

STATE OF MINNESOTA

IN SUPREME COURT

A-8

In the Matter of the Petition of the Minnesota State Bar Association, a corporation, for Amendment of DR 9-102 and DR 9-103, and to Enact a new DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board

O R D E R

SUPREME COURT
FILED

JUL 28 1982

JOHN McCARTHY,

CLERK

WHEREAS, the Minnesota State Bar Association has petitioned the Supreme Court to amend Rules DR 9-102 and DR 9-103 and to enact a new DR 9-104 of the Code of Professional Responsibility relating to trust funds, and for establishment of a Lawyer Trust Account Board, as follows:

DR 9-102 PRESERVING IDENTITY OF FUNDS AND PROPERTY OF A CLIENT

(A) All funds of clients paid to a lawyer or a law firm other than advances for costs and expenses, shall be deposited in one or more identifiable bank interest bearing trust accounts maintained in the state in which the law office is situated as set forth in DR 9-103. and No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds of the lawyer or law firm reasonably sufficient to pay bank service charges may be deposited therein.

[BALANCE OF DR 9-102 UNCHANGED.]

DR-103 INTEREST BEARING TRUST ACCOUNTS

(A) Each trust account referred to in DR 9-102 shall be an interest bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.

(B) A lawyer who receives client funds shall maintain a pooled interest bearing trust account for deposit of client funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

(C) All client funds shall be deposited in the account specified in subdivision (B) unless they are deposited in:

(1) A separate interest bearing trust account for the particular client or client's matter on which the interest, net of any transaction costs, will be paid to the client; or

(2) A pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any transaction costs, to the client.

(D) In determining whether to use the account specified in subdivision (B) or an account specified in subdivision (C), a lawyer shall take into consideration the following factors:

(1) The amount of interest which the funds would earn during the period they are expected to be deposited;

(2) The cost of establishing and administering the account, including the cost of the lawyer's services; and

(3) The capability of financial institutions described in subdivision (A) to calculate and pay interest to individual clients.

DR 9-104 REQUIRED BOOKS AND RECORDS; REQUIRED CERTIFICATE

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, his private practice of law, and to establish compliance with DR 9-102 and DR 9-103. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to

books and records relating to funds or property of clients, for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9-1034(A) shall certify, in connection with the annual renewal of his registration and in such form as the Clerk of the Supreme Court may prescribe that he or his law firm maintains books and records as required by DR 9-1034(A).

RULES ON LAWYER TRUST ACCOUNT BOARD

RULE 1. COMPOSITION

The Lawyer Trust Account Board shall consist of six lawyers having their principal offices in this state, three of whom the Minnesota State Bar Association may nominate, and three public members resident in this state, all appointed by this Court to three-year terms except that shorter terms shall be used where necessary to assure that one-third of all terms expire each February 1st. No person may serve more than two three-year terms, in addition to any initial shorter term.

RULE 2. POWERS AND DUTIES

(a) General. The Board shall have general supervisory authority over the administration of these Rules.

(b) Receipt and investment of funds. The Board shall receive funds from lawyers' interest bearing trust accounts and make appropriate temporary investments of such funds pending disbursement of them.

(c) Disbursement of funds. The Board shall, by grants and appropriations it deems appropriate, disburse funds for the tax exempt public purposes which the Board may prescribe from time to time consistent with Internal Revenue Code Regulations and rulings, including those under Section 501(c)(3).

(d) Records and reports. The Board shall maintain adequate books and records reflecting all transactions, shall report quarterly to the Court, and shall report annually to the Minnesota State Bar Association and to the public.

RULE 3. OFFICERS

(a) Chairperson. The Board shall select a Board member to serve as Chairperson at the pleasure of the Board.

(b) Other officers. The Board may elect other officers as it deems appropriate and may specify their duties.

RULE 4. DIRECTOR

(a) Appointment. The Board may appoint an Executive Director to serve on a full or part time basis at the pleasure of the Board and to be paid such compensation as the Board shall fix.

(b) Duties. The Director shall be responsible and accountable to the Board for the proper administration of these Rules.

(c) Services. The Director may employ persons or contract for services as the Board may approve.

RULE 5. COMPENSATION AND EXPENSES

The Chairperson and other members of the Board shall serve without compensation but shall be paid their reasonable and necessary expenses incurred in the performance of their duties. All expenses of the operation of the Board shall be paid from funds the Board receives from lawyers' interest bearing trust accounts.

RULE 6. DISPOSITION OF FUNDS UPON DISSOLUTION

If the Lawyer Trust Account Board is discontinued, any funds then on hand shall be transferred to its successor state agency or organization qualifying under Internal Revenue Code section 501(c)(3), if any, for distribution for the purposes specified under Rule 2 or, if there is no successor, to the general fund of the State of Minnesota.

RULE 7. SUPPLEMENTAL RULES

The Board may make and adopt rules not inconsistent with these Rules to govern the conduct of its business and performance of its duties.

WHEREAS, the Supreme Court wishes to hold a public hearing on this petition,

NOW, THEREFORE, IT IS HEREBY ORDERED that a hearing on this petition be held in the Supreme Court Chambers in the State Capitol, Saint Paul, Minnesota, at 9:00 a.m. on Friday, October 8, 1982.

IT IS FURTHER ORDERED that advance notice of the hearing be given by the publication of this Order once in the Supreme Court edition of FINANCE AND COMMERCE, ST. PAUL LEGAL LEDGER and BENCH AND BAR.

IT IS FURTHER ORDERED that interested persons show cause, if any they have, why the proposed petition should not be granted. All persons desiring to be heard shall file briefs or petitions setting forth their objections, and shall also notify the Clerk of the Supreme Court, in writing, on or before Friday, September 24, 1982, of their desire to be heard on the matter. Ten copies of each brief, petition, or letter should be supplied to the Clerk.

DATED: July 27 , 1982.

BY THE COURT


Chief Justice



20

Minnesota State Bar Association

MINNESOTA BAR CENTER • SUITE 403, 430 MARQUETTE AVE. • MINNEAPOLIS, MN 55401 • PHONE 612-333-1183
In-state 1-800-292-4152

October 11, 1982

President

THEODORE J. COLLINS
W-1100 First National Bank Bldg.
St. Paul, MN 55101
(612) 227-0611

The Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol
St. Paul, Minnesota 55101

RE: Interest on Lawyers' Trust Accounts
No. A-8

A-8

Dear Mr. Chief Justice:

You will recall that during the oral presentation in the above matter on October 8, 1982, I suggested that the words "net of any transaction costs," be inserted into the proposed DR 9-103(B). The thought occurred to me over the weekend that perhaps it would be helpful to the Court if I indicated the precise placement of those words in the paragraph. Therefore, the revised proposed paragraph would read as follows (new words underscored):

"DR 9-103 INTEREST BEARING TRUST ACCOUNTS

(A) * * * *

(B) A lawyer who receives client funds shall maintain a pooled interest bearing trust account for deposit of client funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court."

I am enclosing several extra copies of this letter in the event you would like to circulate it to other of the Judges.

Respectfully yours,

Allen I. Saeks, Chairman
Interest on Lawyers
Trust Accounts Committee

AIS:sjr
Encs.

cc: Theodore J. Collins, Esq.
Gerald E. Magnuson, Esq.
Clinton Schroeder, Esq.
Arthur Boylan, Esq.

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President-Elect

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October 29, 1982

Mr. John McCarthy, Clerk
Minnesota Supreme Court
230 State Capitol
St. Paul, Minnesota 55155

President

THEODORE J. COLLINS
W-1100 First National Bank Bldg.
St. Paul, MN 55101
(612) 227-0611

RE: Interest on Lawyers Trust Accounts
Administrative Proceeding A-8

Dear Mr. McCarthy:

At such time as the Supreme Court either enters an order or opinion in the above administrative proceeding, I would appreciate if copies of the order or opinion be sent to the following persons who appeared at the hearing on behalf of the Minnesota State Bar Association:

1. Theodore J. Collins, Esq.
W-1100 First National Bank Bldg.
St. Paul, Minnesota 55101
2. Allen I. Saeks, Esq.
1200 National City Bank Bldg.
510 Marquette Avenue
Minneapolis, Minnesota 55402
3. Gerald E. Magnuson, Esq.
4200 IDS Center
Minneapolis, Minnesota 55402

Thank you very much for your cooperation.

Very truly yours,

Allen I. Saeks

Allen I. Saeks
Chairman, Interest on Lawyers
Trust Accounts Committee
1200 National City Bank Bldg.
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Telephone: (612) 339-1200

AIS:sjr

cc: Theodore J. Collins, Esq.

Gerald E. Magnuson, Esq.

Celene Greene, Exec. Dir.,

MSBA

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A-8
20 (a)

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612/341-2181

MINNEAPOLIS, MINNESOTA 55402

October 19, 1982

Clerk of Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

Dear Sir or Madam:

Please circulate my letter as appropriate. Thank you.

Very truly yours,

MEYER, NJUS, JOHNSON & NETTLES

James M. Njus
James M. Njus
JMN/sjp

Enclosures

10-20 -- filed and distributed

MEYER, NJUS, JOHNSON & NETTLES

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October 19, 1982

SUPREME COURT
FILED

OCT 20 1982

JOHN McCARTHY
CLERK

Supreme Court
Chief Justice Douglas K. Amdahl
Justice C. Donald Peterson
Justice John J. Todd
Justice George M. Scott
Justice Lawrence R. Yetka
Justice John E. Simonett
Justice Rosalie E. Wahl
Justice Glenn E. Kelly
Justice M. Jeanne Coyne
230 State Capitol Building
St. Paul, Minnesota 55155

RE: In the Matter of the Petition of the Minnesota State Bar Association, a corporation, for amendment of DR9-102 and DR9-104 of the Code of Professional Responsibility relating to trust funds, and for establishment of a lawyer trust account board.

Dear Honorable Judges of the Minnesota Supreme Court:

I would like to voice a strong dissent to the proposed amendments referenced above.

I believe that a Code of Ethics for the legal professional is a desirable thing to have. I also believe it is desirable to remove people from the profession who violate the profession's Code of Ethics.

It disturbs me greatly to think that the Code of Ethics might be amended to include matters which are ethically neutral. Whether or not funds are deposited in an interest bearing trust account is not an ethical issue. The decision as to what type of trust account to use is one which is made by the attorney and his client and the decision is a business one which is dependent upon the size of the funds involved. I believe an extremely dangerous precedent will be set if lawyers will now be disbarred because their client directs that the money be deposited in a non-interest bearing trust account and the

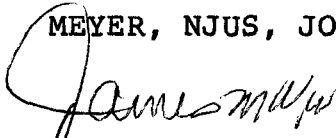
Supreme Court
October 19, 1982
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"ethics" require that an interest bearing trust account be used. If the amendments are adopted, it will create a difficult situation for an attorney who advises his client of his choices and is instructed to place the money in a non-interest bearing trust account. (It may be that the client does not want his interest going to the Minnesota State Bar Association). In that situation, an attorney is faced with the prospect of being disbarred because he honors a client's request that his funds not be placed in the special trust account.

I do not believe that the Code of Ethics should be used to govern attorneys and their practices other than in areas which are clearly ethical. Business decisions, relating to interest on monies held in trust accounts, is not an ethical issue and should not be treated as such. Please register my strong dissent to these proposed amendments.

Respectfully submitted,

MEYER, NJUS, JOHNSON & NETTLES


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JMN/sjp

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(305) 673-1100



Special Commission to Implement Interest on Lawyers' Trust Accounts Program

A-8



Please reply to:

October 4, 1982

RECEIVED OCT - 6 1982

Ms. Celene Green, Executive Director
Minnesota State Bar Association
Suite 403, 430 Marquette Avenue
Minneapolis, Minnesota 55401

Dear Celene:

It is my understanding that the Minnesota Supreme Court will be considering a Petition filed by the Minnesota State Bar seeking to implement a mandatory program for Interest on Lawyers' Trust Accounts. On behalf of The Florida Bar and The Florida Bar Foundation, I wish to commend the lawyers of Minnesota for moving forward with this unique and imaginative program to benefit the administration of justice in general, and delivery of legal services to the poor in particular.

By way of an update for the Minnesota Bar, I am pleased to advise you that our efforts in Florida are progressing exceedingly well. We now have raised \$423,151.91 as of September 23, 1982. These funds cover essentially a seven month period within which we have solicited lawyers' participation in IOTA. At the present time there are approximately 1,950 lawyers, comprising 376 law firms, committed to the Program.

Until now it has been difficult to determine the amount of funds we can raise, however I am beginning to believe that a minimum of one million dollars per annum can be raised on the basis of 1,800 to 2,000 lawyer participants, whether they be solo practitioners or in law firms. In that light we count every lawyer in the law firm in reaching our total number of lawyers participating.

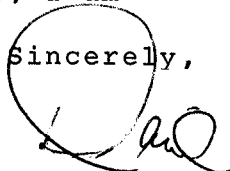
It is particularly gratifying to learn that Minnesota is seeking a mandatory program. I strongly urge the Minnesota State Bar and the Minnesota Supreme Court to not only approve the Interest on Trust Accounts Program, but make it mandatory. We have spent a

Ms. Celene Green
October 4, 1982
Page 2

tremendous amount of time, money and untold effort in enlisting lawyers in our Program by virtue of our effort being a voluntary one. Although we are definitely pleased with the results, we could be doing so much more to benefit the public if we were on a mandatory basis. Using our present rough projections, which are in no way absolute, we estimate that there are approximately 18,000 lawyers in Florida with trust accounts, out of a total of 30,000 members of The Bar. If 2,000 lawyers will conservatively earn one million dollars, then a mandatory program affecting all of our lawyers could earn as much as nine million dollars per year or more. These sums would almost be sufficient to match the funds committed to Florida in delivering legal services to the poor prior to Congress's substantial reduction in funding legal service programs.

Should you or the Court be in need of any further information pertaining to this magnificent endeavor, I will be more than happy to respond. Minnesota has a great Bar and is to be commended for its commitment to the administration of justice and the public good. With kind personal regards, I am

Sincerely,



L. David Shear

LDS/vb

(17)

JOHNSON & ILDSTAD

ATTORNEYS AT LAW

211 EDEN 100 BUILDING

5100 EDEN AVENUE

EDINA, MINNESOTA 55436

TELEPHONE (612) 929-3343

September 29, 1982

Honorable Douglas K. Amdahl
Chief Justice
Minnesota Supreme Court
State Capitol Building
St. Paul, Minnesota 55101

Re: Lawyer Trust Account Board
Hearing: October 8, 1982

Dear Chief Justice:

This is written to express my views concerning the above hearing on the subject of lawyers' trust accounts.

It is my understanding the Minnesota State Bar Association (MSBA) has petitioned the Court to establish a Lawyer Trust Account Board. This action was taken without significant prior notice or hearings with the members of MSBA and by delegate vote at the convention. Existing disciplinary rules under DR 9-101, 102 and 103 provide for honest accounting and identity of funds between lawyer and client.

This may result in thrusting responsibility on the lawyer for prudent investment in money market funds, short term bonds, or securities as compared with 5-1/4% interest accounts. It places burdens of responsibility on the lawyer beyond the legal representation of client and honest disbursement of funds.

Trust funds may be on deposit for a longer period of time when there is a dispute between client and medical provider, contested subrogation, or interest deposits for insurance companies of a client. If the lawyer has additional specific responsibility to the Lawyer Trust Account Board for interest on funds in escrow, the lawyer may prefer to avoid these responsibilities and turn them over to the bank for the accounting and disbursement.

A bank I discussed this with stated that their escrow fee would be a standard minimum of \$400.00; in addition, \$10.00 per investment transaction; and in addition, \$2.50 per distribution. Any interest on the account would be held by the bank. A local title company informed me that they would set up trust escrow accounts for a basic minimum charge of \$25.00 per account; all interest earned on the account would be held as consideration for the escrow responsibility; and there would be additional charges for disbursement.

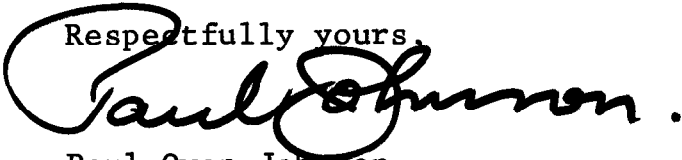
Honorable Douglas K. Amdahl
September 29, 1982
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In summary, it appears to me that this proposal is unnecessary and is going in a direction which will be a disadvantage and expense to the client.

This is to express my recommendation that the proposal either be denied or that it be referred back to the Minnesota State Bar Association for the conduct of scheduled hearings when the thoughts of all Bar Association members may be heard in an orderly manner.

It is not my intention to appear at the hearing. Thank you for your attention.

Respectfully yours,

A handwritten signature in cursive script that reads "Paul Owen Johnson". The signature is written in black ink and is positioned below the typed name.

Paul Owen Johnson

POJ/skr

Canon 9
EC 9-2

CODE OF PROFESSIONAL RESPONSIBILITY

guidance does not exist, a lawyer should determine his conduct by acting in a manner that promotes public confidence in the integrity and efficiency of the legal system and the legal profession.

EC 9-3. After a lawyer leaves judicial office or other public employment, he should not accept employment in connection with any matter in which he had substantial responsibility prior to his leaving, since to accept employment would give the appearance of impropriety even if none exists.

EC 9-4. Because the very essence of the legal system is to provide procedures by which matters can be presented in an impartial manner so that they may be decided solely upon the merits, any statement or suggestion by a lawyer that he can or would attempt to circumvent those procedures is detrimental to the legal system and tends to undermine public confidence in it.

EC 9-5. Separation of the funds of a client from those of his lawyer not only serves to protect the client but also avoids even the appearance of impropriety, and therefore commingling of such funds should be avoided.

EC 9-6. Every lawyer owes a solemn duty to uphold the integrity and honor of his profession; to encourage respect for the law and for the courts and the judges thereof; to observe the Code of Professional Responsibility; to act as a member of a learned profession, one dedicated to public service; to cooperate with his brother lawyers in supporting the organized bar through the devoting of his time, efforts, and financial support as his professional standing and ability reasonably permit; to conduct himself so as to reflect credit on the legal profession and to inspire the confidence, respect, and trust of his clients and of the public; and to strive to avoid not only professional impropriety but also the appearance of impropriety.

DISCIPLINARY RULES

DR 9-101. Avoiding Even the Appearance of Impropriety

(A) A lawyer shall not accept private employment in a matter upon the merits of which he has acted in a judicial capacity.

(B) A lawyer shall not accept private employment in a matter in which he had substantial responsibility while he was a public employee.

(C) A lawyer shall not state or imply that he is able to influence improperly or upon irrelevant grounds any tribunal, legislative body, or public official.

DR 9-102. Preserving Identity of Funds and Property of a Client

(A) All funds of clients paid to a lawyer or law firm, other than advances for costs and expenses, shall be deposited in one or more identifiable bank

accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay bank charges may be deposited therein.

(2) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(B) A lawyer shall:

(1) Promptly notify a client of the receipt of his funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accounts to his client regarding them.

(4) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

DR 9-103. Required Books and Records; Required Certificate

(A) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis books and records sufficient to demonstrate income derived from, and expenses related to, his private practice of law, and to establish compliance with DR 9-102. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients, for at least six years after completion of the employment to which they relate.

(B) Every lawyer subject to DR 9-103(A) shall certify, in connection with the annual renewal of his registration and in such form as the Clerk of the Supreme Court may prescribe that he or his law firm maintains books and records as required by DR 9-103(A).

(Adopted and effective Oct. 13, 1976.)

DEFINITIONS *

As used in the Disciplinary Rules of the Code of Professional Responsibility:

(1) "Differing interests" include every interest that will adversely affect either the judgment or

Original

Wefald & Baer
Attorneys at Law
222 SIXTH STREET
HAWLEY, MINNESOTA 56549
September 29, 1982

MAGNUS WEFALD
ZENAS BAER

TELEPHONE
218-483-4400
P. O. BOX 249

TO THE SUPREME COURT OF THE STATE OF MINNESOTA,
State Capital
St. Paul, Mn 55155

A-8

Dear Sirs:

Re: Petition to Require Money on Lawyers Trust
Funds to be Deposited on Interest Bearing
Accounts.

* This letter is written to object to the proposal contained in the Order of the Minnesota Supreme Court in the case of The Matter of the Petition of Minnesota State Bar Association, a Corporation, for amendment of the Code of Professional Responsibility to require that attorneys deposit trust moneys on interest bearing accounts.

If it is possible to deposit such money on checking accounts that bear interest on the balances, there would not be much objection to such a rule, but in both of the banks here in Hawley, and in other smaller towns around the State of Minnesota, and perhaps even in nearly all towns in the State of Minnesota, it would be necessary to deposit such money on savings accounts, and then transfer the money on the savings account to a trust checking account, etc. which will simply entail much extra work on the part of every law firm that has such trust accounts.

The requirements in the proposed amendments to DR 9-102 and DR 103 appear to require a seperate account for each collection of money made by an attorney or law office and that the attorney should pay all the expenses of such accounts, etc. This is a very impractical proposal, and we don't believe that it will be workable.

If it is necessary to have a rules that requires interest on trust accounts, it should require that money held more than 30 days should be transferred to an interest bearing savings account, in which the money may be drawn out at anytime. There would be more sense to that. Then the lawyer or the law firm could make reasonably sure to get the money out before the 30 day period is over with. If it is necessary or a lawyer or a law firm to hold a clients money longer than that, then it would be more reasonable to require a transfer to a savings account.

9/29/82

Please note our appearance in this matter, and send us copy of any decisions that you make. We are sending herein 10 copies of this letter as required by your order, and are sending it although we were unable to get this letter finished and mailed by September 24, 1982.

Yours very truly,

WEFALD & BAER


Magnus Wefald


Zenas Baer

MW:co 15 copies

10 copies of this letter enclosed
herewith.

MAUN, GREEN, HAYES, SIMON, JOHANNESON AND BREHL
ATTORNEYS AT LAW

NORTHLAND EXECUTIVE OFFICE CENTER
SUITE 330
3500 WEST 80TH STREET

MINNEAPOLIS, MINNESOTA 55431

TELEPHONE: AC-612-835-9550

September 24, 1982

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OF COUNSEL
RICHARD T. MCHAFFIE

JOSEPH A. MAUN
MERLYN C. GREEN
LAWRENCE J. HAYES
JEROME B. SIMON
JOHN C. JOHANNESON
JAMES W. BREHL
BRUCE G. ODLAUG
ALBERT A. WOODWARD
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RICHARD M. GAALSWYK
GREGORY J. HOLLY
LARRY B. GUTHRIE
CANDICE M. HOJAN
ROLF E. GILBERTSON
RICHARD L. LEIGHTON

The Honorable Douglas K. Amdahl,
Chief Justice, and
The Members of the Minnesota Supreme
Court
State Capitol Buildings
St. Paul, Minnesota 55101

Re: Proposed Amendments to Code of Professional
Responsibility Regarding Trust Funds;
Rules DR9-102, DR9-103 and New DR9-104

Dear Chief Justice Amdahl and Members of the Supreme Court:

We wish to express our endorsement of the proposed amendments to the Code of Professional Responsibility with respect to the administration of client trust funds. However, we suggest the following comments or proposed revisions for your consideration:

1. Although the amendment to DR9-102 suggests that advances for costs and expenses are to be deposited as "client funds", the status of retainers received against professional fees to be incurred remains uncertain. We suggest that Rule DR9-102 specify whether or not retainers against professional fees to be incurred and advances for costs and expenses are to be considered "funds of clients".

2. Based upon our experience, we suggest that threshold levels be provided below which deposit in an interest bearing trust account will not be required. For example, trust funds less than \$200 as to any single client matter, or aggregating less than \$4,000, probably do not justify the transaction costs involved with the maintenance of an interest bearing account.

MAUN, GREEN, HAYES, SIMON, JOHANNESON AND BREHL

The Honorable Douglas K.
Amdahl, Chief Justice, and
The Members of the Minnesota
Supreme Court
Page Two
September 24, 1982

3. We suggest that the provisions of DR9-103 (C)(2) and (D)(3) be clarified. Although we expect that financial institution arrangements over time will adjust to any program adopted, it presently does not appear feasible to have a pooled trust account established on the basis of the financial institution accounting for interest to each individual client if small amounts are involved. Instead, the rules should be sufficiently broad to allow that a trust account may be established with the subaccounting provided by the attorney or his firm.

We trust that the foregoing may be of assistance to you. Although we do not anticipate appearing at the hearing on October 8, 1982, we will be pleased to respond to any questions which you may have or provide any further specific amending language as you find may be helpful.

Respectfully submitted,

MAUN, GREEN, HAYES, SIMON,
JOHANNESON & BREHL

By 
James W. Brehl

JWB:lrh

16

GREGORY C. OLSON
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HOME (507) 267-4725

OF COUNSEL: DAVID M. LEACH

CABLE ADDRESS: "WIZARD"

September 23, 1982

Mr. John McCarthy
Clerk of Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

A-8

In Re: Petition of Minnesota State Bar Association Regarding Amending
Code of Professional Responsibility Relating to Trust Funds

Dear Mr. McCarthy:

I am writing in response to the Supreme Court's Order dated July 28, 1982 relative to the above-referenced matter. I am opposed to the Bar Association's Petition mandating interest bearing checking accounts and establishing a trust account board, for the following reasons:

1. The establishment of interest-bearing trust accounts should be left to the discretion of each individual law firm, or lawyer, rather than making their establishment absolutely mandatory.
2. The Bar's proposal, if adopted, would create an "accounting nightmare" for lawyers, especially small firms and sole practitioners. There will be confusion between banks and lawyers as to who has the responsibility for bookkeeping, and reporting to state and local taxing authorities.
3. The Bar Association has no business getting involved in collecting monies to be disbursed for tax exempt public purposes consistent with the Internal Revenue Code, and furthermore, the receipt of income from a lawyer's trust by the Bar, which interest income belongs to a client, is in all likelihood an unconstitutional taking of property. The Bar Association cannot pass laws under the guise of amending the Code of Professional Responsibility.
4. It appears that an inadequate amount of thought has gone into formulating the specific details relative to accounting for the interest generated from the trust funds and the establishment of the trust fund board. The amendments to the Code are oftentimes capable of various interpretations, which will result in confusion among lawyers charged with the responsibility of implementing the plans.


It is my suggestion that before the Minnesota Bar rushes in to

Mr. John McCarthy
September 23, 1982
Page - 2

authorize the interest-bearing accounts, the Florida and California experiences with such accounts be more closely reviewed. In any event, any plan adopted should be of a voluntary nature.

I anticipate attending the hearing October 8th, if my schedule permits.

Sincerely yours,


Gregory C. Olson
GCO:sw

WAGNER, RUTCHICK & TROJACK, P.A.

ATTORNEYS AT LAW

276 NORTH SNELLING AVENUE
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147 MAIN STREET
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*MICHAEL P. WAGNER
HAROLD L. RUTCHICK
JOHN E. TROJACK
CASS S. WEIL

REPLY TO:

September 21, 1982

Mr. John C. McCarthy
Supreme Court Clerk
Minnesota Supreme Court
230 State Capitol Building
St. Paul, Minnesota 55155

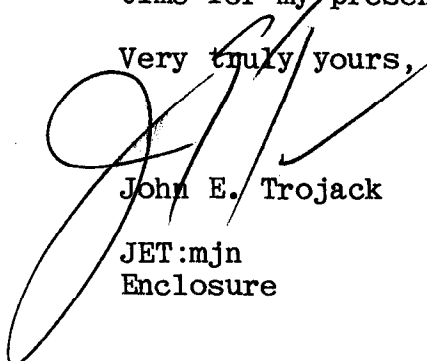
RE: The matter of the Petition of the Minnesota State Bar Association, a corporation, for Amendment of DR 9-102 and DR 9-103, and to Enact a new DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board
File: A-8

Dear Mr. McCarthy:

Enclosed please find the Petition in opposition to the Petition of the State Bar Association relative to the above matter.

Could you please advise me as to what parties are making opposition to the Petition of the Minnesota State Bar Association. I will want to be able to speak to the Supreme Court, and ask you to allot some time for my presentation.

Very truly yours,



John E. Trojack

JET:mjn
Enclosure

ORIGINAL

STATE OF MINNESOTA
IN SUPREME COURT

A-8

PETITION FOR DENIAL OF THE
PETITION OF MINNESOTA STATE BAR
ASSOCIATION

In re the Matter of the Petition
of the Minnesota State Bar Association,
a corporation, for Amendment of DR 9-102
and DR 9-103 and to Enact a new DR 9-104
of the Code of Professional
Responsibility Relating to Trust Funds,
and for Establishment of a Lawyer Trust
Account Board

Comes now the Petitioner and States and alleges as
follows:

1. That Petitioner is an attorney, duly licensed to
practice in the State of Minnesota, admitted before this Court on
April 22, 1976.

2. That Petitioner has read the Order for Hearing on the
Petition of the Minnesota State Bar Association in the above matter
and believes that the said Petition is fundamentally at odds with
the general ethical responsibilities of attorneys at law in the
State of Minnesota with respect to their clients and their clients'
funds.

3. That the Petition of the State Bar Association attempts to take and use money which is not the property of either the attorneys involved or the Bar Association but property of the clients, without due process, and contrary to the Constitution of the United States and the Constitution of the State of Minnesota.

4. That the basic ethics and morality of society does not permit one person, especially a person in a fiduciary and highly important trust position such as an attorney, to use another's funds, held in trust or to entrust them to an association of which he is a member, for that association's uses, no matter high and philanthropic the motives are or the use of those funds may be.

5. That the requirement of the bank to transfer interest on trust funds may be tantamount to conversion under the common law and attorneys, by their acquiescence and compliance, may be parties to such conversion.

6. That the provisions requiring administrative reporting and the administrative machinery will cost attorneys, especially in solo practice or small law firms, additional charges and costs payable to the bank for these services, all having the effect of causing attorneys to in turn increase fees to their clients, the general public, thereby increasing the already burdensome cost of legal services.

7. That the plan as proposed by the Minnesota State Bar Association does not serve the public interest and, in fact, will have the effect of increasing the cost of legal services across the board to the general public and will undermine the public trust and confidence in the legal system as a whole, and the Bar Association and attorneys in particular.

WHEREFORE, Petitioner prays an Order of this Court dismissing the Petition of the Minnesota State Bar Association, a corporation, for Amendment of DR 9-102 and DR 9-103, and to Enact a DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board.

Dated: August 24, 1982

WAGNER, RUTCHICK & TROJACK, P.A.

BY: 

JOHN E. TROJACK
276 North Snelling Avenue
St. Paul, Minnesota 55104
(612) 646-0681

STATE OF MINNESOTA
IN SUPREME COURT

In the Matter of the Petition of the Minnesota State Bank Association, a corporation, for Amendment of DR 9-102 and DR 9-103, and to enact a new DR 9-104 of the Code of Professional Responsibility Relating to Trust Funds, and for Establishment of a Lawyer Trust Account Board.

A-8 26378

PETITION TO APPEAR
AND BRIEF ON BEHALF
OF THE KANDIYOHI
COUNTY BAR ASSOCIATION

The undersigned attorneys, representing the Kandiyohi County Bar Association, hereby petition the Court to permit Arthur J. Boylan, Attorney at Law, Willmar, Minnesota, to appear before the Court's hearing in the above-captioned matter, and hereby submit the following brief in regard to the above-captioned matter.

At its September 13, 1982, monthly meeting, the Kandiyohi County Bar Association passed a resolution favoring modification of the proposed changes related to client trust accounts to allow (1) costs of maintaining the trust accounts to be paid out of interest accrued on the accounts, and (2) allowing greater local control of the disbursements under Rule 2(c) of the Rules on Lawyers Trust Account Board. Therefore the undersigned request that the following modifications be made in the proposed changes to the Disciplinary Rules and in the proposed Rules on Lawyers Trust Account Board:

1. Change the last sentence of proposed DR-103 (B) to read as follows:

The interest accruing on this account, after deduction to pay any bank service charges and other documented out-of-pocket costs of maintaining the account, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.

2. Change proposed Rule 2(c) of the Rules on Lawyers Trust Account Board to add the following provision at the end thereof:

For purposes of this paragraph 2(c), one-half of all funds received pursuant to Rule 2(b) shall be designated for purposes and programs of statewide impact and scope. The remaining one-half shall be designated for purposes and programs of local impact and scope, and shall be prorated among the judicial districts of the state on the basis of the population of each district. The judges in each judicial district may appoint a Lawyers Trust Account Advisory Committee within their respective district, with the same composition as the Lawyers Trust Account Board, to initiate proposals for appropriation of funds allocated to the district and to comment upon proposals for funding of statewide projects and projects within the district.

The first proposed change is a practical recognition of the cost of maintaining a client trust account. If the account is to generate funds which will not be paid over to the clients, first priority for the use of those funds should be given to the cost of maintaining the accounts themselves.

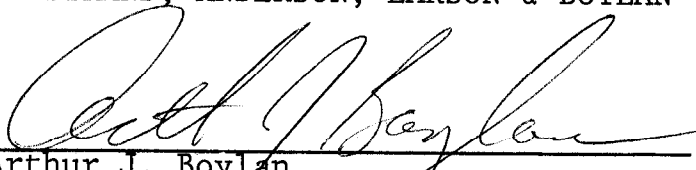
The second proposed change allows for a reasonable measure of local initiative and local influence in the selection of programs and projects funded through trust account interest, and guarantees that receipts will be fairly disbursed throughout the state. The resolution passed by the Kandiyohi County Bar Association fairly reflects the concern of attorneys in the smaller counties that without some conscious effort to set up an allocation system, fund awards will tend to be unfairly concentrated in the large population centers in the state. However, the proposed second change also recognizes the beneficial impact of many statewide programs and projects and provides for an allocation for these purposes as well as local purposes. The second proposed change is a good accommodation of these competing concerns.

For the foregoing reasons, the proposed changes outlined herein should be incorporated into the proposal set forth in the Court's order dated July 27, 1982.

Respectfully submitted on behalf of the Kandiyohi County Bar Association.


HULSTRAND, ANDERSON, LARSON & BOYLAN

By:


Arthur J. Boylan
The Willmar Building, Box 130
Willmar, Minnesota 56201
Telephone: (612) 235-4313

LAW OFFICE OF KURT M. ANDERSON

By:


Kurt M. Anderson
200 W. 4th Street, Suite 24
Willmar, Minnesota 56201
Telephone: (612) 231-1408

LEVANDER, ZIMPFER & ZOTALEY

A PROFESSIONAL ASSOCIATION

LAWYERS

720 NORTHSTAR CENTER (CARGILL BUILDING)

625 MARQUETTE AVENUE

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BERNHARD W. LEVANDER
BERNARD G. ZIMPFER
BYRON L. ZOTALEY
JAMES G. VANDER LINDEN
ROBERT H. RYDLAND
PHILLIP L. POWELL

August 30, 1982

TELEPHONE (612) 339-6841

Chief Justice Douglas Amdahl and
All Members of the Supreme Court
of the State of Minnesota
Supreme Court Chambers
State Capitol
St. Paul, MN 55101

A-8

Re: Petition of Minnesota State Bar Association
for Amendment of DR9-102, DR9-103 and to Enact
a New DR9-104 of the Code of Professional
Responsibility

Dear Chief Justice and Members of the Court:

I have read the Order of the Supreme Court promulgated in connection with the proposal for a new system that would require lawyers to set up interest-bearing trust accounts.

It is difficult for me to believe that the State Bar Association would have supported this proposal. I presume it has come on because we have had a period of relatively high interest rates, which creates an alluring opportunity for the disposition of this interest, rather than having it lie in a non-interest bearing account.

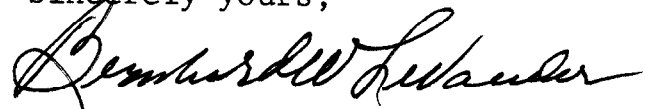
This proposal will add a significant amount of administrative overhead to the average law office, many of which will have very modest sums per client in client trust accounts. It will add an administrative burden to the Supreme Court and to the Bar Association. It will require establishment of another layer of boards and regulators.

We are already an over-regulated society and now, the lawyers are going to become the champion regulators, making the practice an onerous task rather than a pleasant, service occupation in which one could devote his time to the pursuit of justice.

Chief Justice Douglas Amdahl
August 30, 1982
Page Two

I hope that the Supreme Court will turn back this proposal
or indefinitely postpone its adoption.

Sincerely yours,

A handwritten signature in cursive script, appearing to read "Bernhard W. LeVander". The signature is written in dark ink and is positioned above the printed name.

Bernhard W. LeVander

BWL:11

9

COOK and VOEGELE, P.A.

Attorneys At Law

300 DEPOT SQUARE

FARIBAULT, MINNESOTA 55021

Telephone (507) 334-2045

Herbert J. Cook

Gary L. Voegele

August 11, 1982

Mr. John C. McCarthy
Clerk of Minnesota Supreme Court
Minnesota State Capitol Building
St. Paul, MN 55165

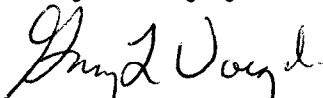
A-8

Re: Proposed Rule Changes

Dear Mr. McCarthy:

Enclosed please find ten copies of the letters that I have addressed to members of the Court noting my opposition to the proposed rule changes dealing with attorney's trust accounts. Thank you.

Very truly yours,


Gary L. Voegele

GLV:jb
Enclosures

COOK and VOEGELE, P.A.

Attorneys At Law

300 DEPOT SQUARE
FARIBAULT, MINNESOTA 55021

Telephone (507) 334-2045

Herbert J. Cook

Gary L. Voegelé

August 11, 1982

The Honorable Chief Justice and
Associate Justices of the
Minnesota Supreme Court

Re: Proposed Rule Changes Relating
to Trust Fund Accounts

Dear Sirs:

I would like to express my opposition to the proposed rules, primarily Rule 9-103 and Rule 9-104 that mandate that the practicing attorneys in the State deposit their general trust funds in interest bearing accounts. Our firm is a professional service corporation incorporated under Minnesota Statutes Chapter 319A. I am sure that several other attorneys in this State use this business arrangement as well. We have been repeatedly informed by all the financial institutions in our area that their regulations do not allow their institutions to pay interest on any corporate account. Yet, it appears that the proposed rules make it mandatory for us to deposit our general trust funds in an interest bearing account. I would like to inquire on how we are to comply with this rule in any reasonable manner in light of this restrictions on the banks and savings and loans in our area.

Therefore, I would propose that this rule be optional rather than mandatory. In addition, I suspect that the proponents of this rule are public sector attorneys and legal aid attorneys looking for a funding source with little foresight or concern on the significant time and expenses that would be incurred by the individual practicing private attorneys or firms to comply with the administrative reporting requirements of this arrangement. It is comparable to the unpopular attempt to impose a sales tax on certain professional services that became an issue in Minnesota Legislature recently. If the Court approves this proposal, I would recommend that the attorneys and firms required to report their interest income be allowed to charge back a fixed percentage of the income derived not to exceed a reasonable fee, eg 15% of the interest generated by the trust account for the administrative expenses incurred to meet the reporting requirements of this provision.

Respectfully submitted,


Gary L. Voegelé

GLV:jb

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

444 LAFAYETTE ROAD
4TH FLOOR
ST. PAUL, MINNESOTA 55101

612 - 296-3952

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CHAIRMAN
PAMELA M. ANDERSON
MARY H. DAVIES
JEANNE GIVENS
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PROFESSIONAL RESPONSIBILITY

JANET DOLAN
ASSISTANT DIRECTOR

RICHARD J. HARDEN
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WILLIAM J. WERNZ
ATTORNEYS

September 15, 1982

PERSONAL AND CONFIDENTIAL

John C. McCarthy, Clerk
Minnesota Supreme Court
230 State Capitol
St. Paul, MN 55155

A-8

Re: In the Matter of the Petition of the Minnesota
State Bar Association, Supreme Court File No. A-8.

Dear Mr. McCarthy:

I have received a copy of the court's July 28, 1982, order in the
above matter setting a hearing to consider the Minnesota State Bar
Association's petition to amend the Code of Professional
Responsibility and to establish a Lawyer Trust Account Board.

At its September 10, 1982, meeting, the Lawyers Professional
Responsibility Board considered the petition. After considerable
debate, the Board voted to take no position on the petition.

In light of the Board's action, we will not be filing any brief in
the above matter. We also do not anticipate any appearance in
behalf of the Board at the hearing unless, of course, the court
itself desires our presence.

While I realize the court's July 27, 1982, order directs
affirmative notice of a desire to appear at the hearing, I did
want to let you know as a courtesy to the court that, contrary to
several other recent petitions involving rules amendments, we will
not be appearing unless the court so directs.

Very truly yours,

Michael J. Hoover
Michael J. Hoover
Director

MJH/cjs

cc: Robert Henson
Theodore Collins

OGURAK LAW OFFICES P.A.

MELVIN OGURAK, J.D.
LEE A. HENDERSON, J.D.

SUITE 654 MIDLAND BANK BUILDING
401 SECOND AVENUE SOUTH
MINNEAPOLIS, MINNESOTA 55401
TELEPHONE (612) 339-2731

RECEIVED
AUG 25 1982
MIDLAND BANK BUILDING

August 26, 1982

Mr. John C. McCarthy
Clerk, State of Minnesota
Supreme Court
230 State Capitol
St. Paul, MN 55155

A-8

Dear Mr. McCarthy:

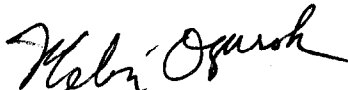
Re: Attorneys' Trust Fund Accounts

This letter is written in opposition to the amendment of Rules DR9-102 and DR9-103 and to enact a new DR9-104 to the Code of Professional Responsibility relating to trust funds, and for establishment of a lawyer trust account board for the following reasons:

1. All the banks and savings and loan associations we have contacted have informed us that they do not pay interest on profit making business checking accounts.
2. Our law firm has all of our bank accounts in the First National Bank of Minneapolis and they specifically do not pay any interest on business checking accounts.
3. It would be a time consuming burden for attorneys to find financial institutions to place trust account money without a high degree of risk to the money so placed.

Respectfully yours,

OGURAK LAW OFFICES, P.A.



Melvin Ogurak, J.D.



Lee A. Henderson, J.D.