

Ethics: Importance of Proper Trust Account Records

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Today's Review

Authority

Basic Rules

3-Way Reconciliation

Advice to Help

Unclaimed / Unknown Funds

Enforcement

Authority over IOLTA Accounts



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What Goes In, And Does Not Go In, Your Trust Account: Some Examples

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Trust
Account

Operating
Account

Rule 1.5(f)

Payment of fees in advance of services shall be subject to the following rules:

- (1) When the client pays the lawyer a **fee to retain the lawyer's general availability to the client and the fee is not related to a particular representation**, the funds become the **property of the lawyer when paid** and may be placed in the lawyer's operating account.
- (2) When the client pays the lawyer **all or part of a fixed fee or of a minimum fee for a particular representation with services to be rendered in the future**, the funds become the **property of the lawyer when paid**, subject to the provisions of Rule 1.5(f)(5). Such funds need not be placed in the lawyer's trust account but may be placed in the lawyer's operating account.

Rule 1.5(f)

Payment of fees in advance of services shall be subject to the following rules:

(3) When the client pays the lawyer **an advance deposit against fees which are to accrue in the future on an hourly or other agreed basis**, the funds remain the **property of the client** and must be placed in the **lawyer's trust account**. The lawyer may transfer these funds **as fees are earned** from the trust account to the operating account, **without further authorization** from the client for each transfer, but must render a **periodic accounting** for these funds as is reasonable under the circumstances

Rule 1.5(f)

Payment of fees in advance of services shall be subject to the following rules:

(4) When the client pays the lawyer **an advance deposit to be used for costs and expenses**, the funds remain the **property of the client** and must be placed in the **lawyer's trust account**. The lawyer may expend these **funds as costs and expenses accrue, without further authorization** from the client for each expenditure, but must render a **periodic accounting** for these funds as is reasonable under the circumstances.

Rule 1.5(f)

Payment of fees in advance of services shall be subject to the following rules:

5) When the client pays the lawyer a fixed fee, a minimum fee or a fee drawn from an advanced deposit, and a fee dispute arises between the lawyer and the client, either during the course of the representation or at the termination of the representation, the lawyer shall immediately refund to the client the unearned portion of such fee, if any. If the lawyer and the client disagree on the unearned portion of such fee, the lawyer shall immediately refund to the client the amount, if any, that they agree has not been earned, and the lawyer shall deposit into a trust account an amount representing the portion reasonably in dispute. The lawyer shall hold such disputed funds in trust until the dispute is resolved, but the lawyer shall not do so to coerce the client into accepting the lawyer's contentions. As to any fee dispute, the lawyer should suggest a means for prompt resolution such as mediation or arbitration, including arbitration with the Louisiana State Bar Association Fee Dispute Program.

Other Examples Of Items For Your Trust Account

- Property Relating to the Client (1.15(d))
 - Contingency Monies
- Property Relating to Third Parties (1.15(e))
 - Fee/Property Disputes

Rule 1.15

Safekeeping Property Once It Is In Your Trust Account



Banking

- Maintain an IOLTA account with an authorized financial institution (Rule 1.15 (a))
 - IOLTA program Institution List published annually by the LBF
 - Very specific rules apply to these financial institutions (not included here)
 - Financial Institution to Immediately notify ODC if overdraft or possible overdraft
- Interest Earned to be paid to La Bar Foundation
- If multi-state Firm, IOLTA account is to be maintained at the Primary office
- Complete Records kept for 5 Years after Termination of representation
- Account to be titled “IOLTA Trust Account” (Rule 1.15(g))
- Lawyer to pay for check printing, wire transfer fees, NSF fees or management fees

Client Funds

- Lawyers must Register annually the IOLTA account with the LSBA
- Lawyer funds in account **only** to pay bank service charges and to keep account open
- Deposit Client funds for **unearned** fees and expenses to be incurred (Rule 1.15(c))
- Exception – a single account is allowed if substantial amount with interest earned for the client
- Earned Fees to be paid out as earned: Funds to be disbursed timely
- When receiving or paying funds, Lawyer to notify Client (or third party if custodian)
- Pay out funds only on unresolved claims (Rule 1.15(f))
 - Final Judgment addressing disposition of funds
 - Per Written agreement of Client guaranteeing payment out of those funds
 - Or, per instructions by the client

Issue of
Funds,
Rule
1.15(f)

Checks are not to be issued to Cash

Disbursements out of account to be made with Client approval

Multiple disbursements (plaintiff type), Client to sign & date settlement statement

Checks must be personally signed by a lawyer

ACH or Wire transfer must be directed by a lawyer

Use of Debit Card or ATM withdrawals are not allowed (Rule 1.15(f))

Funds are intended to be held for a short time period

Never pay a law firm expense through the IOLTA Trust account

Accounting

- Client Trust Accounts are to be reconciled at least quarterly
- Detailed Records to be maintained of deposits and funds withdrawals
- *In re Wahlder*, 728 So. 2d 837 (La. 1999), holding that a lawyer has ultimate responsibility for actions of nonlawyer staff
- Lawyer should review the nonlawyer's IOLTA reconciliation each month
- Accounting records of the IOLTA account are to be made available to the client as well as bills for fees and expenses
- Detailed accounting records include bank statements, records of deposits and disbursements (maintained on computer or electronic copy if they can be produced)

Details for Each Client Funds Ledger

- Client Name
- Date of deposit or wired funds
- Source of the funds (name of the sender)
- Check number, date and amount of each check written
- Name of the Payee
- Reason for the check
- Client's balance in the account

Reconciliation

Rule 1.15(f) does not require the lawyer to personally perform the reconciliation

While required to perform at least quarterly, monthly is the norm

Example Law Firm

Trust Account Analysis - Capital One Acct # xxx999999

By Client File Names

Period 1/01/19 - 07/31/19 with some balances from prior periods

Client (or best name)	Balance as of 1/31/19	Balance as of 2/28/19	Balance as of 3/31/19
UNKNOWN CLIENTS	0.00	0.00	0.00
Fred Smith	1,500.00	0.00	0.00
Tom Jones	50,000.00	50,000.00	50,000.00
Trust Book Balance	51,500.00	50,000.00	50,000.00
Bank Balance	51,500.00	50,000.00	51,700.00
Net Difference	0.00	0.00	0.00

Example Law Firm

Trust Account Analysis - Capital One Acct # xxx99999

Client Transaction Details - By Account with Month as running client balances

Client Name	Transaction Date	Check No	Check Cleared	Jan-19	Feb-19
Fred Smith					
XYZ Insurance, deposit			04/20/19		
Settlement, Fred Smith	06/27/19	2094	06/28/19		
Example Law Firm, legal fees	06/30/19	2095	07/02/19		(1,500.00)
Fred Smith				1,500.00	0.00
Tom Jones					
Settlement Funds	01/11/19		01/11/19	300,000.00	
Example Law Firm, legal fees	01/19/19	1632	01/19/19	(45,000.00)	
Co-Counsel XX, legal fees	01/27/19	1635	01/28/19	(45,000.00)	
Tom Jones, settlement	01/21/19	1634	01/21/19	(160,000.00)	
Tom Jones				50,000.00	50,000.00
DEPOSITS Month Totals from above				300,000.00	0.00
Bank Deposits from Bank Statements				300,000.00	0.00
Difference				0.00	0.00
Checks Written by Month from above-month cleared				(250,000.00)	(1,500.00)
Checks written AFTER IOLTA Check				(250,000.00)	(1,500.00)
Difference				0.00	0.00

Advice / Suggestions

- Per Rule 1.15 (c), a contingency fee arrangement must be in writing and signed by the client
- Suggest using different color checks
- Funds are **not** good on date of deposit, even on Certified or Cashier's checks
- The Lawyer is responsible for verifying that "good" funds are available in That Client's account
- Wire transfers are good funds on the same day as received.
- ACH transfers (even from credit card deposits) are not good funds until 7 days.
- Wait 7 days before disbursing funds!
- Please see the LSBA Practice Aid Guide, Section 3 for additional information
- If LawPay or other credit card for deposits, deposit to Operating account and move the funds to Trust
- If a mistake with your deposit, correct within 30 days

Unidentified / Unknown Fund

- Unidentified Funds
 - Perform Reasonable Due Diligence to locate client
 - Keep the funds in your IOLTA account for at least 1 year
- Unclaimed Funds
 - Perform Reasonable Due Diligence to locate client
 - Keep the funds in your IOLTA account for at least 2 years
- Go To “RaisingTheBar.org”, tab to “IOLTA” and download the appropriate form
- Remit the funds to the LBF with the appropriate form

Enforcement

- ODC is the enforcement arm
- Rule 84 – Misconduct can be added for violations or attempted violations
- Commingling of funds, intentional or inadvertent is the most common infraction prosecuted by the ODC, even for a brief instant
- Suspending a lawyer for improper use or creating potential harm to a client is too common
- Retaining earned fees in a client trust account for too long is a violation
- It is a lawyer's responsibility to put proper measures in place for others in firm

Enforcement

- Issuance of NSF checks drawn on a lawyer's trust account creates a suggestion of conversion of client funds.
- A draft or check deposited into a lawyer's trust account should clear the account on which it is drawn prior to any disbursements of the trust funds. The risk that a draft may not clear should not be borne by other clients. For a lawyer to take advantage of a "float" of funds in her trust account belonging to other clients constitutes conversion of the other clients' funds.

Enforcement

- Do not be tempted to “borrow” a client’s funds, no matter how nominal or for how short a period of time. This is a disciplinary violation, even if repaid within the next hour. The possible consequences are not worth the risk.
- Note that all bank overdrafts are reported to the Office of Disciplinary Counsel, subject to [Rule XIX, Section 28.D](#).

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Questions??
