

FORMAL OPINION NO 2005-135

Trust Accounts: Depositing Fees of Arbitrator or Mediator

Facts:

Lawyer's work is limited to serving as an arbitrator or mediator (or in related roles, such as court-appointed special master). Lawyer retains active membership in the Oregon State Bar.

Lawyer receives fees in advance of arbitration or mediation proceedings, and those funds are held until the proceeding is completed.

Question:

Must fees received by a lawyer serving as an arbitrator or mediator be deposited in a "Lawyer Trust Account"?

Conclusion:

Yes.

Discussion:

Oregon RPC 1.15-1(a) provides:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account" maintained in the jurisdiction where the lawyer's office is situated. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to the rules in the jurisdictions in which the accounts are maintained. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

Funds received by an arbitrator or mediator are not property of a client because no lawyer-client relationship exists. OSB Formal Ethics Op No 2005-101 (rev 2015). Nevertheless, such funds constitute “property of third persons.” By its plain language, then, Oregon RPC 1.15-1(a) applies to advance fees received by a lawyer acting as an arbitrator, even though a nonlawyer arbitrator or mediator would not be required to hold such fees in a separate account.¹

Approved by Board of Governors, August 2005.

¹ ABA Model RPC 1.15(a) requires separate handling only of funds received “in connection with a representation,” although courts have nevertheless applied the obligation to lawyers functioning in other roles. *See* Charles W. Wolfram, *Modern Legal Ethics* § 4.8, at 178 (1986). *Cf. In re Gallagher*, 332 Or 173, 184, 26 P3d 131 (2001) (*former* DR 9-101(A), which required placing in trust account of “[a]ll funds of clients . . . or other funds held . . . in the course of work as lawyers” did not apply to funds of nonclient).

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 3.2-2 (illegal fees) (OSB Legal Pubs 2015); *Restatement (Third) of the Law Governing Lawyers* § 44 (2000) (supplemented periodically); and ABA Model RPC 1.15. *See also Arbitration and Mediation* § 25.24 (Oregon CLE 1996 & Cum Supp 2008).