICS DOCKET NO. 2009-13

You state that you are a member of the Maryland Bar and in your capacity as the sole member of a limited liability company, you intend to enter into a general partnership (“Law Firm”) with another law firm for the purpose of providing legal services related to the defense of real estate foreclosures and loan modifications. You state that the Law Firm will contract for all nonlegal administrative and other nonlegal matters with respect to the operation of the Law Firm. You will supervise all nonlawyer employees and third party vendors that provide nonlegal services to the firm in accordance with the Maryland Lawyers’ Rules of Professional Conduct (“Rules”); particularly Rules 1.6 regarding confidentiality, 5.1 regarding responsibilities of supervising partners and 5.3 regarding the supervision of nonlawyers. You inquire whether the business structure that you have described complies with the Rules.

This Committee has reviewed similar business arrangements in the past. We direct your attention to Ethics Docket 2009-07 which analyzes the several ethical issues that may arise with respect to the operation of the Law Firm and your contemplated professional conduct. You will find a

copy of that opinion at www.MSBA.org. Except as otherwise provided in Ethics Docket 2009-07 and in this opinion, the Committee declines to opine on whether your proposed business operation complies with the Rules and Maryland law. It is our view that while a business arrangement and its contemplated operation may be in compliance on a theoretical basis, in reality, a contrary result may occur because the intentions are not carried out in compliance with the prescribed standards of professional conduct.

However, please note that the Committee recommends that you change the manner in which you intend to handle your fixed or flat fees for legal services rendered to your clients so that it complies with the requirements of Rule 1.15(c).

Your inquiry provides that you intend to deposit all flat or fixed fees that you receive for legal services into the “. . . general operating account of the Law Firm, unless it is required that the fee be deposited in the Law Firm’s Trust Account. 1 No Trust Account will be established to hold any fees received from the client, unless so required.”

Rule 1.15(c) provides:

Unless the client gives informed

consent, confirmed in writing, to a different arrangement, a lawyer shall deposit legal fees and expenses that have been paid in advance into a client trust account and may withdraw those funds for the lawyer’s own benefit only as fees are earned or expenses incurred.

In recent cases, the Court of Appeals has confirmed that it reviews fixed or flat fee arrangements on a case by case basis, since it has not held that all flat fees paid for future legal work or advanced payment fees, under all circumstances, must be placed in an attorney trust account. See, *Att’y Griev. Comm’n v. Milliken*, 348 Md. 486, 517, 704 A.2d 1225, 1240 (1998). Rule 1.15 (c) was revised in 2007 to incorporate the standard of conduct required by the Court. Simply stated, flat fee payments must be placed in escrow upon receipt, if the work has not been performed at the time of receipt and the client has not given informed consent to a contrary arrangement. See, *Att’y Griev. Comm’n v. Kenderick*, 403 Md. 489, 943 A.2d 1173 (2008); *Att’y Griev. Comm’n v. Lawson*, 401 Md. 536, 933 A.2d 842, 861 (2007); *Att’y Griev. Comm’n v. Guida*, 391 Md.

33, 891 A.2d 1085 (2006); Att’y Griev. Comm’n v. McLaughlin, 372 Md. 467, 813 A.2d 1145 (2002); Ethics Docket No. 2007-15.

If you intend to handle the fixed or flat fee arrangement in a manner other than as mandated by the Court, then informed consent must be obtained in writing from the client.

Rule 1.0 (f) describes the term “informed consent” as follows:

“Informed consent” denotes the agreement by a person to a proposed course of conduct after the lawyer has communicated adequate information and explanation about the material risks of

and reasonably available alternatives to the proposed course of conduct.

Consequently, the lawyer must describe to the client, in writing, (i) the possible risks that are inherent in the delivery of the fees prior to the completion of the legal services, including the possibility that the attorney or law firm will not have sufficient funds available in its operating account to refund the fees to the client in the event the lawyer fails to provide the legal services contemplated and (ii) as an alternative, that the lawyer instead could arrange to deposit the fees into

an attorney trust account until the fees are earned by the lawyer, which would occur only upon the performance of the legal services.

The Committee trusts that it has responded fully to your inquiry.

“Flat or fixed fees” contemplates fees for services to be rendered, and they are distinguishable from engagement fees that are earned when delivered. An engagement fee is not advance payment for services to be performed in the future.

By Linda D. Schwartz

The Advertising Index

1-800 Process	11
ABA Retirement Funds	9
Alex Cooper Auctioneers.....	17
Baltimore County Revenue Authority.....	7
Dugan, Babij, Tolley & Kohler	Cover 3
First MD Disability Trust.....	25
King Hall LLC.....	13
Kramer & Connolly	25
LawPay	Cover 2
Potter Burnett Law Group	31, 33, 35
Phillips & Green MD	27
The Law Offices of Julie Ellen Landau	21
The McCammon Group	Cover 4