

# New York State Bar Association

## Committee on Professional Ethics

Opinion 758 – 12/10/02

Topic: Retention of Original Trust Account Documents

Modifies: N.Y. State 680 (1996)

Digest: Trust account documents required to be retained in original form should be retained as paper copies where available to lawyer in the ordinary course of business; otherwise, these documents may be retained in electronic form.

Code: DR 9-102(D)

### QUESTION

May the items listed in DR 9-102(D)(8) – “checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips” – be retained by the attorney in electronic form (rather than in the form of paper copies) for the designated seven-year period?

### OPINION

N.Y. State 680 (1996) makes clear that the items referred to in DR 9-102(D)(8) must be retained in their original form; the items listed are “checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.” Opinion 680, which was issued in 1996, assumes that the original form of the enumerated records will be paper hard copies and that the attorney will be in possession of the cancelled checks and deposit slips. Under modern bookkeeping and banking practices, neither of those assumptions is necessarily correct. The checkbook and bank statement may exist as electronic documents in the first instance; paper checks may be replaced by electronic transfers; even if paper checks are used, they may not be returned to the lawyer by the drawee bank after payment – instead, the bank may provide the lawyer with images of the checks or with a mere descriptive listing of checks paid.

In these circumstances, we interpret DR 9-102(D)(8) to require the lawyer to retain the listed items in their original form, be it paper or electronic. If these

items are returned to the lawyer in paper form by the lawyer's bank in the ordinary course of business, the lawyer should retain them in that form. However, the lawyer is not required to undertake extraordinary effort or incur extra expense to obtain these items in paper form.

### **CONCLUSION**

The items listed in DR 9-102(D)(8) – “checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips” – should be retained by the attorney in their original form. Where these items are returned to the lawyer in paper form by the lawyer's bank in the ordinary course of business, the lawyer should retain them in that form. However, the lawyer is not required to undertake extraordinary effort or incur extra expense to obtain these items in paper form.

(24-02)

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