

Informal 92-08

February 25, 1992

INFORMAL OPINION 92-08

Attorneys' Client Trust Account Deposits Which Will Exceed the \$100,000 FDIC-Insured Limit

Your request for an opinion relates to attorneys' client trust account deposits that will, if made, exceed the \$100,000 FDIC insured limit. More specifically, you ask two questions concerning the ethical obligations of an attorney. First, may an attorney ethically deposit a client's funds in a clients' trust account maintained by the attorney if the deposit would result in the clients' total funds in the particular bank exceeding the \$100,000 insured limit? Other funds of the client on deposit in the bank could contribute to the limit being exceeded, or the client's balance in the trust account maintained by the attorney could exceed \$100,000 even though the client has no other funds in the bank.

Second, you ask if an attorney ethically is obligated to inquire of a client whether the client has funds in the same bank as the one in which the attorney is contemplating making a trust account deposit of the client's funds. This information, of course, is relevant to ascertaining if the contemplated deposit would be insured if made.

Informal Opinion 91-2 (Revised) of this committee is helpful in answering your questions. That Opinion calls attention to the clear injunction in the Comment to Rule 1.15 of the Rules of Professional Conduct: "A lawyer should hold property of others with the care required of a professional fiduciary." The Opinion then goes on to caution that obligations of a fiduciary are fact specific. Risks to the client must be assessed in light of the precise facts and conditions that the attorney is faced with at the time; there is no abstract formula that will yield easy answers. As Opinion 91-2 (Revised) states: "Clearly a professional fiduciary, in an age of bank failures, must exercise due care in selecting banks in which to deposit their funds." Unquestionably, due care extends as well to determining how much of a client's funds goes into a particular bank and whether or not these funds are insured if deposited. At times, the risk may be sufficiently great so that the fiduciary should determine whether the client has other funds in the bank the attorney is considering for a trust account deposit of the client's funds. Further, as Opinion 91-2 (Revised) adds, in some instances "it will be appropriate and necessary for the lawyer to consult with the client before deciding where and how to deposit funds." Rule 1.15 of the Rules of Professional Conduct and the comment that follows provide general guidance. However, determining fact specific questions of when the care required of a professional fiduciary has been properly exercised is a question of law beyond the authority of this committee to answer.

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