



Week of **May 18, 2010**

When Do You Earn Your Fee?

Recently I was asked what is considered earned income. The lawyer posing the question stated that when a client places x amount of dollars in the trust fund, her firm bills against the full amount that is given. After she applies payment to the invoice, her concern was whether she should transfer to general funds the full amount that was originally put in trust.

I replied that, under the rules of professional conduct, the client's payment for work that *has been* performed is to be deposited into a lawyer's general account and payment for work that *will be* performed is generally to be deposited into a client's trust account. The engagement agreement should set forth in detail the circumstances under which funds may or must be transferred from the client's trust account to the lawyer's general account. When the lawyer is entitled to make the transfer, the lawyer *must* make the transfer or be guilty of commingling personal and client funds, which is prohibited by the rules.

It all seems straightforward and clear. Yet lawyers constantly face ethical snares on the use of and accounting for client trust accounts. These often begin with a fundamental question for the lawyer: when you first receive funds, which account should they be placed into, the trust account or the general account? In most instances, this is the rule of thumb to follow:

- If the funds are provided on retainer, then they are for a task that is not completed and the hours are not yet earned. That means the money goes into the client trust account.
- If the funds have been earned when you receive them, then they should go into the general account.

In short, money earned by a lawyer for provision of services belongs to the lawyer and must be removed from the client's trust account when earned. This



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must be done immediately (unless jurisdictional rules state otherwise), with the earned money being placed in the lawyer's general account. Some jurisdictions place additional requirements on the withdrawal of funds from a trust account. In Wisconsin, as one example, the requirement is that before any funds can be withdrawn from the client trust account, the client must be given five days notice. This is the case even when the funds are earned, and even if the engagement agreement provides for immediate withdrawal. In Connecticut, a trust account is the only place where lawyers and law firms may deposit a client's or third person's funds which are less than \$10,000 in amount or are expected to be held for a period of not more than sixty business days. It is thus important to verify the rules in your jurisdiction before making an immediate withdrawal of earned funds.



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Personal Commentary

The last few days were spent in the peaceful environs of Tehachapi, CA with a group of Airstream trailer folks. While there, we visited Edwards Air Force Base. After seeing the new F-35, F-22 and old F-16, among other weapons of mass destruction, I walked away marveling at our ingenuity and our capacity for bending the laws of nature (to an extent) to our will. While there, we heard the breaking of the sound barrier from one of their tests. Ah, if we could only be so ingenious in finding ways for peace. One would think that we would get it right after more than 2000 years of trying.

Best wishes,

Ed Poll
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