

ETHICS ADVISORY OPINION

22-04

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

SC Rules of Professional Conduct: 1.5, 1.15.

Facts: Due to the nature of a residential real estate practice, Lawyer frequently issues relatively small dollar amount checks from Lawyer's trust account to both clients and third parties. A number of these checks are not timely negotiated, resulting in ongoing trust accounting maintenance costs, including labor costs, stop-payment fees, and mailing fees for uncashed trust account checks that require stop payments and/or reissuance and re-mailing to the payee.

Question Presented: May Lawyer charge an amount to cover administrative costs associated with stop-payment fees and trust account check reissuance and re-mailing fees for checks that remain outstanding for more than thirty (30) days after issuance?

Summary: Yes, Lawyer may charge a check recipient an amount to cover administrative measures undertaken to resolve the outstanding check, which includes expenses incurred such as stop payment fees and postage fees, provided the amount charged is not unreasonable.

Opinion: This inquiry implicates Rule 1.5; however, Rule 1.15, together with the Financial Recordkeeping Rules found in Rule 417, SCACR, and the IOLTA Rules at Rule 412, SCACR, govern the Lawyer's trust accounting obligations and must be considered and complied with as to any lawyer trust accounting issues.

Rule 1.5(a) begins with this fundamental statement, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The foregoing sentence governs this inquiry. Comment 1 to Rule 1.5 provides, in relevant part, "A lawyer may seek reimbursement for the cost of services performed in-house...by charging an amount that reasonably reflects the cost incurred by the lawyer." Here, in conjunction with the administrative measures undertaken by Lawyer in addressing and resolving trust account checks that remain outstanding for more than thirty (30) days, it appears that Lawyer incurs actual expenses to third-parties as well as costs associated with the in-house expenditure of time and effort on the part of Lawyer and his staff. Consequently, Lawyer may charge an amount against the recipient's check to obtain reimbursement for the same, provided the amount charged is not unreasonable. To collect on such amount charged, Lawyer may deduct the amount to be charged from funds that remain in trust after adequate steps have been taken to cancel, void, or otherwise nullify the previously issued check that Lawyer is undertaking efforts to replace. Regardless of reasonableness of the amount

to be charged, deduction of that amount by Lawyer is limited to the total amount of funds that were to be paid by the previously outstanding check to avoid use of funds belonging to another party besides the intended check recipient. Apart from the limit referenced, the Committee specifically avoids opining as to whether any specific amount meets the “not unreasonable” requirement of Rule 1.5(a).