

STATE OF MINNESOTA
IN SUPREME COURT
NO. A-8

SUPREME COURT
FILED
DEC 27 1982

JOHN McCARTHY
CLERK

IN THE MATTER OF THE PETITION)
OF THE MINNESOTA STATE BAR)
ASSOCIATION, a corporation,)
for Amendment of DR 9-102 and)
9-103, and to enact a new)
DR 9-104 of the Code of Pro-)
fessional Responsibility Re-)
lating to Trust Funds, and)
for Establishment of a Lawyer)
Trust Account Board.)

ORDER AMENDING CODE OF
PROFESSIONAL RESPONSIBILITY
RELATING TO CLIENT
TRUST FUNDS, AND
ESTABLISHING LAWYER TRUST
ACCOUNT BOARD

WHEREAS, in the summer of 1981, the Minnesota State Bar Association ("MSBA") appointed a special Committee on Interest on Lawyers' Trust Accounts to analyze and make recommendations to the MSBA Board of Governors as to the possible use of interest to be earned on client trust account balances and the method of implementation of any such uses; and

WHEREAS, that Committee prepared a final report containing recommendations which were, except for minor revisions, approved by the Board of Governors of the MSBA on March 27, 1982; and

WHEREAS, the report and recommendations of the MSBA Committee were, after due notice to the membership, presented for consideration by the delegates and members of the MSBA at its annual convention assembled on June 19, 1982, and after debate, approved by a voice vote of the members in attendance; and

WHEREAS, pursuant to the approval obtained at the MSBA annual convention, the MSBA filed a petition with this court on July 1, 1982, requesting that the court amend the Code of Professional Responsibility to provide for a mandatory program relating to Interest on Lawyers' Trust Accounts in the State of Minnesota and providing for the establishment of a new Lawyer Trust Account Board to administer the program; and

WHEREAS, after due published notice in *Finance and Commerce*, *St. Paul Legal Ledger* and *Bench and Bar*, this court set a hearing on the MSBA petition before the court on October 8, 1982; and

WHEREAS, various parties, including representatives of the MSBA, and others, appeared to present their views personally to the court sitting *en banc* at the public hearing held on October 8, 1982, and the Court now having given due consideration to the proposals contained in the MSBA petition, and having considered legal briefs and correspondence from various persons, and the presentations by all interested parties desiring to be heard;

NOW, THEREFORE, IT IS HEREBY ORDERED that, effective July 1, 1983, Disciplinary Rules 9-102, 9-103 and 9-104 of the Code of Professional Responsibility be adopted as follows [new material underscored; matter to be deleted lined out]:

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 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.

(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 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, net of any transaction costs, 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 9-10~~3~~4 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 9-10~~3~~4(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 9-10~~3~~4(A).

IT IS HEREBY FURTHER ORDERED that, effective July 1, 1983, there is hereby created under supervision of this Supreme Court a new Lawyer Trust Account Board with its initial Rules to be as follows:

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.

To assure that the program authorized by these rule changes will be ready for implementation on July 1, 1983, the effective date of this order,

IT IS HEREBY FURTHER ORDERED;

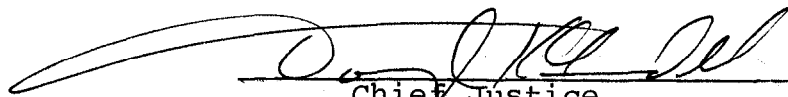
(a) That by April 30, 1983, the MSBA will report to this court as to compliance of the program with governmental regulations including the approval of the Board of Governors of the Federal Reserve System;

(b) That by April 30, 1983, the MSBA will report to this court on the status of administrative procedures that may be necessary to implement the program; and

(c) That the MSBA take such action deemed appropriate to it to publicize to all the lawyers of the state prior to July 1, 1983, the manner in which the Interest on Lawyers' Trust Accounts program will function.

Dated December 13, 1982.

BY THE COURT


Chief Justice