



ESSENTIALS OF HANDLING CLIENT TRUST FUNDS

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ISBA Mutual

Agenda

- Basic Requirements of ILRPC 1.15
- Recordkeeping Requirements
- Overdraft Investigations
- Handling Retainers
- Trust Accounts in an Electronic Age
 - Handling Credit Card Payments
 - E-Mail Scams
- Resources

Handling Trust Funds: The Requirements of ILRPC 1.15



When is a Lawyer Required to Hold Property in Trust?

Rule 1.15 **Safekeeping** Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation **separate** from the lawyer's own property...

General Duties Under Rule 1.15

- Duty to Segregate in an IOLTA or Non-IOLTA Client Trust Account: **ILRPC 1.15(a)**
- Duty to Promptly Notify: **ILRPC 1.15(d)**
- Duty to Maintain Complete Records: **ILRPC 1.15(a)**
- Duty to Account: **ILRPC 1.15(d)**
- Duty of Prompt Payment: **ILRPC 1.15(d)**
- Duty to Preserve Disputed Funds: **ILRPC 1.15(e)**

What is a Client Trust Account?

An interest- or dividend-bearing fiduciary account maintained at an eligible financial institution for the deposit of funds held by a lawyer or law firm on behalf of a client.

What Must, Must Not, and May Be Held in a Trust Account?

MUST

- Unearned fees
- Settlement proceeds
- Disputed funds
- Advances for court costs



MUST NOT

- Lawyer's own personal or business funds
- Earned fees*



MAY

Lawyer's own funds necessary to pay bank services charges or maintain minimum balance requirements



Commingling and Conversion



Commingling

Commingling

Three common ways commingling can happen are:

- Leaving earned fees in the trust account
- Depositing a settlement check in the business account
- Hiding personal funds in the trust account



Conversion

Conversion

“any unauthorized use” of funds held in trust.

Conversion

Writing a trust check before deposited funds are available for withdrawal.

Poor accounting records.

“Borrowing” or intentionally taking trust funds.

Every Client Trust Account Must Be:

- ❖ interest-bearing or dividend-bearing;
- ❖ held at an “eligible financial institution;” and
- ❖ opened with interest accruing for the benefit of either:
 - the client (Non-IOLTA account) or
 - the IOLTA program (in Illinois, the Lawyers Trust Fund) (IOLTA)

Non-Interest Bearing Trust Accounts are Prohibited – Rule 1.15(f)

Required Accounting Journals



Five Required Client Trust Account Recordkeeping Journals

- ✓ **Checkbook Register**
- ✓ **Receipts Journal**
- ✓ **Disbursements Journal**
- ✓ **Client Ledger Pages**
- ✓ **Reconciliation Report**

Rule 1.15(a)(1)-(8)

Samples of the above recordkeeping journals can be found on
the ARDC website (www.iardc.org)

#1 Checkbook Register

Rule 1.15(a)(4)

Lists sequentially all trust account deposits and checks and reflects a current and accurate daily balance on the trust account.

CHECK	DATE	PAYEE OR DEPOSIT SOURCE	AMOUNT OF CHECK	AMOUNT OF DEPOSIT	BALANCE
	2/01/10	Joan Smith		\$1,000	\$8,000
1010	3/01/10	Mrs. Johnson	\$1,000		\$7,000

#2 Receipts Journal

Rule 1.15(a)(1)

Lists all receipts chronologically for all deposits in the trust account and identifies the date and source of each receipt

DATE	SOURCE	CLIENT	CASE OR FILE#	DEPOSIT	AMOUNT
2/01/10	Smith Retainer Check #2398	Joan Smith	2011-123	50062	\$1,000
2/05/10	Fed Refund	James Johnson	2009-456	50145	\$2,000

#3 Disbursements Journal

Rule 1.15(a)(1)

Lists all disbursements chronologically and identifies the recipient, purpose and date of each disbursement.

DATE	CHECK #	PAYEE	PURPOSE	CLIENT	CASE or FILE #	AMOUNT
3/1/10	1010	Mrs. Johnson	Ct. Order	James Johnson	2009-456	\$1,000

#4 Client Ledger Page

Rule 1.15(a)(

Name of Client: John Doe

Legal Matter/ Adverse Party: Bob Smith

File/Case Number: 2008-210

Date	Description of Transaction	Payor/Payee	Ref	Funds Paid	Funds Received	Balance
10/15/08	Adv. Fee dep.					\$3,500.00
10/23/08	Attorney's fees					\$3,076.86
11/17/08	Med. records	RCS	#634	67.89		\$3,008.97
11/18/08	Filing fee	County Ct. Clerk	#635	\$210.00		\$2,798.97

#5 Reconciliation Report

TRUST ACCOUNT RECONCILIATION REPORT
TRUST ACCOUNT NO. _____
PERIOD OF _____ to _____

CLIENT LEDGER BALANCES	Amount
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Client _____	\$ _____
Attorney Funds for Bank Charges, if any	\$ _____
Total Client Ledger Balances	\$ _____*
Trust Account Journals Balance <small>(Receipts minus Disbursements)</small>	\$ _____*
Trust Account Checkbook Balance	\$ _____*
BANK STATEMENT BALANCE	\$ _____
Less Outstanding Checks	_____
Less unrecorded interest	_____
Plus In-Transit Deposits	_____
Adjusted Bank Statement Balance	\$ _____*

* These amounts must be identical to each other.

How to Do a Reconciliation

BANK STATEMENT



CHECKBOOK REGISTER



RECEIPTS JOURNAL – THE DISBURSEMENT JOURNAL



SUM OF ALL CLIENT LEDGERS

MUST EQUAL ONE ANOTHER

Common accounting mistakes

- Bank error
- Bank charges
- IOLTA interest
- Mathematical error
- Bank deposit or check not recorded
- Using wrong account



To summarize, trust account records should show at all times:

When money is deposited

How much was deposited

Who the trust money belongs to

When it was disbursed and to whom

What is the current balance

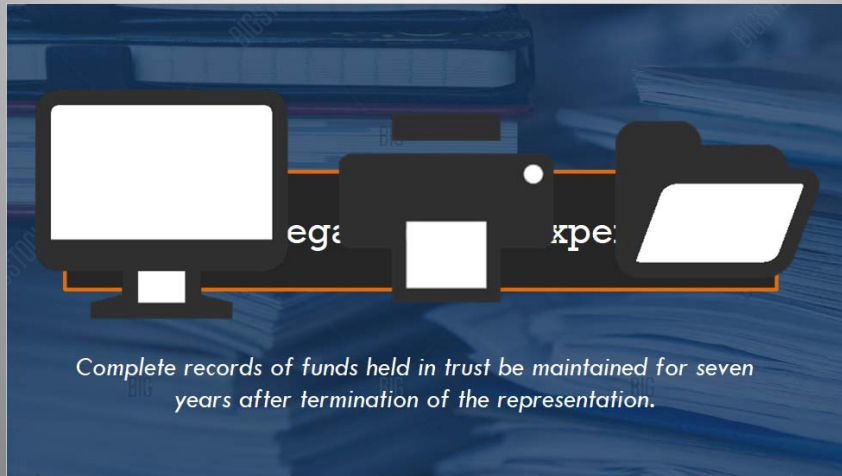
Best practices

- Use different colored checks
- Let deposits clear before writing checks
- Reconcile monthly
- Store all checks in a locked cabinet
- Know the bank's charges and fees



Best practices

- Carefully screen all employees that have or will have access to your client trust account.
- Don't allow one person exclusive control over any part of the accounting system.
- Review your client trust account records periodically throughout the month.
- Select signatories with great care.



Overdrafts: When the Disciplinary Agency Comes Calling

$$2 + 2 = 5$$

Automatic Overdraft Notification: Rule 1.15(h)

- ARDC notified when a client trust account contains insufficient funds (“NSF”).
- Applies regardless of whether a check is ultimately honored.
- Provides an early warning that a lawyer’s trust account systems are deficient or that the lawyer is engaging in conduct that could injure clients or others.

Regulatory Impact of Overdraft Notification 2012-2017

Chart 14: Overdraft Notification Investigations (2012-2017)

<i>Overdraft Notification Investigations</i>	2012	2013	2014	2015	2016	2017	Total
Opened	530	485	370	288	241	265	2,179
Closed	311	363	371	313	242	255	1,855
Formal Complaints Filed	3	5	12	10	6	6	42

Top Ten Reasons for ARDC OD Investigation Closures

1. Trust account check issued against uncollected funds (post-dated check syndrome);
2. Deposited item is returned;
3. There is a failure to make a timely make deposits;
4. Bank fees (e.g., dormant account and check printing charges);
5. Online computer banking errors (Lawyer mistypes information);
6. Telephone banking errors (e.g., teller/backroom personnel credit items into a different account);
7. Using the trust account for personal, not client trust, purposes;
8. Lawyer math errors;
9. Using the wrong check book; and
10. Bank error.

Handling Retainers



Where to Deposit Retainers

- RPC 1.15(c): Funds for fees and expenses not yet earned/incurred (a/k/a “**security payment retainer**”) **MUST** be deposited in the client trust account

EXCEPT for:

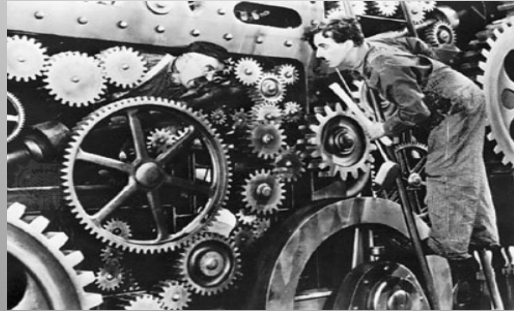
- General Retainer
- Fixed/lump Fee Agreement
- Advance Payment Retainer

See Comments [3B]-[3D]

Types of Retainers Recognized in Illinois *See* Comments [3B]-[3D] to Rule 1.15

- **Security Retainer** = payment to secure fees owed for future services. **Deposit in trust account**
- **General or “Classic” Retainer** = payment to secure lawyer’s availability. **Deposit in the business account**
- **Advance Payment Retainer** (Dowling) = present payment in exchange for the commitment to provide future services. **Deposit in business account**
- **Fixed/Flat Fee Agreements** = a/k/a “lump” sum or “flat” fee, the lawyer agrees to provide a specific service for a fixed amount. **Deposit in business account**

Trust Account Questions in an Electronic Age



Handling Credit Card Payments

- Issues:
 - Commingling
 - Credit card service fees
 - Chargebacks
 - Confidentiality



- ISBA Op. 14-01 (May 2014)

Trust Account Email Scams



- The Way it Works
- Avoiding the Scam
 - Wait for a check, even a cashier's or certified check, to clear before using the money;
 - Provisional credit is NOT sufficient;
 - Be suspicious of client who wants you to act quickly and insist on sending fund by wire transfer; and
 - Verify client's ID and facts by sources independent of what client gives you before accepting the representation.

ARDC Resources





ARDC website under “Publications”

- List of Eligible Financial Institutions
- *Client Trust Account Handbook*
- Sample Recordkeeping Account Journals
- Trust Account Software Resources

Questions about IOLTA & Enrollment Forms

- Lawyers Trust Fund (IOLTA) www.ltf.org



ARDC Ethics Inquiry Hotline

312-565-2600 (Chicago)
217-546-3523 (Springfield)

IL Rules of Professional Conduct & Disciplinary Law

ARDC website at: www.iardc.org

FREE online CLE seminars at ARDC web site

<https://www.iardc.org/CLEseminars.html>