



WSBA

Managing Client Trust Accounts

November 17, 2006

Trina Doty, CPA, CFE

Audit Manager

Washington State Bar Association

2101 4th Avenue, Suite 400

Seattle, WA 98121-2330

(206) 727-8242

e-mail: trinad@wsba.org

TRINA DOTY is the Audit Manager for the Washington State Bar Association. Her main responsibilities include conducting “for cause” audits, overseeing the Association’s random examinations, investigating grievances involving trust account violations, and educating lawyers and their staff as to the trust account rules and regulations. She is a Certified Public Accountant and a Certified Fraud Examiner.

INTRODUCTION

Several resources are available to help you with your trust account. The Washington State Bar Association publishes a booklet called “Managing Client Trust Accounts: Rules, Regulations and Common Sense” which provides some guidance. Information is also available on the WSBA website (www.wsba.org - go to Site Map, then “T” for trust account information). If you have specific trust account questions, you may contact Trina Doty, Audit Manager, Cheryl Heuett, Auditor, or Jim Roberg, Auditor. Other resources include WSBA’s Law Office Management Assistance Program (LOMAP) and Ethics Line [(206) 727-8284].

WASHINGTON TRUST ACCOUNT RULES & REGULATIONS

Rules of Professional Conduct

RPC 1.15A Safeguarding Property

- ❖ All client funds must be held in a trust account
- ❖ Interest earned on trust accounts must benefit either the Legal Foundation of Washington (LFW) or the client, not the attorney
- ❖ Complete and accurate records must be maintained per RPC 1.15B
- ❖ No commingling of lawyer’s personal or business funds allowed
- ❖ Property of clients must be properly labeled and safely kept

RPC 1.15B Required Trust Account Records

- ❖ Records must be maintained for seven years after the events they recorded
- ❖ Copies of all documents supporting deposits and disbursements must be maintained

Enforcement of Lawyer Conduct - Title 15

ELC 15.1 Audit & Investigation of Books and Records

- ❖ Authorizes random examinations of lawyers’ trust accounts
- ❖ Authorizes special audits or examinations upon receipt of information that an attorney may not be in compliance with RPC 1.15A
- ❖ Authorizes full audits if warranted as determined by the Disciplinary Board Chair

ELC 15.2 Cooperation of Lawyer

- ❖ Attorney must cooperate with WSBA examinations, investigations, and audits by providing all evidence, books, records, papers, and explanations requested

ELC 15.4 Trust Account Overdraft Notification

- ❖ Banks have a duty to report overdrafts of trust accounts to the WSBA
- ❖ Attorneys have a duty to self-report overdrafts to the WSBA

ELC 15.5 Declaration or Questionnaire

- ❖ Attorneys must complete & sign declaration of trust accounts annually (stating whether or not the attorney handles client funds, has trust accounts, and if so, the account numbers of such trust accounts)

SETTING UP A TRUST ACCOUNT

DETERMINING WHETHER YOU NEED A CLIENT TRUST ACCOUNT – DISCUSSION OF CLIENT FUNDS AND TYPES OF RECEIPTS

The general purpose of trust accounts is to safeguard client funds. RPC 1.15A requires that funds belonging in part to a client or a third person be initially deposited into the trust account. The purpose of this requirement is to protect client funds from lawyers' creditors or personal financial troubles. You cannot put client funds into your general account, then transfer them to the trust account, because the client funds would be subjected to your creditors for the short period of time they were being run through the account. It is possible that a lawyer's account could be garnished or attached before the client funds were transferred to the trust account or paid to the client. This concept is important in determining which types of receipts go into the trust account.

What types of receipts go in the trust account?

1. Advance fee/cost deposits

Advance fee/cost deposits are funds given to you by clients to pay for future fees and costs. These are costs you have not yet paid, or fees you have not yet earned. Advance fee/cost deposits are considered client funds and must be deposited into the trust account (because the client has the expectation that the funds will be safeguarded until needed). If you handle advance fee/cost deposits, you need a trust account.

2. Settlements

Settlements are considered to be client funds and must be handled in accordance with RPC 1.15A. In addition, RPC 1.5 (c)(3) requires that at the conclusion of a contingent fee matter, the lawyer must provide the client with a written statement showing the settlement amount recovered, the fees and costs, and the portion being remitted to the client. (Don't forget that all contingent fee arrangements must be in writing signed by the client. See RPC 1.5 (c)(1).)

3. Overpayments of bills

It is fairly common for clients to overpay their bills. They may be confused about what they owe, they may have paid an invoice twice, or they may be paying additional money to cover future services (an advance fee deposit). Overpayments are considered to be partially earned (the part covering the outstanding balance) and partially unearned (the overpayment portion). Therefore, overpayments must *initially* be deposited into the trust account. Think back to the theory behind the trust account rules – to protect the client's funds from the lawyer's creditors. Even though it is a hassle to deposit the payment into the trust account, wait for the check to clear, and then withdraw the earned portion, this is what you must do to comply with the rules. The unearned portion may be refunded to the client or, if the client so chooses, held in the trust account to apply to future services.

If you prefer to not deposit the overpayment into the trust account, you can send the payment back to the client and ask him to reissue the check for the proper amount. Doing a split deposit is not allowed under RPC 1.15A.

Keep in mind that the overpayment issue only applies if clients' payments are for more than you are owed in total. Even if they are overpaying one bill, if you have since billed them for additional fees and costs, the overpayment can be applied to any other outstanding bills. It is only if the payment is for more than the total of all outstanding bills that it must first be deposited into the trust account.

4. Lawyer's funds to cover bank charges

Lawyers may place funds that are "reasonable" to cover bank charges in the trust account. What is "reasonable" varies for each lawyer depending on the volume and frequency of bank charges. Some bank charges that the lawyer (rather than the Legal Foundation of Washington) must pay include check printing fees, deposit slip printing fees, wire transfer fees, overdraft fees, credit card transaction fees, and credit card maintenance fees. The interest earned on the account is netted against the monthly maintenance fee. If there is enough interest to cover the fee, the remaining interest is sent to the LFW. If the monthly service charge is more than the interest, the bank CAN charge the attorney for the amount owing. You should not place your own funds in the trust account as a "cushion." Rather, you can only have enough personal funds in the account that is reasonable to cover expected bank fees.

Remember, bank fees that are incurred and chargeable to the attorney must be reimbursed to the trust account in a timely manner. Leaving a deficit in the account and showing it as a reconciling item month after month is not acceptable. As soon as you learn that bank fees have been charged to your account, you should reimburse the account immediately.

5. Refundable Fixed Fees

Some lawyers charge fixed fees for legal services such as drafting a will, filing a bankruptcy, or handling a criminal defense. If a lawyer charges a flat fee for a service, but agrees to refund all or a portion of it to the client if the client terminates the representation before much work is done on the matter, then the funds should be deposited into the trust account. The funds should be withdrawn when the lawyer has earned the fee.

You should treat fixed fees the same way you characterize them to your clients and in your fee agreements. The WSBA looks at how lawyers actually treat fees and deposits, not how they are characterized or labeled.

6. Escrow Funds

Escrow and other funds incident to closing real estate or personal property transactions are considered client funds.

What types of receipts DO NOT go in the trust account?

- 1. Fully earned fees (i.e., payments of bills)**
- 2. Reimbursements for cost advances**

“Cost advance” is generally the term used to describe funds that the lawyer has *advanced* out of his/her own pocket. These costs should be paid out of the general account, *not the trust account*. RPC 1.8 authorizes lawyers to advance “court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter.” When you bill the clients for these costs and they make a full or partial payment, you should deposit the funds into your general account.

Sometimes the reimbursements for costs advanced will be paid from a settlement when it is received. Because part of the settlement belongs to the client, the settlement must be deposited into the trust account. The lawyer’s portion to cover costs and fees is then withdrawn after the settlement check clears the bank.

- 3. Lawyer’s personal or business transactions**

Deposits related to a lawyer’s personal or business transactions shall not be placed in the trust account. The trust account is designed to hold client funds, not funds relating to employees, stockholders, outside counsel, friends, businesses of the lawyer, and personal real estate transactions. Make sure trust account deposits are for your clients and related to a legal matter before depositing the funds into the trust account. Even if the related party is a client, be aware that the conflict of interest rules may also apply (for example, if a firm is handling a real estate transaction for one of its lawyers).

What about credit cards?

Many lawyers mistakenly believe it is acceptable to have only one merchant account, and then transfer the credit card receipts to the appropriate account. This is not acceptable. The credit card receipt must initially go into the proper account, which means you may have to set up two merchant accounts.

Credit card receipts are treated just like checks or cash deposits. You must first identify what type of payment is being made. If the type of payment falls into one of the trust account categories mentioned above, you must set up a merchant account for your trust account in order to accept these receipts. If the credit card receipt is for earned fees, you need to set up a separate merchant account for your general account.

TYPES OF TRUST ACCOUNTS

1. IOLTA (Interest on Lawyers' Trust Accounts)

- If you handle client funds, you need an IOLTA account
- The interest goes to the Legal Foundation of Washington (LFW), a non-profit legal services organization established by the Washington State Supreme Court
- Only an attorney can be an authorized signatory on IOLTAs.

2. Individual Client Trust Account

- You need to open one of these if it would be beneficial to the client and the client wants the interest.
- You need to do a cost/benefit analysis to determine whether it would be beneficial to the client. You look at the amount of money, length of time to be held, interest rate, and costs of establishing and maintaining the account. If you determine it would be beneficial to the client to have a separate account, you should then consult with the client to see if they want the interest.
- The interest goes to the client. The account is set up in the client's tax ID number, but the attorney is the signer on the account.

3. Pooled Interest Bearing Trust Account

- This is where the interest is allocated among various clients, either by the bank or by the attorney.
- These accounts are very rarely used due to the complexity of allocating the interest and the extra accounting work involved.
- Only an attorney can be an authorized signatory on these accounts.

SETTING UP AN IOLTA ACCOUNT

1. Select a financial institution.

- Financial Institution must have signed agreement with WSBA to report overdrafts
- See list of approved financial institutions on WSBA's website

2. Fill out a "Request to Establish IOLTA Account" form and take it to your bank.

- Before you do this, you should register your business with the State of Washington and obtain a UBI number.

3. Whose tax ID number do I use?

- IOLTA = LFW's tax ID number
- Individual Client Trust Accounts = client's tax ID #
- Pooled Interest Bearing Trust Account = various clients' tax ID #s

4. Fees to maintain the IOLTA account

- The monthly maintenance fee is netted against the interest earned
- Lawyer pays for check printing, wire fees, credit card fees, etc.

RECOMMENDED PRACTICES FOR MAKING SURE YOUR CLIENT FUNDS ARE PROPERLY HANDLED

DAILY ACTIVITIES

A. Deposits

Identify funds – trust account or general funds

Before you deposit any money that a client or third party gives to you it must be determined if the money belongs to you or to your client. Funds that belong wholly or in part to your client must be deposited to the trust account. Conversely, funds which belong wholly to you or your law firm must never be deposited to the trust account.

How do you decide to whom the money belongs?

One place to start looking is with the initial fee agreement. Except for contingent fee agreements that are required to be in writing, the fee agreement may be written or verbal. Hopefully, if it was a verbal agreement you made some notes somewhere describing your conversation with the client. Refundable deposits (advance fee deposits) are those that will be applied as services are performed or costs are incurred. Any balance remaining at the end of the engagement will be returned to the client. These go in the trust account.

Another place to look would be at the current billings. If the client is paying fees and costs shown on a billing statement, the money should be deposited to your general law firm account. If the client payment is in excess of the amount due for work already performed or costs incurred, the payment must go in the trust account. Then the earned portion is withdrawn from the trust account.

Do not deposit funds to either your trust account or your general operating account until you identify the ownership of the funds.

Deposit Records

Clearly identify the client by name or file number on the deposit slip. Each line of the deposit slip should show the client identity of the deposit items. (See example below.) Keep a copy of the deposit slip for your records. If possible, make a copy of the deposit items to back up the deposit slip. Your copy of the deposit slip becomes a source document and should be retained as part of your accounting records. Should you forget to record the deposit in your check register or cash receipts journal, the copy will be there for reference.

If you receive funds into the trust account by electronic transfer, retain a copy of the bank notification showing the date, payee and amount of the transfer. If necessary, manually identify the transfer by client name.

Martha K. Potter 727-8237 2101 Fourth Avenue Seattle WA 98121	<u>March 17</u> 20 <u>00</u>	639
Pay to the Order of <u>My Lawyer</u>	\$ <u>500.00</u>	
<u>Five hundred and 00/100</u> Dollars		
<u>Legal fees</u>		<u>Martha K Potter</u>

Date	3/17/00	Currency		Check	500.00	Debit	500.00	Credit		Total	1,700.00
My Lawyer's Trust Account											

B. Checks

Determine client funds deposited have been collected

Depending on what you deposit to the trust account, it can take from one day to two weeks or longer for items to clear the banking system and become collected funds. If you make disbursements on uncollected funds, you run the risk of having the item returned after you have disbursed the funds. The returned item may cause an overdraft to your account or create the situation where you have disbursed other client's funds on behalf of a different client.

Do not confuse collected funds with available funds. The Federal Reserve Regulation CC requires financial institutions to make funds available from deposit items before they have cleared. The Federal Reserve explains this as balancing the needs of the consumer for access to their money against the risk to the financial institution of losses from uncollectible items. The only deposit items that are considered collected when deposited are cash and electronic transfers of funds. All other items require some length of time to collect.

If you must disburse funds before the deposit item has cleared you should have in place a written guarantee arrangement with your financial institution whereby any returned item is charged against your funds rather than the trust account. Essentially the bank is agreeing to loan you the

amount of the pending trust deposit should the deposit be returned for any reason. This way, you'll be able to disburse money immediately, and any other client money in the trust account will not be affected.

Have written evidence supporting issuance of each check

When issuing checks on behalf of your clients you should have some documentation to support the disbursement. This documentation may be a vendor invoice, a receipt from the payee, a settlement accounting, or for checks to you, a copy of the billing statement showing entitlement to the funds. These documents should be retained as part of the client file or your accounting files.

Identify checks by client

Identify the client on the face of the check or the remittance advice. If the check covers more than one client, show the breakdown by client and amount. Attach the breakdown to your copy of the check.

My Lawyer	1001
Client Trust Account	
123 Any Street	March 25, 2000
Any Town WA 98XXX	
Pay to the Order of Superior Court Clerk	160.00
One Hundred Sixty and no/100	Dollars
Potter	

NOTE: It is not acceptable to make a check payable to “cash”.

C. Check register

Record deposit by client in the check register

From your copy of the deposit slip you should promptly record the deposit in your cash receipts journal or check register. The entry should show the date of the deposit and the amount belonging to each client.

List checks in the check register chronologically as issued

Record checks in the check register promptly as they are issued. Record the check date, check number, payee, description, client reference, and amount.

Record all other disbursements by client

Sometimes funds are removed from the trust account by wire transfer, phone transfer or other bank transfer. These disbursements must be recorded in the check register as well. List the date of the withdrawal, payee, client reference, description, and amount.

NOTE: withdrawing funds from a trust account through an ATM is not allowed.

Keep a running balance in the check register

Add each deposit and subtract each check from the bank balance as they occur so that you will always know the balance in the trust account.

Check Register							
Date	Ref	Payor/Payee	Description	Deposit	Check	Balance	
3/15/00		Balance forward					2,156.75
3/17/00	Dep	Potter	fee & cost advance	500.00		2,656.75	
		Jones	cost advance	200.00		2,856.75	
		Smith	restitution	1,000.00		3,856.75	
3/18/00	999	Dr. Smith	Brown		55.00	3,801.75	
3/20/00	1000	Title Co.	Thomas		878.00	2,923.75	
3/25/00	1001	Superior Ct. Clk	Potter		160.00	2,763.75	

D. Client ledgers

Post both deposits and checks promptly to client ledgers

Client ledgers are individual client transaction summaries. They contain all deposits and disbursements for a particular client, as well as the current balance on hand in the trust account. Client ledgers may be produced manually by the attorney or automatically by an accounting software program.

Each entry in the check register must be posted to a client ledger. This should be done simultaneously with posting items to the deposit journal or the check register. The client summary should include the same information as is contained in the deposit journal or check register entry. A running balance must be maintained on each client summary.

Maintain one summary for each client with trust account activity

There should be one transaction summary for each client with trust account activity. If you have deposited a nominal amount of your own money to the trust account per RPC 1.15A(h)(1) to pay bank charges, you should also maintain a transaction summary for your own funds.

Client Ledger						
Name:	Martha Potter	Telephone:	(206) 727-8200			
Address:	2101 Fourth Avenue Seattle WA 98121		(206) 727-8237			
Matter		Fee	\$125 per hr/\$500 fee & cost dep			
Date	Ref	Payor/Payee	Description	Deposit	Check	Balance
3/17/00	CR	Martha Potter	advance	500.00		500.00
3/25/00	1001	Sup Ct Clk	filing fee		160.00	340.00

MONTHLY RECONCILIATION

A. Bank reconciliation

Perform reconciliation promptly each month

Each month, as the bank statement is received, you should reconcile your check register balance to the bank statement balance. A reconciliation should be simply a listing of the timing differences between the bank's and your recognition of transactions. For example, you reduce your bank balance when a check is issued. The bank has no record of a check until it is presented for payment. Since checks issued near the end of the month have frequently not been presented for payment, you will usually have a list of outstanding checks on your reconciliation.

The bank reconciliation will also identify items that have been recorded in the wrong amount. If the bank has deposits or checks listed in amounts different than you have in your registers, you should determine if the error is yours or the banks. If the bank has made an error, you should contact it immediately to have it corrected. If the mistake is yours, you should change your records accordingly.

During the reconciliation process, you should note if there are any bank charges to your account. The monthly service fee on the account should be netted against any interest earned and paid to the Legal Foundation of Washington. Check or deposit slip printing charges, wire transfer fees, and credit card fees are your responsibility and should be reimbursed by you.

The final benefit of the bank reconciliation is that you will be able to determine if you have made any mathematical errors. Once you have identified the outstanding items, determined the transaction amounts you recorded agree with the bank, and any fees have been recorded, the only remaining explanation for a difference between the reconciled bank balance and your register is a mathematical error. You must then go back to your last reconciled balance and double check all of your addition and subtraction to determine where the difference is.

Bank Reconciliation			
Date: 3/31/00			
Balance per Bank Statement			<u>4,706.75</u>
Deposits in Transit:	Date	Amount	
	_____	_____	
	_____	_____	+
			<u> </u>
Outstanding Checks:	Ck #	Date	Amount
	<u>1001</u>	<u>3/25</u>	<u>160.00</u>
	<u>1002</u>	<u>3/28</u>	<u>1,000.00</u>
	<u>1003</u>	<u>3/31</u>	<u>40.00</u>
	<u>1004</u>	<u>3/31</u>	<u>1,200.00</u>
	_____	_____	_____
	_____	_____	_____
			<u>- 2,400.00</u>
Balance per Check Register			<u><u>2,306.75</u></u>

Record adjusting items in check register

Make sure you have recorded any adjustments from the bank reconciliation process in your check register and that the running balance has been corrected for both adjustments and any mathematical errors. Then the adjustments should be posted to the client ledgers the same as any other entry to the check register.

Client ledger reconciliation

Prepare a list of client ledger balances

Once the bank reconciliation is complete, you should prepare a list of client ledger balances. The total of this list should agree to the reconciled check register balance.

Reconcile the client ledgers to the reconciled check register balance

If there is a difference between the total of client balances and the check register balance, try to determine the reason. The process is similar to the process you use to reconcile the bank statement balance and your check register balance. You will not have timing differences in that

each transaction should be recorded on the client transaction summary at the same time as it is recorded in the check register. However, you will still have times when items may be recorded in a different amount or not recorded on one document or the other. You must go through the records for the month and identify each difference and correct it. In addition, you may have to check all of the addition and subtraction to determine if any variances are created by mathematical errors.

Produce a final client balance listing that agrees to the reconciled bank balance and keep it for your records.

Client Ledger Reconciliation	
Date: 3/31/00	
Client	Balance
Brown	48.00
Chase	625.00
Long	475.00
Potter	340.00
Thomas	16.75
Wilson	802.00
Total	2,306.75
Balance per Check Register	2,306.75
Difference	0

Review reconciled client balances

On a monthly basis you should review the reconciled client balances. If someone else prepares this report, you should also review the bank reconciliation and make sure it agrees to the client balance listing. The review of client balances should be done to determine if funds should be applied to current billings, refunded to the client, or continue to be held for some future purpose. In addition, you should look at larger balances and determine if you should transfer funds to individual interest bearing account if the amount is sufficient to produce a net positive return to the client.

Written notification of accounting sent to client

After distributing money to your client or upon request, you must provide a written accounting to your client. You may be holding money for your client without any activity. If this is the case, you must still provide a written accounting to your client at least annually.

TIPS ON PROPERLY MAINTAINING A TRUST ACCOUNT

Some things you SHOULD NOT do include the following:

- Don't disburse funds before the corresponding check has cleared the banking system. Know the difference between available funds (what banks follow) and collected funds (what lawyers must follow). The only funds on which you can disburse immediately are cash and wire transfers. Cashier's checks, money orders, bank drafts and certified checks are NOT the same as cash. While it is true that these monetary items usually indicate the funds are good, they must clear the bank and be collected just like regular checks. The key to this is that the funds must have actually been COLLECTED by the bank before disbursement can occur. Know how long you need to wait before you can disburse the funds.
- Don't advance costs out of the trust account. Costs that are advanced are paid by the lawyer, then later paid by the client (through a bill in most cases or out of a future settlement in contingency cases). If the client has no money on deposit with you in the trust account, you should not be advancing costs on his behalf from the trust account.
- Don't deposit fully earned fees into the trust account. Do not use the trust account as your personal checking account! Personal expenditures made from the trust account are not proper. You should withdraw your fees and costs and place them in your general or personal account. Then pay your bills out of that account, not the trust account.
- Don't arbitrarily withdraw funds from the trust account for your fees or costs before you have earned them and properly accounted for them. Don't think, "I will be owed approximately this much money for fees, so I'll take it out now." You can pay yourself only after giving reasonable notice to your client through a bill or something similar. The trust account is not a place from which you can borrow money.
- Don't make deposits or disbursements that are unidentified in your records. You must identify each transaction by client.
- Don't maintain client funds in brokerage accounts or uninsured depositories. With the lower interest rates, many attorneys have tried to find accounts resulting in a higher interest for their clients. One of the most common types of account for this is a sweep account. In a sweep account, the money is held in a brokerage account, but is swept into a regular checking account when a disbursement is presented. Because the checks are written on a regular bank account, many attorneys believe, incorrectly, that these accounts are okay. Two things to check for are: 1) is the account FDIC insured (sweeps tend not to be), and 2) is the account interest-bearing or dividend-yielding.
- Don't make checks payable to "cash".
- Don't withdrawal funds from your trust account through an ATM machine.

Some things you SHOULD do include the following:

- Maintain complete and accurate records. Develop a good system (either manual, computerized, or a combination) and maintain it consistently. The system should be designed to account for all the funds in your trust account at any given point in time (i.e., identify each client's balance in the trust account). Below are some fundamental things you should do to maintain complete and accurate records:
 - Identify all transactions in the trust account to particular clients.
 - Maintain an updated check register.
 - Maintain client ledgers and record all client transactions in them (or set up your computer system to do this for you).
 - Reconcile your check register to your bank statements monthly.
 - Reconcile your client ledgers to your reconciled check register at least monthly.
- Deposit client funds into the trust account. Funds belonging in part to the client and in part to the lawyer should be deposited into the trust account; then the part belonging to the lawyer should be withdrawn. This includes overpayment of bills.
- Utilize written fee agreements to make sure there are no surprises later. (Note that all contingency fee arrangements *must* be in writing.) Word your fee agreements so that they are clear in meaning and easy to understand. Make sure the client understands the fee agreement, including how settlements will be disbursed.
- Communicate with your client! This includes sending out bills that are accurate and can be understood by your clients; providing accurate, written settlement statements to clients at the conclusion of a contingency case; and letting clients know how much money they have in the trust account.

TRUST ACCOUNT MYTHS

1. *“10-day rule”*

The “10-day rule” states that lawyers should wait 10 days before disbursing client funds from the trust account.

You may disburse from the trust account only after the deposit which created the funds has cleared the banking system. The length of time to clear is dependent upon the deposit item. Only cash and wire transfers are considered collected when deposited. All other items (including cashier’s checks) take some amount of time to clear. The time can vary from one day to an unrestricted number of days. Talk to your bank about the clearing time for different types of deposit items (local checks, out of state checks, government checks, insurance drafts, etc.) to set up a reasonable internal schedule for trust account disbursements.

2. *“If in doubt, deposit to trust account”*

This rule states that any unidentified receipts should be deposited to the trust account until the receipt can be properly identified. Lawyers who are going to be out of the office for a few days frequently invoke this rule. This prevents client funds from being deposited to the general account. However, non-client funds may end up being deposited into the trust account.

RPC 1.15A is very clear in stating that only client funds must be deposited to the trust account and lawyer’s funds should never be deposited to the trust account (with limited exceptions, and this is not one of them). Unidentified receipts cannot be deposited into either the trust account or the lawyer’s general account because it is not possible to determine if they belong to the client or to the lawyer. The only option is to hold the check until its purpose can be identified.

3. *“Same day deposit/disbursement”*

One version of the “same day deposit/disbursement rule” states that it is acceptable to deposit client funds to the lawyer’s general account as long as the disbursement checks are written the same day. The second version is that it is acceptable to deposit to the trust account and disburse the same day if the deposit is from a reliable source. This “rule” seems to be used frequently by lawyers who want to disburse funds to clients the same day as they are deposited.

The first version is not correct. While it would appear from the lawyer’s record of the transaction that the funds went in and out of the account the same day, this is not necessarily the case. From the bank’s perspective, funds represented by any outstanding checks are actually on deposit in the account. While some clients may take their check and cash it immediately at the lawyer’s bank, other clients who do not would have their funds on deposit

for some period of time in the lawyer's general account. By being on deposit in the lawyer's general account, the funds lose their identity as belonging to the client and are available to the lawyer's creditors.

The second version is also not true. It does not matter if the attorney has a strong belief that the deposit will clear with no problems. The deposit must clear the banking system *before* disbursements are made. By disbursing the same day, the attorney is essentially borrowing funds from other clients until the related deposit clears (because most likely the client will go cash the check immediately, yet the deposit won't clear the banking system for a few days).

4. ***“Bank charges cannot be incurred in a trust account”***

This rule states that the bank cannot charge to an IOLTA account fees such as wire transfer fees, check printing charges, and credit card discount fees. Some banks will charge these types of fees to the attorney's general account instead.

RPC 1.15A (h)(1)(i) states that “funds to pay bank charges” may be deposited into the trust account “but only in an amount reasonably sufficient for that purpose”. This is one of the *exceptions* to the general rule that only client funds can be deposited into the trust account. Thus, bank charges may be incurred in a trust account. However, the attorney needs to reimburse the charges immediately or keep a *reasonable* amount of “attorney funds” in the account to cover such charges. Account maintenance charges are deducted from the interest paid to the Legal Foundation of Washington. The attorney is responsible for all other fees.

5. ***“Deposit all credit card payments to general as long as client money is transferred before the credit card money is actually received by the bank”***

It often takes a few days for credit card deposits to show in a bank account. Attorneys will say because the money hasn't actually been received yet, there is no violation of RPC 1.15A. They are actually depositing the money directly to the trust account.

All client funds must be deposited directly to the trust account. The form of payment is irrelevant.

RULE 1.15A: SAFEGUARDING PROPERTY

(a) This Rule applies to (1) property of clients or third persons in a lawyer's possession in connection with a representation and (2) escrow and other funds held by a lawyer incident to the closing of any real estate or personal property.

(b) A lawyer must not use, convert, borrow or pledge client or third person property for the lawyer's own use.

(c) A lawyer must hold property of clients and third persons separate from the lawyer's own property.

(1) A lawyer must deposit and hold in a trust account funds subject to this Rule pursuant to paragraph (h) of this Rule.

(2) A lawyer must identify, label and appropriately safeguard any property of clients or third persons other than funds. The lawyer must keep records of such property that identify the property, the client or third person, the date of receipt and the location of safekeeping. The lawyer must preserve the records for seven years after return of the property.

(d) A lawyer must promptly notify a client or third person of receipt of the client or third person's property.

(e) A lawyer must promptly provide a written accounting to a client or third person after distribution of property or upon request. A lawyer must provide at least annually a written accounting to a client or third person for whom the lawyer is holding property.

(f) Except as stated in this Rule, a lawyer must promptly pay or deliver to the client or third person the property which the client or third person is entitled to receive.

(g) If a lawyer possesses property in which two or more persons (one of which may be the lawyer) claim interests, the lawyer must maintain the property in trust until the dispute is resolved. The lawyer must promptly distribute all undisputed portions of the property. The lawyer must take reasonable action to resolve the dispute, including, when appropriate, interpleading the disputed funds.

(h) A lawyer must comply with the following for all trust accounts:

(1) No funds belonging to the lawyer may be deposited or retained in a trust account except as follows:

(i) funds to pay bank charges, but only in an amount reasonably sufficient for that purpose;

(ii) funds belonging in part to a client or third person and in part presently or potentially to the lawyer must be deposited and retained in a trust account, but any portion belonging to the lawyer must be withdrawn at the earliest reasonable time; or

(iii) funds necessary to restore appropriate balances.

(2) A lawyer must keep complete records as required by Rule 1.15B.

(3) A lawyer may withdraw funds when necessary to pay client costs. The lawyer may withdraw earned fees only after giving reasonable notice to the client of the intent to do so, through a billing statement or other document.

(4) Receipts must be deposited intact.

(5) All withdrawals must be made only to a named payee and not to cash. Withdrawals must be made by check or by bank transfer.

(6) Trust account records must be reconciled as often as bank statements are generated or at least quarterly. The lawyer must reconcile the check register balance to the bank statement balance and reconcile the check register balance to the combined total of all client ledger records required by Rule 1.15B(a)(2).

(7) A lawyer must not disburse funds from a trust account until deposits have cleared the banking process and been collected, unless the lawyer and the bank have a written agreement by which the lawyer personally guarantees all disbursements from the account without recourse to the trust account.

(8) Disbursements on behalf of a client or third person may not exceed the funds of that person on deposit. The funds of a client or third person must not be used on behalf of anyone else.

(9) Only a lawyer admitted to practice law may be an authorized signatory on the account.

(i) Trust accounts must be interest-bearing and allow withdrawals or transfers without any delay other than notice periods that are required by law or regulation. In the exercise of ordinary prudence, a lawyer may select any bank, savings bank, credit union or savings and loan association that is insured by the Federal Deposit Insurance Corporation or National Credit Union Administration, is authorized by law to do business in Washington and has filed the agreement required by ELC 15.4. Trust account funds must not be placed in mutual funds, stocks, bonds, or similar investments.

(1) When client or third-person funds will not produce a positive net return to the client or third person because the funds are nominal in amount or expected to be held

for a short period of time the funds must be placed in a pooled interest-bearing trust account known as an Interest on Lawyer's Trust Account or IOLTA. The interest accruing on the IOLTA account, net of reasonable check and deposit processing charges which may only include items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, must be paid to the Legal Foundation of Washington. Any other fees and transaction costs must be paid by the lawyer.

(2) Client or third-person funds that will produce a positive net return to the client or third person must be placed in one of the following unless the client or third person requests that the funds be deposited in an IOLTA account:

(i) a separate interest-bearing trust account for the particular client or third person with earned interest paid to the client or third person; or

(ii) a pooled interest-bearing trust account with sub-accounting that allows for computation of interest earned by each client or third person's funds with the interest paid to the appropriate client or third person.

(3) In determining whether to use the account specified in paragraph (i)(1) or an account specified in paragraph (i)(2), a lawyer must consider only whether the funds will produce a positive net return to the client or third person, as determined by the following factors:

(i) the amount of interest the funds would earn based on the current rate of interest and the expected period of deposit;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client or third person's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients or third persons if the account in paragraph (i)(2)(ii) is used.

(4) As to IOLTA accounts created under paragraph (i)(1), lawyers or law firms must direct the depository institution:

(i) to remit interest or dividends, net of charges authorized by paragraph (i)(1), on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, monthly, to the Legal Foundation of Washington;

(ii) to transmit with each remittance to the Foundation a statement, on a form authorized by the Washington State Bar Association, showing details about the account, including but not limited to the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, nc

then transferred to the trust account. Similarly, credit card payments of earned fees cannot be deposited into the trust account and then transferred to another account.

[9] Under paragraph (g), the extent of the efforts that a lawyer is obligated to take to resolve a dispute depend on the amount in dispute, the availability of methods for alternative dispute resolution, and the likelihood of informal resolution.

[10] The requirement in paragraph (h)(4) that receipts must be deposited intact means that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, commonly known as a split deposit.

[11] Paragraph (h)(7) permits Washington lawyers to enter into written agreements with the trust account financial institution to provide for disbursement of trust deposits prior to formal notice of dishonor or collection. In essence the trust account bank is agreeing to or has guaranteed a loan to the lawyer and the client for the amount of the trust deposit pending collection of that deposit from the institution upon which the instrument was written. A Washington lawyer may only enter into such an arrangement if 1) there is a formal written agreement between the attorney and the trust account institution, and 2) the trust account financial institution provides the lawyer with written assurance that in the event of dishonor of the deposited instrument or other difficulty in collecting the deposited funds, the financial institution will not have recourse to the trust account to obtain the funds to reimburse the financial institution. A lawyer must never use one client's money to pay for withdrawals from the trust account on behalf of another client who is paid subject to the lawyer's guarantee. The trust account financial institution must agree that the institution will not seek to fund the guaranteed withdrawal from the trust account, but will instead look to the lawyer for payment of uncollectible funds. Any such agreement must ensure that the trust account funds or deposits of any other client's or third person's money into the trust account would not be affected by the guarantee.

[12] The Legal Foundation of Washington was established by Order of the Supreme Court of Washington.

[13] A lawyer may, but is not required to, notify the client of the intended use of funds paid to the Foundation.

[14] If the client or third person requests that funds that would be deposited in a separate interest-bearing account instead be held in the IOLTA account, the lawyer should document this request in the lawyer's trust account records and preferably should confirm the request in writing to the client or third person.

[15] A lawyer may not receive from financial institutions earnings credits or any other benefit from the financial institution based on the balance maintained in a trust account.

RULE 1.15B: REQUIRED TRUST ACCOUNT RECORDS

(a) A lawyer must maintain current trust account records. They may be in electronic or manual form and must be retained for at least seven years after the events they record. At minimum, the records must include the following:

(1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:

(i) identification of the client matter for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed, or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new trust account balance after each receipt, disbursement, or transfer;

(2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:

(i) identification of the purpose for which trust funds were received, disbursed, or transferred;

(ii) the date on which trust funds were received, disbursed or transferred;

(iii) the check number for each disbursement;

(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and

(v) the new client fund balance after each receipt, disbursement, or transfer;

(3) Copies of any agreements pertaining to fees and costs;

(4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust account;

(7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;

(8) Copies of all trust account client ledger reconciliations; and

(9) Copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

(b) Upon any change in the lawyer's practice affecting the trust account, including dissolution or sale of a law firm or suspension or other change in membership status, the lawyer must make appropriate arrangements for the maintenance of the records specified in this Rule.

Washington Comments

[1] Paragraph (a)(3) is not intended to require that fee agreements be in writing. That issue is governed by Rule 1.5.

[2] If trust records are computerized, a system of regular and frequent (preferably daily) back-up procedures is essential.

[3] Paragraph (a)(9) does not require a lawyer to retain the entire client file for a period of seven years, although many lawyers will choose to do so for other reasons. Rather, under this paragraph, the lawyer must retain only those portions of the file necessary for a complete understanding of the financial transactions. For example, if a lawyer received proceeds of a settlement on a client's behalf, the lawyer would need to retain a copy of the settlement agreement. In many cases, there will be nothing in the client file that needs to be retained other than the specific documents listed in paragraphs (a)(2)- (8).