

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Repealed: January 26, 2006

OPINION NO. 15

ADVANCE FEE PAYMENTS AND AVAILABILITY OR NON-REFUNDABLE RETAINERS

Definitions

- (1) **Advance Fee Payments:** Funds paid by a client or a prospective client to a lawyer for specific services to be undertaken. All fees paid at the beginning of the representation shall be presumed to be advance fee payments unless a written fee agreement signed by the client states otherwise.
- (2) **Availability or Non-Refundable Retainers:** Funds paid by a client or a prospective client to secure a lawyer's general availability to, or representation of, that client over a specified period of time or for a specific legal matter.
- (3) **An Accounting:** An itemized statement issued to a client which lists all trust fund withdrawals (e.g., fees, costs or expenses) for that client since the last statement and which states the balance of that client's funds remaining in the trust account after the withdrawals have been made.

Opinion

All advance fee payments must be deposited into an interest bearing trust account in accordance with Rules 1.15(a)(2) and (f), Minnesota Rules of Professional Conduct. A lawyer may withdraw fees from the trust account when earned provided the client is given: (1) written notice of the time, amount and the purpose of the withdrawal; and (2) an accounting of the client's funds in the trust account. *See In re Lochow*, 469 N.W.2d 91 (Minn. 1991).

Funds paid to a lawyer pursuant to an availability or non-refundable retainer agreement are not required to be deposited into a trust account or held in trust. All availability or non-refundable retainer agreements must be in writing and signed by the client. *Lochow*, 469 N.W.2d at 98. All availability or non-refundable retainer agreements must include a final paragraph immediately above the client signature line which informs the client that: (1) the funds will not be held in a trust account; and (2) the client may not receive a refund of the fees if the client later chooses not to hire the lawyer or chooses to terminate the lawyer's services. All fees paid pursuant to an availability or non-refundable retainer agreement shall be reasonable in amount. The factors to be considered in determining the reasonableness of a lawyer's fee include those set forth in Rule 1.5(a), Minnesota Rules of Professional Conduct.

Adopted: September 13, 1991.

Amended: August 1, 1999.

Repealed: January 26, 2006.