CLIENT TRUST ACCOUNT HANDBOOK (Rev. July 2023)

A Guide to Creating and Maintaining Client Trust Accounts

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I. Introduction - The Importance of Client Trust Accounting.

Preface – Amendments to Rule 1.15 (eff. July 1, 2023)

On March 1, 2023, the rule governing funds or property held in trust (Rule 1.15) as well as the fees rule (Rule 1.5) were amended to simplify the rules and provide clear guidance to lawyers on their ethical duties in handling fees, safekeeping property, and client trust accounts. These amendments took effect on July 1, 2023.

The amendments to Rule 1.15, formerly known as "Safekeeping Property", moves much of the provisions that were in the rule and breaks those requirements into now four separate rules.

New Rule 1.15, now titled "General Duties Regarding Safekeeping Property", retains the admonishment that property or funds held by a lawyer in connection with a representation must be kept separate from the lawyer's own property and adds language to underscore the directive that a lawyer cannot use trust funds or property without authorization. New paragraph (g) adds that cash withdrawals from a trust account are prohibited. The new comments explain the meaning of "conversion" and provide guidance for lawyers receiving funds through electronic payment methods. The descriptions of the common fee retainers, previously found in the Comments to Rule 1.15, are now codified in amended Rule 1.5 Fees under new paragraph (d) and details how such retainers are to be handled - as the lawyer's property or as funds required to be held in trust.

New Rule 1.15A Required Records adds, along with Comments, the required records in maintaining property in trust previously found in Rule 1.15(b)(1)-(8), as well as adding a specific paragraph (c) to lay out how to do a three-way reconciliation.

New Rule 1.15B Trust Accounts and Overdraft Notification details all the requirements for trust accounts including IOLTA accounts, disbursing real estate transaction funds, and overdraft notifications. It also includes instruction on handling unidentified funds.

New Rule 1.15C Definitions for Rules 1.15, 1.15A and 1.15B contains much of the same terminology that was previously contained in prior Rule 1.15(j).

A. A Lawyer's Ethical Obligations

The ethical importance of the creation and maintenance of the client trust account is rooted in the general principle that a lawyer who holds the funds or property of a client or third person in trust, even if for a brief time or intermittently, has the duty as a fiduciary to safeguard and segregate those assets from the lawyer's personal and business assets.

Rules 1.15, 1.15A, 1.15B and 1.15C sets forth the ethical duties a lawyer must fulfill in holding the funds of clients or third persons that are received by the lawyer in connection with

a representation. The duties set forth in Rule 1.15 *et. seq* are intended to eliminate not only the actual loss of client or third person funds but also their risk of loss while in the lawyer's possession. *See In re Bizar*, 97 Ill. 2d 127, 132, 454 N.E.2d 271, 273 (1983). To fulfill the duties set forth in Rules 1.15 through 1.15C, a lawyer's handling of trust funds must be: (1) separate, i.e., client or third person fund must be segregated from the lawyer's own property; (2) accountable, i.e., the lawyer must be easily able to account to the client or third person through updated and accurate records of the funds being held in trust; and (3) identifiable, i.e., the funds being held in trust must be readily recognized as the property of others.

Holding property in trust is a non-delegable, personal fiduciary responsibility as long as that property remains in the lawyer's possession. This responsibility cannot be transferred and is not excused by ignorance, inattention, incompetence or dishonesty of the lawyer or by the lawyer's associates or non-lawyer employees. Although a lawyer may employ others, through adequate training and supervision, to assist the lawyer in fulfilling his or her duties safekeeping trust funds and property, the lawyer is solely responsible for ensuring that the duties imposed by Rule 1.15 *et. seq* are being met.

The need to handle with scrupulous care funds entrusted to a lawyer by a client or third person should be self-evident. Nonetheless, cases continue to arise where practicing lawyers, either inadvertently or intentionally, mishandle trust funds, subjecting clients and third persons to the risk of economic hardship and undermining public confidence in the legal profession. The purpose of this Handbook is three-fold:

1. To describe the rules for handling trust funds and property;

2. To provide a practical guide to the basics of opening and maintaining the client trust account; and

3. To give guidance on certain unresolved questions concerning the handling of trust funds.

The *Handbook* will serve its purpose if it promotes better safeguarding of trust funds, facilitates greater accountability and reduces the number of complaints annually received relating to the maintenance of trust funds. It is not intended to address all the ethical issues that might arise when handling client or third person property. To help you find answers to these and other professional responsibility questions, you may call the ARDC Ethics Inquiry Program at either the Chicago office at: 312/565-2600 or 800/826-8625 or the Springfield office at: 217/546-3523 or 800/252-8048. The program provides general research and guidance on hypothetical questions regarding ethics issues and the Rules of Professional Conduct. We encourage your input regarding this Handbook or any of its provisions by contacting the ARDC at one of the above telephone numbers.

B. Disciplinary Treatment of Management of Trust Property and Funds

The primary objectives of the disciplinary system are to safeguard the public and to maintain the integrity of the legal profession. *In re Neff*, 83 Ill. 2d 20, 413 N.E.2d 1282 (1980).

With regard to client trust accounts, the Illinois Supreme Court in *In re Clayter*, 78 Ill. 2d 276, 278, 399 N.E.2d 1318, 1319 (1980), admonished lawyers of the importance in properly safeguarding trust funds:

> This case presents this court with an opportunity to admonish the bar of the State that it is absolutely impermissible for an attorney to commingle his funds with those of his client or with money he holds as a fiduciary. Unfortunately, many attorneys are either unaware of, or indifferent to, this proscription.

Despite the Court's admonition in *Clayter*, the mishandling of client funds continues to be a problem. The improper handling of client funds is consistently one of the most frequently alleged type of misconduct found in formal complaints filed before the Hearing Board.

In a disciplinary case involving Rule 1.15 violations, the Hearing Board observed:

> Fourteen years after [the Supreme Court's admonition in *Clayter*], we are still contending with attorneys who are either ignorant or scornful of the rule. At some point, something must be done to get the Bar's attention . . . . We hope we are beyond having to discuss the seriousness of commingling, but it bears repeating that the harm to the public is no less if the attorney who commingles does so with a pure heart. The Court observed in *In re Enstrom*, 104 Ill. 2d 410, 417, 472 N.E.2d 446, 449 (1984) that commingled funds may become subject to the claims of an attorney's creditors or otherwise encumbered by operation of law. A tax lien, insolvency, a dissolution of marriage proceeding, or the death or incapacity of the attorney are just a few events that can tie up a client's assets for years, if not permanently deprive him or her of those assets. As the Court said in *In re Enstrom*, 104 Ill. 2d 410, 417, 472 N.E.2d 446, 449 (1984): "The rule is intended to guard not only against the actual loss of the funds but also against the risk of loss." *Citing In re Bizar*, 97 Ill. 2d 127, 132, 454 N.E.2d 271, 273 (1983).
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> Respondent's assertion that the nature of his practice did not require him to have a client trust account does not excuse his failure to comply with Rule 1.15(a) [now Rule 1.15(b)]. Had Respondent deposited the check into a separate, identifiable trust account and then disbursed the proceeds promptly upon the written direction of the parties, this case would never have occurred and the funds would have been safe. The risk of loss of client funds strongly militates in favor of strictly enforcing the rules regarding their safekeeping. (*In re Van Beek*, 93CH 34 (4/15/94 HB Report at p. 16).

The ARDC investigative staff approach every complaint that suggests the mishandling of client funds as a potentially serious case meriting close scrutiny. Such complaints usually require inspection of a lawyer's account records, related client files, and bank records to assure that no impropriety has occurred.

Where the evidence shows misuse of funds, formal charges will be pursued whether or not the client has ultimately been reimbursed. Sanctions for improper handling of client funds range from censure to disbarment. In cases where the evidence suggests dishonest motives or

reckless disregard for the client's or third person's property, disbarment or a lengthy suspension will usually be sought.

II. Overview of a Lawyer's Duties in Holding Property in Trust

Whenever a lawyer holds the property of a client or third person in connection with a representation, Rule 1.15 *et. seq* applies. Rule 1.15 governs the overall requirements and procedures a lawyer must follow while holding that property. Entitled "GENERAL DUTIES REGARDING SAFEKEEPING PROPERTY", Rule 1.15 applies to both funds and tangible property. Since lawyers are most frequently holding funds on behalf of a client, this Handbook will discuss the requirements of Rule 1.15 mainly in the context of holding client funds, i.e., any form of money. *See* definition of "funds" in Rule 1.15C(a). Nevertheless, Rule 1.15~~(a)~~ is clear that the requirements and duties expressed in Rule 1.15 apply with equal force to tangible property held in trust by the lawyer. All property that is the property of clients or third persons, including prospective clients, held by the lawyer should be held with the care required of a professional fiduciary. *See* Comment [3] to Rule 1.15. Also, by using the word "safekeeping" in its title, Rule 1.15 requires the lawyer to do more than just hold property, the lawyer must take adequate precautions to "safekeep" or protect the property from actual or potential loss.

A. General Duties Under Rule 1.15

Rule 1.15 imposes several affirmative duties upon lawyers governing their handling of property held in trust for clients or third persons in connection with a representation. Those duties include:

1. Duty to Preserve the Integrity of Trust Property

The single most important duty in handling trust property is the duty to refrain from using that trust property for any purpose whatsoever, other than as directed by the client or third person on whose behalf the lawyer is holding property in trust. *See* Rule 1.15(a). This includes any unauthorized use by the lawyer of the client's or third person's funds entrusted to the lawyer, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not the lawyer derives any personal gain or benefit. Misappropriation occurs not only when the lawyer uses the trust funds to pay the lawyer's own personal obligations, but also, for example, when the lawyer disburses trust funds to one client before the deposits, which are the source of the disbursement, have either cleared or are at least available for withdrawal, thereby using one client's funds to pay another client. *In re Elias*, 114 Ill. 2d 321, 499 N.E.2d 1327 (1986).

2. Duty to Segregate

A lawyer has a duty to keep client or third person funds or property separate from the lawyer's own property, so that the property is protected from actual or potential loss. *See* Rule 1.15(b).

3. Duty to Notify Promptly

A lawyer has a duty to notify clients or third persons promptly upon the receipt of funds or other property in which the client or third person has an interest. The rationale for this

duty is that since the funds belong to the client or third person, the client or third person must make necessary decisions about what to do with their property. *See* Rule 1.15(e).

4. Duty to Account to Client and Maintain Complete Records

A lawyer has a duty to promptly render a full accounting, upon request, to the client or third person regarding the funds or property held or distributed by the lawyer. *See* Rule 1.15(e). New Rule 1.15A Required Records requires that for each client matter the lawyer maintain complete records of client trust account funds and other property held in trust pursuant to Rule 1.15 for a period of no less than seven years after the end of the representation. *See* Rule 1.15A(a). "Complete records" for a client trust account is set forth in Rule 1.15A(b)(1)-(8). Supreme Court Rule 756(d) also requires all Illinois lawyers, as part of the annual registration process, to disclose whether the lawyer or the lawyer's law firm maintained a client trust account during the preceding year.

5. Duty of Prompt Payment or Delivery of Client or Third Person Property

A lawyer has a duty to promptly pay over or deliver to the client or third person any funds or property that the client or third person is entitled to receive. *See* Rule 1.15(e).

B. Required Records Under Rule 1.15A

A lawyer has a duty to properly maintain complete records of client trust account funds and other property held in trust pursuant to Rule 1.15 for a period of no less than seven years after the end of the representation. *See* Rule 1.15A. In addition, Rule 1.15A specifics what complete records of client trust account funds a lawyer must prepare and maintain.

Records required by Rule 1.15A may be maintained by electronic, photographic, or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

As part of the duty to account, lawyers are also required to prepare and maintain three-way reconciliation reports. A three-way reconciliation is a comparison of the bank statement balance with the balances in the lawyer's records to determine that the figures in the lawyer's records are accurate and in agreement with the bank's figures. The three-way reconciliation report amount must always equal the total sum belonging to all clients and third persons whose money the lawyer is holding in trust. The steps required for a three-way reconciliation are described in Rule 1.15A(c). *See* Page 38.

Finally, Supreme Court Rule 756(d) requires all Illinois lawyers, as part of the annual registration process, to disclose whether the lawyer or the lawyer's law firm maintained a client trust account during the preceding year.

C. Requirements for IOLTA Trust Accounts Under Rule 1.15B

All funds belonging to a client or third person must be deposited into an IOLTA account unless the funds can otherwise earn net income for the client or third person. Net income means interest that exceeds the costs incurred to secure such interest. *See* Rule 1.15B(a). Funds that can earn net income for the benefit of the client or third person must be deposited in a separate, interest- bearing non-IOLTA client trust account, with the client or third person designated as the recipient of net interest generated on that account. Trust accounts that do not earn interest or pay dividends are prohibited. *See* Rule 1.15B(a).

A lawyer must use an IOLTA account established at an eligible financial institution, authorized by federal or state law to do business in Illinois and has complied with the Overdraft Notification provisions in Rule 1.15B(e) and offers IOLTA accounts within the comparable rate, remittance and reporting requirements in Rule 1.15B(c).

A lawyer must use reasonable judgement in determining the appropriate trust account. The factors to be considered when determining whether to deposit client or third-party funds in an IOLTA account or a non-IOLTA client trust account are: (1) The amount of client or third-person funds to be deposited; (2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; (3) The rate of interest at the financial institution where the funds are to be deposited; (4) The cost of establishing and administering a non-IOLTA client trust account for the benefit of the client, including the cost of the lawyer's services, financial institution fees and service charges, and the cost of preparing tax reports; (5) The capability of the financial institution, through sub-accounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client; and (6) Any other circumstances that affect the ability of the client's funds to earn net interest for the client.

D. Definitions

1. Rule 1.15C provides definitions that pertain specifically to Rule 1.15, Rule 1.15A, and Rule 1.15B.

"Funds"
Rule 1.15C(a) defines "funds" as "any form of money, including cash; payment instruments such as checks, money orders, or sales drafts; and electronic fund transfers."

"IOLTA account"
Rule 1.15C(b) defines "IOLTA account" as "a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of client or third-person funds as provided in Rule 1.15B(a) and from which funds may be withdrawn upon request as soon as permitted by law."
"Non-IOLTA client trust account"

Rule 1.15C(c) defines "Non-IOLTA client trust account" as "a separate and identifiable interest- or dividend bearing client trust account established to hold the funds of a client or third person as provided in Rule 1.15B(a). This type of client trust account is not pooled, and the client or third person for whom it is established should be designated as the income beneficiary."

"Eligible financial institution"

Funds held in the client trust account must be maintained at an "eligible financial institution" selected by the lawyer in the exercise of ordinary prudence. *See* Rule 1.15(b). Rule 1.15C(d) defines an "eligible financial institution" as "a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide overdraft notification regarding any type of client trust account as provided in Rule 1.15B(e) and that, with respect to IOLTA accounts, offers IOLTA accounts within the requirements of Rule 1.15B(c)." For a list of eligible financial institutions, please consult the Lawyers Trust Fund of Illinois website at www.ltf.org.

"Properly payable"
Rule 1.15C(e) refers to an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Money market fund", "U.S. Government securities", and "Safe harbor"
Rule 1.15C(f) "Money market funds", paragraph (g) "U.S. Government securities", and paragraph (h) "Safe harbor" define terms pertaining to IOLTA accounts.

"Allowable reasonable fees"
Rule 1.15C(i) "Allowable reasonable fees" for IOLTA accounts are per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

"Unidentified funds"

Rule 1.15C(j) defines "Unidentified funds" as amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

2. Commingling

Commingling occurs when a lawyer either deposits trust funds belonging to a client or third person into the lawyer's own personal or business account or when the lawyer maintains the lawyer's own personal funds in the client trust account, other than as permitted by Rule 1.15(c), such as where the lawyer does not withdraw promptly from the client trust account his earned fees. *See In re Clayter*, 78 Ill. 2d276, 399 N.E.2d

1318 (1980). The Illinois Supreme Court has frequently warned that commingling of a lawyer's funds with trust funds is often the "first step" toward conversion of trust funds. *See Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277, 293-94, 875 N.E.2d 1012, 1022 (2007).

3. Conversion

Rule 1.15(a) prohibits a lawyer's unauthorized use, even temporarily, of funds or property of clients or third persons. The prohibition is conversion, defined by the Illinois Supreme Court in the context of older attorney disciplinary proceedings as "'any unauthorized act, which deprives a man of his property permanently or for an indefinite time.'" *In re Thebus*, 108 Ill. 2d 255, 259, 483 N.E.2d 1258 (1985), quoting *Union Stock Yard & Transit Co. v. Mallory, Son & Zimmerman Co.*, 157 Ill. 554, 563 (1895); Comment [1] to Rule 1.15. Conversion of trust funds occurs when a lawyer uses those funds for a purpose other than that for which they were delivered. Conversion is typically proven when the client trust account is either overdrawn or when the lawyer allows the balance in the client trust account to become less than the sum total of all client and third person funds the lawyer is required to maintain in trust. *In re Ushijima*, 119 Ill. 2d 51, 58, 518 N.E.2d 73, 76 (1987); *In re Cheronis*, 114 Ill. 2d 527, 502 N.E.2d 722 (1986); Comment [1] to Rule 1.15.

III. Identifying and Protecting Trust Property

A. Key Characteristics of Holding Trust Funds and Property

To understand and fulfill the requirements of Rule 1.15, property held in trust must have all of the following three distinct and essential characteristics: 1) separate; 2) accountable; and 3) identifiable. A lawyer cannot discharge those duties unless the way in which the property is held in trust can satisfy all of these requirements. *See* Rule 1.15(b).

1. Separate

Under Rule 1.15(b), property of clients or third persons that is in a lawyer's possession in connection with a representation must be kept separate from the lawyer's own property. A lawyer holding property of clients or third persons in trust should exercise the care required of a professional fiduciary. *See* Comment [3] to Rule 1.15. For funds, the monies must be maintained at an eligible financial institution, as defined in Rule 1.15C(d), and in an interest- or dividend-bearing client trust account that is separate and identifiable from the lawyer's personal and business accounts. A client trust account is either a pooled-funds IOLTA account as defined in Rule 1.15C(b), or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as defined in Rule 1.15C(c). Holding client or third person funds in a safety deposit box, file cabinet or desk drawer is usually not an acceptable way of safekeeping trust funds and has been condemned by the Supreme Court, which has stated that "such a covert method of handling a client's funds is highly unprofessional and one which can only create suspicion and harmful inference." *In re Lingle*, 27 Ill. 2d 459, 463-64, 189 N.E.2d 342 (1963); *In re Ashbach*, 13 Ill. 2d 411, 419, 150 N.E.2d 119 (1958). Due to the danger of conversion or other risk of loss, "it is essential that a client's

money be held in such a manner that there can be no doubt that the lawyer is holding it only for another and that the money does not belong to him personally." *In re Johnson*, 133 Ill. 2d 516, 531, 552 N.E.2d 703, 710 (1989).

Other, tangible property must be identified as such and appropriately safeguarded as required by Rule 1.15(b).

Separation:

- protects the funds from levy by the lawyer's or law firm's creditors, including levy by the IRS (*see In re Enstrom*, 104 Ill. 2d 410, 415, 472 N.E.2d 446, 449 (1984));
- allows the account to be found in the event the lawyer becomes ill, incompetent or dies;
- protects the funds from being considered part of the lawyer's estate in the event the lawyer files for bankruptcy, is going through a marital dissolution proceeding or dies; and
- discourages the lawyer from recklessly or intentionally misappropriating client funds for the lawyer's own personal use.

2. Accountable

The lawyer must be able to make a full and accurate accounting at any time to the client or third person of the funds or property held in trust. This is done through updated and accurate record keeping and Rule 1.15A(b)(1)-(7) specifies what lawyers must prepare and maintain to fulfill this duty. For trust funds, the lawyer MUST be able to tell the client or third person the following:

- exactly how much monies were deposited;
- how monies were disbursed; and
- how much remains in the account for each client or third person on whose behalf the funds are being held.

3. Identifiable

The account must be clearly labeled as a client trust account and should use such designations as "client trust account," "client funds account" or similar words that would indicate the fiduciary nature of the account. *See* Comment [3] to Rule 1.15. Therefore, the account must be opened as a client trust account, with the checks and deposit slips imprinted with that title. Merely opening an account in the lawyer's or law firm's name and treating the account as a client trust account is not enough. *See In re Clayter*, 78 Ill. 2d 276, 281, 399 N.E.2d 1318 (1980) (savings account, which was in the name of respondent who testified that he kept clients' funds in this account and that he had written

"clients trust account" on the face of the passbook, was not a separate and identifiable client trust account).

Identifying the account as a client trust account serves as notice to the world that the funds in this account are not the lawyer's or law firm's personal or business assets and further safeguards the trust funds from any attempts to get at the lawyer's or law firm's assets through the trust fund account.

B. Funds to be Held in the Client Trust Account

1. What MUST be held in a Client Trust Account?

a. All funds belonging to a client or third person entrusted to the lawyer in connection with a representation. *See* Rule 1.15(b) and Comment [2]. *E.g.*, advances for filing fees or costs of retaining an investigator or expert; money to pay the client's creditors; rents collected on behalf of the client.

b. All funds of clients and third persons received by a lawyer to secure payment of legal fees and expenses and to be withdrawn by the lawyer only as fees are earned and expenses incurred and are not received as a fixed fee, an engagement retainer, or a special purpose retainer, as described in Rule 1.5(d)(1), (3) and (5). *See* Comment [2] to Rule 1.15(b). *See* also discussion infra part IV.D.6.

c. All funds or property in the lawyer's possession in which a client or third person has an interest. *See* Comment [2] to Rule 1.15(b). E.g., escrow funds held back in a real estate closing; escrow funds held pending the disposition of property in a dissolution of marriage proceeding.

d. All fund belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm. *See* Comment [2] to Rule 1.15(b). *E.g.*, settlement check.

e. Those funds or property being held by the lawyer or law firm in which two or more persons (one of whom may be the lawyer or law firm) have competing claims to the funds or property and ownership claims that are unresolved. *See* Rule 1.15(f) and Comments [2], [8] & [9] to Rule 1.15. *E.g.*, amounts in dispute where the lawyer is holding funds as an escrowee; a dispute over the amount of a lien asserted by a medical provider on settlement funds; a dispute with a client over the lawyer's fees or expenses.

2. What funds MAY be held in a Client Trust Account?

Funds of the lawyer necessary to pay bank services charges such as the bank's minimum balance requirements to open or maintain the client trust account. *See* Rule 1.15(c).

3. What funds MUST NOT be held in a Client Trust Account?

a. Lawyer's own personal funds.

b. Lawyer's business and investment monies.

c. Fees that have been earned and funds received as a fixed fee, an engagement retainer, or a special purpose retainer, as described in Rule 1.5. *See* Rule 1.15(d)(1), (3) and (5). *See* infra part IV.D.6.

4. What MUST go into an IOLTA Client Trust Account?

All funds belonging to a client or third person that cannot otherwise earn net income for the client or third-person must be deposited into an IOLTA account, which means a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution, with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of client or third-person funds as provided in Rule 1.15B(a) and from which funds may be withdrawn upon request as soon as permitted by law. *E.g.*, most settlement funds are typically considered short-term since they must be promptly paid to the client once the settlement check has cleared.

In determining whether the client or third-person funds can earn net income for the benefit of the client or third person, Rule 1.15B(b) sets forth the following factors that ordinarily the lawyer or law firm would take into consideration:

(1) The amount of client or third-person funds to be deposited;

(2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) The rate of interest at the financial institution where the funds are to be deposited;

(4) The cost of establishing and administering a non-IOLTA client trust account for the benefit of the client, including the cost of the lawyer's services, financial institution fees and service charges, and the cost of preparing tax reports;

(5) The capability of the financial institution, through sub-accounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client; and

(6) Any other circumstances that affect the ability of the client's funds to earn net interest for the client.

Rule 1.15B(b) provides that "[a] lawyer who exercises reasonable judgment in determining whether to deposit client or third-person funds into an IOLTA account or a non-IOLTA client trust account pursuant to this rule will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination." Rule 1.15B(b) also requires the lawyer to review the lawyer's IOLTA account(s) at reasonable intervals to determine whether changed circumstances require further action regarding the deposited client or third-person funds.

C. Trust Property Other Than Cash

The duties of safekeeping property under Rule 1.15 apply both to funds and tangible trust property. *See* Rule 1.15(b). As funds must be kept in a separate, identifiable and interest- or dividend-bearing client trust account, other property must also be appropriately identified as trust property and adequately safeguarded. *See* Rule 1.15(b). When the lawyer receives tangible trust property, as with money held in trust, the lawyer must (1) clearly identify or label it as trust property; (2) keep trust property separate from the lawyer's own property; and (3) take appropriate safeguards to protect and preserve trust property. This means that the lawyer should identify and label the trust property promptly upon receipt and place it in a safe deposit box or other place of safekeeping as soon as possible. The safe deposit box, like the client trust account, should bear a label that clearly identifies it as the repository of property not belonging to the lawyer but property held in trust on behalf of clients, such as "Clients' Safe Deposit Box," and must not contain any of the lawyer's property. *See* Comment [3] to Rule 1.15.

The lawyer must also keep records that sufficiently describe the items that are being held in trust, for whose benefit, and where they are being held. Below is an example of the type of record that could be made with respect to items being held in a safe deposit box:

Trust Safe Deposit Receipt

Received this _____day of _____, 20 ____, by _____

_____

_____

_____

(Description of item(s) being placed into safe deposit box – if items are numbered such as stocks or bonds, specify numbers.)

Item(s) being held in trust for: _____

Firm Name: _____
Client Name: _____
Item(s) being placed into safe deposit box by: _____

Any questions regarding contents should be addressed to: _____

Name and Address of bank where Safe Deposit located _____
Safe Deposit Box ID Number: _____

Anticipated period of time item(s) will be held: _____

IV. Basics of Opening and Operating a Client Trust Account

A. Determining the Kind of Client Trust Account

Under Rule 1.15(b), all funds belonging to a client or third person received in connection with a representation must be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. There are two types of client trust accounts: an IOLTA account governed by Rule 1.15B and defined in Rule 1.15C(b) and a non-IOLTA client trust account, defined in Rule 1.15C(c). A lawyer may have one or more client trust accounts depending on need. Either type of client trust account must be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary care. Rule 1.15B(a) prohibits funds of clients or third persons from being deposited in non-interest or non-dividend-bearing accounts.

Under Rule 1.15B(a), a lawyer must deposit all funds belonging to a client or third person into an IOLTA account unless the funds can otherwise earn net income for the client or third person. Rule 1.15B(b) provides that in determining the type of account to deposit funds for a client, the lawyer or law firm must take into consideration the amount of interest that the funds would earn for a client during the period they are expected to be held, the cost of establishing and maintaining the account, and the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

Rule 1.15B(b) further requires a lawyer to review the lawyer's IOLTA account(s) at reasonable intervals to determine whether changed circumstances require further action regarding the deposited client or third-person funds. However, Rule 1.15B(b) also makes clear that "a lawyer who exercises reasonable judgment in determining whether to deposit client or third-person funds into an IOLTA account or a non-IOLTA client trust account pursuant to this rule will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination." Regardless of the type of account the lawyer decides to deposit funds, it is axiomatic that a lawyer cannot take the interest earned on the funds held in trust. *See In re Kitsos*, 127 Ill. 2d 1, 535 N.E.2d 792 (1989).

B. IOLTA Trust Accounts

Rule 1.15B requires that all funds of clients or third persons which cannot earn otherwise earn net income (interest that exceeds the costs incurred to secure such interest) for the client or third person must be deposited in one or more IOLTA client trust accounts. An IOLTA trust account is defined in Rule 1.15C(b) as " a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of client or third-person funds as provided in Rule 1.15B(a) and from which funds may be withdrawn upon request as soon as permitted by law." "IOLTA" is the acronym for the "Interest on Lawyer Trust Accounts" program run by the Lawyers Trust Fund of Illinois, a non-profit corporation incorporated in 1981 by the Illinois State Bar and Chicago Bar associations.

The IOLTA account is operationally different from a non-IOLTA client trust account in two respects, one, that the taxpayer identification number (TIN) on the account is the Lawyers Trust Fund of Illinois' and not the client's or third person's, the lawyer's or the law firm's and, second, the interest earned on the account is collected by the bank, and is sent, along with the remittance report, to the Lawyers Trust Fund of Illinois.

The net interest or dividends earned on IOLTA client trust accounts is paid directly to the Lawyers Trust Fund of Illinois, which uses the money to fund legal assistance and other programs benefiting the public throughout the state, as approved by the Supreme Court of Illinois.

The Lawyers Trust Fund of Illinois is located at 65 East Wacker Drive, Suite 1900, Chicago, IL 60601 (312) 938-2906 [Main Phone] (312) 938-3091 [Fax] 1-800-624-8962 [Toll Free]. Inquiries concerning the IOLTA program may be directed to the Lawyers Trust Fund of Illinois, at the above address or phone number or you may visit the Lawyers Trust Fund of Illinois website at www.ltf.org.

The decision as to whether funds are capable of earning net income for the benefit of the client or third person rests within the reasonable judgment of the lawyer or law firm and no charge of ethical impropriety or breach of professional conduct will result from the lawyer's or law firm's exercise of reasonable judgment on the basis of that determination. However, a lawyer must review the lawyer's IOLTA account(s) at reasonable intervals to determine whether changed circumstances require further action regarding the deposited client or third-person funds. *See* Rule 1.15B(b).

All IOLTA and non-IOLTA client trust accounts must be maintained only at an "eligible financial institution." *See* Rule 1.15(b). An "eligible financial institution" is defined in Rule 1.15C(d) as "a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide overdraft notification regarding any type of client trust account as provided in Rule 1.15B(e) and that, with respect to IOLTA accounts, offers IOLTA accounts within the requirements of Rule 1.15B(c)." The Lawyers Trust Fund website (www.ltf.org) has a listing of those institutions. To contact the Lawyers Trust Fund of Illinois by phone, please call (800) 624-8962 or (312) 938-2906.

C. Opening the Client Trust Account

1. Form

Rule 1.15(b) sets forth the general requirements of all client trust accounts, IOLTA and non-IOLTA which must be 1) separate and identifiable as a client trust account; 2) interest- or dividend-bearing with the income beneficiary for IOLTA trust accounts being the Lawyers Trust Fund of Illinois and for non-IOLTA client trust accounts the client or third person who will receive the interest designated as income beneficiary; and 3) maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. Generally, the client trust account can be a savings account, checking account or certificate of deposit at a federally insured bank or savings and loan. For IOLTA client trust accounts,

the account must also meet the requirements as set forth in Rule 1.15B(c) and be subject to withdrawal promptly upon request (*e.g.*, a corporate/business checking account, such as a NOW account). *See* Rule 1.15B(c)(3).

2. Location

The account must be maintained in the state where the lawyer's office is located or elsewhere with the consent of the client or third person as provided in Rule 1.15(b). For an IOLTA client trust account located in Illinois, it must be established at an eligible financial institution authorized by federal or state law to do business in the state of Illinois. *See* Rule 1.15B(c)(1). If the client trust account is located outside of Illinois either because the lawyer is licensed and practices in that other jurisdiction or because the client or third person has otherwise directed the lawyer, care must taken that the client trust account complies with that state's trust accounting rules. *See also* ILRPC Rule 8.5(b) (Choice of Law).

In situations where the client or third person wants the client trust account opened in another state, it is advisable to get the consent of the client or third person in writing.

3. Eligible Financial Institution

All client trust accounts, IOLTA and non-IOLTA, must be maintained at an "eligible" financial institution as provided in Rule 1.15(b). Rule 1.15C(d) defines "eligible financial institution" as "a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide overdraft notification regarding any type of client trust account as provided in Rule 1.15B(e)…" With respect to IOLTA accounts, an IOLTA account must be established at an eligible financial institution that is authorized by federal or state law to do business in the state of Illinois; that has complied with the Overdraft Notification provisions of Rule 1.15B(e); and that offers IOLTA accounts within the comparable rate, remittance, and reporting requirements of this paragraph (c) as administered by the Lawyers Trust Fund of Illinois. For a list of eligible financial institutions, please consult the Lawyers Trust Fund of Illinois website at *www.ltf.org*.

4. Know Your Financial Institution

Know the financial institution's charges and fees for maintaining such accounts and obtain a copy of the account agreement with the financial institution. Know the financial institution's schedules for posting and crediting deposits. Know what the federally insured limits are on deposits. At the end of 2010, unlimited FDIC deposit insurance coverage of IOLTA trust accounts was extended to December 31, 2012. Under the FDIC's program, IOLTA accounts are fully guaranteed by the FDIC for the entire amount in the account over and above the $250,000/per client/third person coverage available under the FDIC's general deposit insurance rules. To receive pass-through coverage, (1) the deposit account records generally must indicate the account's custodial or fiduciary nature and (2) the details of the relationship and the interests of other parties in the account must be ascertainable from the deposit account records or from records maintained in good faith and in the regular course of business by the depositor or by

some person or entity that maintains such records for the depositor. If the account receives pass-through coverage, then each owner of funds in the account is insured for his or her share in the account up to $250,000 including any other funds held by or for the owner at the same insured institution. The final rule is available at: *http://www.fdic.gov/news/board/2011Janno2.pdf*. Investigate the financial institution's requirements for opening and maintaining a client trust account such as the minimum balance to earn interest, bank charges to handle the account, check printing charges, and the collection process to clear intrastate and interstate checks and other instruments.

The Lawyers Trust Fund website (*www.ltf.org*) has a section on its site with information for financial institutions describing the IOLTA program, how a financial institution can become certified by the Lawyers Trust Fund, the forms necessary to set up an IOLTA account and how interest is to be reported and remitted.

5. Naming the Client Trust Account

The client trust account must bear the lawyer or law firm's name and include such designations as "Client Trust Account," "Client Funds Account" or similar words which would clearly identify the fiduciary nature of the account. *See* Comment [3] to Rule 1.15(b). Also, it is important for FDIC insurance coverage of the trust funds that the fiduciary nature of the account can be ascertained from the bank's deposit account records. For IOLTA accounts, do not identify the Lawyers Trust Fund of Illinois as designee, trustee or owner of the account. For non-IOLTA client trust accounts, which are opened for the benefit of a particular client or third person, the name of the account would include that fact.

6. Opening an IOLTA Client Trust Account

For an IOLTA account, the lawyer or firm enrolls in the IOLTA program by completing the sign-up forms (Notice to Financial Institution to Establish IOLTA Account and Notice of Enrollment in the IOLTA Program) and submitting the forms to the bank. The enrollment forms instruct the bank to establish an IOLTA account. The taxpayer identification number (TIN) on the account is the Lawyers Trust Fund of Illinois. The IOLTA enrollment forms may be submitted electronically or downloaded from the Lawyers Trust Fund website at *www.ltf.org* or obtained by contacting the Lawyers Trust Fund at (800) 624-8962 or (312) 938-2906.

7. Use Client Trust Account Checks that are Distinguishable from Business Account Checks

Select checks that have the client trust account name on them and are of a different color than those of the operating account so that checks written on the client trust account can be more easily distinguished from checks written on the attorney's operating account. Also, some lawyers maintain their business and personal accounts at a different financial institution from where they have their client trust accounts so that no client trust account moneys will be inadvertently accessed.

8. Select Signatories with Care

Illinois does not prohibit a lawyer from delegating check-signing authority to someone other than the lawyer. However, the lawyer has a non-delegable duty to protect and preserve the funds in the client trust account (*see In re Vrodolyk*, 137 Ill. 2d 407, 560 N.E.2d 840 (1990)) and can be disciplined for failure to supervise subordinates. *See In re Waddy*, M.R. 13084, 95 CH 686 (Ill. 1997).

D. Handling Certain Types of Funds and Property

1. Advances for Costs and Expenses

If a client advances to the lawyer money for costs and expenses to be incurred in the future, the money shall be deposited and maintained in the client trust account until the cost or expense has been incurred. *See* Rule 1.15(d). If a lawyer advances the court costs and expenses of litigation on behalf of a client, which is permitted under Rule 1.8(e), and bills the client for the expense, the funds received by the lawyer would not be deposited in the client trust account since the client is reimbursing the lawyer. Expenses must be reasonable as governed by Rule 1.5(a).

2. Handling Settlement Checks

Settlement checks in contingent fee matters typically will have as payees the client, the lawyer or lawyer's law firm and any third persons who have served a notice of a lien on the proceeds (often a medical provider). The settlement check must be deposited in the client trust account. Funds of clients and third persons include funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm; and funds in which two or more persons (one of whom may be the lawyer) claim interests. *See* Comment [2] to Rule 1.15. Some lawyers may be tempted to deposit the settlement check into the lawyer's business account and write the client's portion of the proceeds from the lawyer's own business account. This is a violation of Rule 1.15. *See In re Elias,* 114 Ill. 2d 321, 333, 449 N.E.2d 1327, 1331 (1986).

When disbursing funds, the proper procedure is to secure the signatures of all the payees and deposit the settlement check into the client trust account. A deposit in the client trust account may not be disbursed until the funds are at least available for withdrawal as determined by the account agreement with the financial institution. If a lawyer writes a check to the client or others for settlement proceeds before the settlement has been credited to the account on the theory that there is other money in the client trust account, if the check is honored it will be drawing on the funds of other clients. This is conversion because it is the unauthorized use of one client's money to pay another client under Rule 1.15(a). *See In re Thebus*, 108 Ill. 2d 255, 260, 483 N.E.2d 1258, 1260 (1985).

3. Real Estate Transactions

Lawyers who act as closing agents for real estate transactions face the dilemma of the commercial necessity of immediately issuing checks from the client trust account on funds that have not even been deposited, much less cleared the banking process. Rule 1.15B(f) permits a lawyer in the closing of a real estate transaction to disburse funds

deposited, but not yet collected, so long as the lawyer deposited the funds into a segregated Rule Estate Funds Account (REFA), established prior to the closing and maintained solely for the receipt and disbursement of such funds, and the lawyer was either acting as a closing agent as prescribed by Rule 1.15B(f)(1) or the instrument for deposit meets the "good-funds" requirements set forth in Rule 1.15B(f)(2). However, while the rule protects a lawyer from any disciplinary consequences in this context, Rule 1.15B(f) states that the disbursing lawyer is responsible for reimbursing the client trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

4. Non-Client and Third Person Claims

The duties of prompt notification, delivery and accounting of trust property also extend to third persons under Rule 1.15(e). Medical providers who have perfected their lien on the settlement funds or a lawyer who has agreed to hold earnest money as an escrowee in a real estate transaction are common examples in which a lawyer has a fiduciary duty to non-clients to protect and preserve funds the non-client is presently or potentially entitled.

5. Disputed Amounts

When there is a dispute over property held in trust, whether it be between the client and a third person or between the client and lawyer, Rule 1.15(f) requires the lawyer to maintain the disputed portion of the funds in the client trust account until the dispute is resolved. Typical examples arise in connection with amounts the lawyer is holding as an escrowee in a real estate transaction or when there is a dispute over the amount of lien asserted by a medical provider or when the client disputes the amount of the fees the lawyer claims are earned. For fee disputes with the client, Comment [8] of Rule 1.15 instructs:

> [8] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds must be promptly distributed. …

For third parties that may have lawful claims to the funds, Comment [9] of Rule 1.15 gives the following guidance:

> [9] Paragraph (f) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate

a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

6. Retainers and Advances for Fees

Effective July 1, 2023, Rule 1.5, entitled "Fees," governs how legal fees and expenses received in advance are to be handled and where they are to be deposited. Rule 1.5(d) identifies five "common" types of fee agreements and prescribes where those fees must be deposited – in the lawyer's business account or in a client trust account:

(1) *Fixed Fees*: A fixed fee, also described as a "flat" or "lump-sum" fee, is a sum of money paid by a client to the lawyer to provide a specific service for a fixed amount. The fixed amount constitutes complete payment for the performance of the described services and may be paid in whole or in part in advance of the lawyer providing those services. A fixed fee may not be deposited in the lawyer's client trust account.

(2) *Contingent Fees*: A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (c) or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(3) *Engagement Retainers*: An engagement retainer, also described as a "general," "classic," or "true" retainer, is a fixed sum of money paid by a client to the lawyer to ensure a lawyer's availability during a specified period of time or for a specified matter. Funds received as an engagement retainer are earned when paid and immediately become property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. A lawyer is compensated separately for any legal services actually rendered by the lawyer. Funds received as an engagement retainer may not be deposited into a client trust account.

(4) *Security Retainers*: A security retainer, also referred to as a "security payment retainer," describes funds paid to the lawyer intended to secure payment of fees and expenses for future services and costs the lawyer is expected to perform or incur. Funds received as a security retainer remain the property of the client and, therefore, must be deposited in a client trust account and kept separate from the

lawyer's own property until the lawyer applies the retainer to charges for services that are actually rendered. The term "security retainer" should be used in any written agreement describing the retainer.

(5) *Special Purpose Retainers*: A special purpose retainer, also referred to as an "advance payment retainer," describes funds paid to the lawyer intended by the client to be present payment to the lawyer in exchange for the commitment to provide legal services in the future and may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. Ownership of a special purpose retainer passes to the lawyer immediately upon payment and is generally the lawyer's property and, therefore, may not be deposited in the lawyer's client trust account. An agreement for a special purpose retainer shall be in a writing signed by the client that uses the term "special purpose retainer" to describe the retainer and must include provisions as set forth in subparagraphs (5)(i) through (v).

While Illinois recognizes the general rule of freedom of contract between lawyers and clients with respect to fee agreements, the "guiding principle" is what is in the best interests of the client. *See* Comment [7] to Rule 1.5. The type of retainer that is appropriate will depend on the circumstances of each case, and any fee agreement should clearly define the kind of retainer being paid. In most cases, the funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account. If the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer. *Id.*

Regardless of what the advance for fees is termed, all fee agreements are subject to the requirement of Rule 1.5(a) that a lawyer may not charge or collect an unreasonable fee and any fees that have not been earned must be refunded to the client pursuant to Rule 1.16(d). *See* Comments [3] and [7] to Rule 1.5. If a fee is not reasonable or has not been earned, it is subject to refund and any provision in an agreement that permits a lawyer to keep a fee without meeting these ethical requirements is unenforceable and a violation of Rule 1.5(c).

Nonrefundable Fee Agreements or Retainers. A client has an unqualified right to discharge a lawyer and, if discharged, the lawyer may retain only a sum that is reasonable in light of the services the lawyer performed prior to being discharged. Any agreement that purports to restrict a client's right to terminate the representation or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees is prohibited under Rule 1.5(c). *See* ABA Formal Opinion 505 (May 3, 2023) *Fees Paid in Advance for Contemplated Services* (provides guidance on handling advances for fees under the Model Rules; lawyers should look to the rules of the jurisdiction (*see* Rule 8.5 Choice of Law) in which the fee will most likely be regulated).

Practice Pointer – All retainer agreements should:

1. be in writing, signed by the client;

2. clearly disclose to the client the basis or rate of fee and nature of the retainer; and

3. indicate where the money will be deposited and how withdrawals will be handled.

For a "special purpose" or "advance payment retainer" agreement (deposit in the lawyer's business account), the agreement must include provisions #1, 2 and 3 above, and include the following five provisions as outlined in Rule 1.5(d)(5):

1. the special purpose for the special purpose retainer and an explanation as to why it is advantageous to the client;

2. that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;

3. the manner in which the retainer will be applied for services rendered and expenses incurred;

4. that any portion of the retainer that is not earned or required for expenses will be refunded to the client; and

5. that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving a special purpose retainer, the agreement must so state and provide the lawyer's reasons for that condition. Other considerations:

Special purpose retainers are to be used sparingly, *i.e.,* those circumstances in which it is in the client's best interests as it relates to the representation. *See* Comment [6] to Rule 1.5.

7. Handling Electronic Payments for Legal Fees and Expenses

The use of electronic payment methods by clients to pay for legal fees and expenses has become increasingly common in the last few years. While the general consensus of authority is that lawyers may use such forms of payment (*see* ABA Formal Ethics Op. 00-419 (approved the use of credit cards to pay legal fees); ABA/BNA Lawyers' Manual on Professional Conduct, sec. 41:601-606), a lawyer who receives funds or property by any means must take reasonable steps to safeguard and segregate client and third-person funds and property pursuant to Rule 1.15.

In accepting electronic methods of payment, a lawyer needs to understand the terms of service of the electronic payment provider including knowing how, when and where funds are transferred, what any associated costs will be, and what level of security and privacy the service provider has in place. Comments [5] and [6] to Rule 1.15 instructs that a lawyer must take reasonable steps to ensure that the use of an electronic payment

method does not result in any commingling with the funds of the lawyer, does not risk the loss of any client or third-person funds, does not compromise the identity of any client or third-person funds, and assures that funds are transferred immediately to an IOLTA account or non-IOLTA client trust account maintained by the lawyer.

With regards to credit cards, ISBA Ethics Opinion 14-01 (May 2014) opines that when a lawyer accepts credit card payments for both earned fees (the lawyer's property) and security retainers (the client's property), the lawyer must designate two accounts - a trust account and a business account - with the credit card company. Some lawyer-friendly credit card processors like LawPay (www.lawpay.com/isba), an ISBA partner vendor, have the ability to direct funds separately into lawyers' business and trust accounts thereby avoiding commingling. A lawyer also must carefully consider how credit card service fees and chargebacks will be addressed and take adequate precautions to protect what the lawyer is required to maintain in trust. A lawyer may charge service fees to clients, according to ISBS Op. 14-01, so long as the "fee is reasonable and…is disclosed to the client, preferably in writing, before or within a reasonable time after commencing the representation, such as in the engagement agreement." Before accepting credit card payments, a lawyer should have a thorough understanding of the agreement with the credit card company.

7a. Handling E-Filing Electronic Payments

Lawyers often pay filing fees from funds advanced by their clients. Since these funds belong to the client, they must be held only in an IOLTA account or a non-IOLTA client trust account established for the benefit of the client. Traditionally lawyers used paper checks to pay filing fees and other court costs from IOLTA accounts and other client trust accounts. Mandatory e-filing renders that practice obsolete and presents the question of which methods of electronic payment may be made from an IOLTA or client trust account. The Illinois Supreme Court ordered the implementation of mandatory e-filing in all Illinois civil cases effective January 1, 2018. Documents in civil cases must be filed electronically through a centralized manager called eFileIL. In addition, filing fees will need to be paid electronically.

Permitted E-filing payment methods are credit cards, debit cards, and E-checks, which are paperless transactions that are cleared through the ACH (Automated Clearinghouse) network. Using these methods of payment from the client trust account is consistent with Rule 1.15. Unlike paper checks, however, electronic payments usually contain less information than a paper check; therefore, lawyers need to be conscientious about make clear contemporaneous record of the date, purpose and payee on each transaction. Also, lawyers need to account for fees for e-filing transactions, including any payment and provider service fees.

Further guidance can be found in *Guide to E-filing and IOLTA Accounts*, *prepared by the Lawyers Trust Fund of Illinois (LTF) in collaboration with the ARDC, available on the LTF website (*www.ltf.org*) or ARDC website.* This guide responds to some of the common questions and concerns of lawyers as they make the transition to electronic payment of filing fees.

8. Withdrawing Earned Fees

A lawyer must promptly withdraw funds held in the client trust account from which the lawyer's fees are to be withdrawn once the fees have been earned and there is no dispute over the amount of funds to be withdrawn. *See* Rule 1.15(f). However, before fees can be withdrawn the lawyer must apprise the client of the withdrawal and give the client a reasonable opportunity to raise any objection. While a lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. Therefore, any disputed portion of the funds must be kept in a client trust account until there is a prompt resolution of the dispute, such as arbitration. The undisputed portion should be promptly distributed. *See* Comment [8] to Rule 1.15.

For contingent fee matters, this is accomplished in the settlement statement required by Rule 1.5(c), which shows the amount that will go to the lawyer. For hourly-fee agreements, where the lawyer has received a security retainer and the funds are being held in the client trust account, the lawyer would send a billing statement indicating the services rendered and the amount the lawyer intends to withdraw from the client trust account unless the lawyer hears otherwise from the client within a reasonable period of time.

In withdrawing the undisputed portion, the lawyer should promptly write a check, payable to the lawyer's law firm, for the full amount of the fee earned. The lawyer must not let earned fees accumulate in the client trust account and withdraw fees on an "as needed" basis; otherwise, commingling occurs, and consequently, the trust funds are put at risk. Also, the appearance may be created that the lawyer is hiding money in the account to avoid creditors or income taxes thereby exposing the client trust account to possible attachment or levy by the lawyer's creditors.

In withdrawing earned fees, the lawyer should make the trust check payable to the lawyer's law firm and indicate in the memo portion of the check the purpose of the payment and the client matter, as well as make the appropriate entries in the checkbook register, client ledger and disbursement journal.

Practice Pointer – The payee on a trust check for earned fees should be made payable to the lawyer's law firm. Trust checks for earned fees made payable to the lawyer's own creditors or made out to cash make it difficult to trace the source and purpose of the payment and could create the appearance that the lawyer is using the client trust account as a personal account, thereby endangering the account's status as a client trust account, or that the lawyer is using client funds for personal purposes.

9. Dealing with Unclaimed or Unidentified Funds

Situations may arise where there is an unclaimed or unidentified amount of funds in the client trust account due to (1) the disappearance of a client or third person before a client trust account check could have been issued; (2) the fact that the client trust account check has yet to be cashed; or (3) there is an unexplained amount of money that cannot be traced as belonging to either a client, a third person or the lawyer. Whatever the situation, the bottom line is that the lawyer is not entitled to take the money.

a. Unclaimed Funds

When the person to whom trust funds are being held disappears before the lawyer has issued a check to that person, the lawyer must first take all reasonable steps to locate that person. *See In re Walner*, 119 Ill.2d 511, 519 N.E.2d 903 (1988). How much effort a lawyer must undertake to find the missing client or third person will vary in each case. Typically, a lawyer would check with the post office to see if the client or third person left a forwarding address. The lawyer would then send a letter to the person's last known address by regular mail and by certified return receipt advising that person that the lawyer is holding their funds and asking that person for direction in disbursing the money. The lawyer may attempt to contact the person's relatives, employers, neighbors and friends, publish notice in places where that person might frequent, use an investigator or check with the Social Security Administration. *See Michigan State Bar Opinion RI-38* (November 20, 1989).

If the client or third person cannot be located and the funds have remained unclaimed for three years, under the Revised Disposition of Unclaimed Property Act, 765 ILCS secs. 1026/1 *et seq*. (eff. 1/1/18), the funds are presumed unclaimed and the lawyer will remit the funds to the Illinois State Treasurer thru the "I Cash" program on the Illinois State Treasurer website at http://illinoistreasurer.gov/; *see* Comment [4] to Rule 1.15B.

The same analysis applies if a client trust account check was issued but had not been cashed. The lawyer should contact the person to whom the check is made payable at the person's last known address, advising that person that the client trust account check has not been cashed and that unless that person advises the lawyer to issue a replacement check, the funds will be presumed to be unclaimed in accordance with the Revised Disposition of Unclaimed Property Act and the funds will be remitted to the Illinois State Treasurer.

b. Unidentified Funds

Sometimes ownership of the funds cannot be traced to either a client, a third person or the lawyer. This could be typically due to mathematical error, faulty bookkeeping or the lawyer failure to withdraw past earned legal fees and now lacks sufficient records to claim. Rule 1.15B(d) establishes a procedure by which

lawyers remit unidentified trust funds to the Lawyers Trust Fund when, in the lawyer's reasonable judgment, further efforts to account for them after a period of 12 months are not likely to be successful as follows:

> A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If, after 12 months from the discovery of the unidentified funds, the lawyer determines that further efforts to ascertain the ownership or secure the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. A lawyer who remits funds in error or subsequently identifies the owner of the remitted funds may make a claim for a refund to the Lawyers Trust Fund. The Lawyers Trust Fund will return the funds to the lawyer after verifying the claim. A lawyer who exercises reasonable judgment in making a determination under this paragraph will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination.

Instruction on remitting unidentified trust funds to the Lawyers Trust Fund are on the Lawyer Trust Fund website (www.ltf.org) at http://ltf.org/lawyers/unidentified-funds/.

Rule 1.15B(d) applies only to trust funds for which no owner can be ascertained. Trust funds where the owner is known but the funds have not been claimed should be handled according to the Revised Disposition of Unclaimed Property Act. *See* Comment [4] to Rule 1.15B and discussion at IV.D.9.a., *supra*.

"Unidentified funds" are defined in Rule 1.15C(j) as "amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm."

10. Bank Charges and Fees

Rule 1.15(c) specifically provides that "[a] lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges or minimum balance requirements on that account, but only in an amount necessary for that purposed." For an IOLTA account, the Lawyers Trust Fund of Illinois will pay certain "[a]llowable reasonable fees," defined in Rule 1.15C(i) as "per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account." *See* Rule 1.1.5B(c)(4)(iii).

Practice Pointer - Any deposits of the lawyer's own funds to cover bank charges and fees must be entered into and accounted for in the trust accounting records that must be maintained. *See* Comment [4] to Rule 1.15.

V. Client Trust Accounting

A. Establishing Accountability

A lawyer has the duty to give an accurate and complete accounting to the client or third person. *See* Rule 1.15(e). In order to fulfill that duty, Rule 1.15A also requires that all complete records of all client trust account funds and other property held pursuant to Rule 1.15 are kept for seven years after the end of the representation. For client trust account funds, the "complete records" that must be prepared and maintained are set forth in some detail in Rule 1.15A. There are various manual and automated accounting systems that are available. In the first instance, many lawyers will consult with an accountant to set up an appropriate accounting system. Whichever accounting method or system is used, it must be one that the lawyer understands, puts into practice, and follows (and that others auditing the lawyer's account can follow).

In establishing an accounting system that meets the requirements of Rule 1.15, the following accounting principles and the specific account and recordkeeping requirements of Rule 1.15A should be kept in mind:

1. Separate Clients Should Be Thought of as Separate Accounts

With an IOLTA client trust account, where the funds of more than one client or third person are being held at any given time (a/k/a pooled), it is important to keep in mind that while funds deposited in the client trust account belong to more than one person, the lawyer must know and account for each client or third person's funds as if each client or third person had a separate account. Client A's funds have nothing to do with Client B's funds. NEVER allow the funds being held for one client or third person to be used, even momentarily, to satisfy the obligations of another client or third person. Separation is obtained by maintaining a separate log or subsidiary ledger sheet for each client or third person. In this way, the lawyer will be able to account exactly for all money received or paid out on behalf of each client or third person at any given time as well as know the total balance of all client and third person funds the lawyer is required to maintain in the client trust account. Also, for FDIC insurance to cover each client or third person's funds in the pooled client trust account up to the federally insured limits, the name and ownership interest of each client or third person must be ascertainable from the client trust account records maintained by the lawyer. *See* www.fdic.gov.

Recordkeeping Requirement: Rule 1.15A(b)(2) requires that for all client trust accounts contemporaneous ledger records must be prepared and maintained for each separate trust client or beneficiary whose funds are being held in trust. The ledger records must show for each separate trust client or beneficiary the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed.

2. You Can't Spend What You Don't Have or Timing is Everything

A deposit in the client trust account cannot be disbursed until the deposited item has cleared the banking process and been credited to the client trust account. The funds in the client trust account cannot be used by anyone other than the client or third person who owns them, and the lawyer is responsible for assuring that the funds are not, even inadvertently, diverted to another.

The rule of uncollected funds is simply: if you write a check from the client trust account after you have deposited a check or draft on behalf of a particular client, but before the deposited monies have cleared the banking process and have been credited to the client trust account, if the check is presented, either it will bounce or you will be drawing on funds belonging to other clients or third persons. This is considered conversion even if the lawyer has no dishonest motive and no client or third person is ultimately harmed. *In re Clayter,* 78 Ill. 2d 276, 283, 399 N.E.2d 1318 (1980) Conversion is defined as any unauthorized use of trust funds that deprives the client or third person of the use of those funds even temporarily. *See In re Lenz,* 108 Ill. 2d 445, 484 N.E.2d 1093 (1985).

For example, do not be tempted to do your client a favor by writing a check to the client for settlement proceeds before the settlement check has cleared on the theory that there is other money in the client trust account. By doing so, you are putting at risk the funds of other clients or third persons. *See In re Reeves*, M.R. 11056, 93 SH 599 (Ill. 1995) (lawyer suspended for, *inter alia*, conversion of client funds where the lawyer would often issue a client a check drawn on the client trust account prior to the deposited settlement check clearing and its proceeds being posted to the client trust account. His clients would frequently cash their checks on the same day the client trust account check was issued and the lawyer's bank would pay out on the check from the funds currently in the account belonging to other clients).

Therefore, it is important to know the financial institution's check clearing procedures and schedules of when funds can be withdrawn. The time it takes for funds to become available after deposit can vary between a day to several weeks depending on the form in which the money is deposited. Ask your financial institution for their schedule of when deposits are posted to the account. Many banks have automated account information systems where you can check the activity on an account.

Automatic Overdraft Notification Rule: Rule 1.15B(e) requires all IOLTA and non-IOLTA client trust accounts be established at financial institutions that have agreed to notify the Attorney Registration and Disciplinary Commission (ARDC) when a client trust account is overdrawn, irrespective of whether or not the instrument is honored. A bounced check drawn on a client trust account can be an early warning that a lawyer is engaging in conduct that could injure clients. When the ARDC receives an overdraft notice, an investigation is opened and the lawyer will be required to explain why and provide proof that the lawyer is complying with the recordkeeping requirements of Rule 1.15C. Experience demonstrates, however, that most lawyer regulatory action under an overdraft notification rule does not result in lawyer disciplinary charges. Instead, the rule helps identify those lawyers who simply need education on managing their client trust accounts.

Practice Tip: Normally, checks will be presumed good and many financial institutions will automatically honor and credit a deposit a certain number of banking days after deposit without actually having received verification from the drawee bank that the funds have been paid. In such cases, the lawyer can safely disburse funds against the check when the lawyer's bank credits the deposit to the account. However, even after an item has been posted to an account, it still may be returned due to insufficient funds, stop payment or improper endorsement and a lawyer may not learn of the dishonor until several days after the item was posted. When a lawyer has any concerns that a check might be dishonored, the safest way to determine that an item has cleared is to call the bank upon which it is drawn to find out if the item has been honored.

Real Estate Transactions: Lawyers who act as the closing agents for real estate transactions face the dilemma of the commercial necessity of immediately issuing checks from the client trust account on funds that have not even been deposited, much less cleared the banking process. Rule 1.15(f) permits lawyers in the closing of a real estate transaction to disburse funds deposited, but not yet collected, so long as the lawyer deposited the funds into a segregated Real Estate Funds Account (REFA), established prior to the closing and maintained solely for the receipt and disbursement of such funds. Also, the lawyer must either be acting as a closing agent as prescribed in subparagraph (f)(1) or the instrument for deposit must meet the "good-funds" requirements set forth in subparagraph (f)(2). However, while the rule protects a lawyer from any disciplinary consequences in this context, the rule may not affect the lawyer's civil liability if any deposit does not clear. *See* Rule 1.15(f)(2).

3. Always Maintain an Audit Trail

Accountability requires that all aspects of the transaction can be traceable from the time of receipt of the funds, up to and including the disbursement of the funds. A "paper" trail consists of the physical or digital record of documented evidence that tracks the sequence of events or transactions. In the typical transaction, where the client gives funds to the lawyer, who then deposits those funds in the client trust account and pays funds out at the direction of the client, the following documents would provide a paper trail for the lawyer of what actions were taken:

- the initial deposit slip or copy of a bank receipt, which would show the date of deposit, the amount of deposit, the name of the client or third person on whose behalf the money has been received, the source of the funds and the date stamp showing the date the deposit was received by the bank;
- the bank statement, which would show that the bank credited the deposit and when it was credited;
- the checkbook stub, which would show when disbursements were made and to whom;

- the disbursement check, which would show the date it was drawn, the amount and the name of the payee, the purpose of the check, the order of negotiation (from the endorsements) and the date deposited for collection;

- the bank statement, which would show the date the client trust account was actually charged for the check; and

- any file documentation that would explain the deposit or the authority for how the money should be distributed, such as a closing statement, a court order or a signed authorization by the client for the disbursement of funds.

Each deposit and disbursement should describe the client or third person and the matter to which it relates. In addition, for each electronic transfer, the journals should include the name of the person authorizing transfer and the financial institution and account number to or from which funds were transferred. *See* Rule 1.15A(b)(1).

Recordkeeping Requirement: Rule 1.15A(b)(1)-(8) requires specific recordkeeping requirements for all IOLTA and non-IOLTA client trust accounts. Rule 1.15A(b)(1)-(8) proscribes the following records:

Maintenance of complete records of client trust accounts shall require that a lawyer:

(1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits to and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited and the date, payee, client matter, and purpose of each disbursement. In addition, for each electronic transfer, the journals should include the name of the person authorizing transfer and the financial institution and account number to or from which funds were transferred;

(2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited; the date of each deposit; the names of all persons for whom the funds are or were held; the amount of such funds; the dates, descriptions, and amounts of charges or withdrawals; and the names of all persons to whom such funds were disbursed;

(3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

(4) maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;

(5) maintain copies of all retainer and compensation agreements with clients;

(6) maintain copies of all bills rendered to clients for legal fees and expenses;

(7) prepare and maintain three-way reconciliation reports of all client trust accounts on at least a quarterly basis; and;

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

Records may be maintained by electronic, photographic, or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

B. Essential Accounting Systems

Rule 1.15 requires lawyers to do more than just deposit client or third person funds into a separate and identifiable client trust account. Under Rule 1.15(e), the lawyer also has the duty to give an accurate and complete accounting to the client or third person concerning how their property was handled by the lawyer. Rule 1.15A(b)(1) through (7) sets forth the accounting records or books listed below that must be maintained for funds held in the client trust account. Trust account records required under the rule can be kept manually or electronically through some type of accounting software program so long as printed copies can be produced and the records are readily accessible to the lawyer. *See* Rule 1.15A(b).

There are various manual and automated accounting systems that are available. In the first instance, many lawyers will consult with an accountant to set up an appropriate accounting system. Basic accounting journals and forms that can be used as guides, as well as a form reconciliation report can be downloaded from the ARDC website at www.iardc.org under the "Client Trust Account" tab. For records kept manually, the lawyer must record each trust account transaction a number of different times. For example, for a trust account check, the lawyer would have to prepare the check, enter the check into the check register, enter the check in the client subsidiary ledger, and enter the check in the disbursement journal.

In comparison, the use of computer software for trust accounting permits the lawyer to only make one computer entry and the software will enter the information into the correct ledgers and journals assuming the software is properly setup that way. This ensures that all the required journal entries are up-to-date and saves time for the lawyer. While a lawyer can purchase software specifically designed for attorney trust accounting, two commonly used, generic accounting programs that can be modified to provide the necessary trust account records are Quicken® and *QuickBooks*. Whichever accounting system is used it must be one that the lawyer understands, puts into practice, and follows (and that others auditing the lawyer's account can follow).

Required Journals: Rule 1.15A(b) requires the following journals must be prepared and maintained, either manually or computerized, for all IOLTA and non-IOLTA client trust accounts:

1. Receipts and Disbursement Journals - Rule 1.15A(b)(1).

These journals provide a chronological record of all deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited and the date, payee, client matter, and purpose of each disbursement. In

addition, for each electronic transfer, the journals should include the name of the person authorizing transfer and the financial institution and account number to or from which funds were transferred.

TRUST ACCOUNT RECEIPTS JOURNAL

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	SOURCE	CLIENT	CASE/FILE NO.	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

TRUST ACCOUNT DISBURSEMENTS JOURNAL

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	CHECK NO.	PAYEE	PURPOSE	CLIENT	CASE/FILE NO.	AMOUNT

2. Client Ledger Pages - Rule 1.15A(b)(2).

This ledger records chronologically for each client or third person for whom funds are held in trust all receipts, disbursements and balances. Without a client subsidiary ledger, the lawyer would likely be unable to know the amount of funds that must be maintained for a given client or third person and to provide an accurate and complete accounting on request. Also, the FDIC insurance rules require that to fully insure each client's or third person's funds being held in the IOLTA client trust account, each client and third person's interests must be ascertainable from the client trust account records. *See* discussion on Page 15-16. Each client subsidiary ledger would include:

- Separate subsidiary ledger pages for each client or third person for whom funds are held in trust.
- Posting transactions (receipts and disbursements) by date, purpose and amount.

- If the client trust account is opened for the benefit of one client or third person or if the account allocates interest to each client or third person, any net interest (accrued interest less service charges) credited to the client or third person.

TRUST ACCOUNT CLIENT LEDGER PAGE

NAME OF CLIENT/THIRD PERSON: _____

LEGAL MATTER/ADVERSE PARTY: _____

FILE OR CASE NUMBER: _____

DATE	DESCRIPTION OF TRANSACTION	PAYOR/ PAYEE	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE

3. Checkbook Register - Rule 1.15A(b)(4).

A client trust account checkbook register is like any other checkbook register. It is used to record deposits and client trust account checks in sequential order and is also used to maintain a running balance. To properly maintain the checkbook register, check stubs, bank statements, records of deposit, and checks or other records of debits must also be maintained.

TRUST ACCOUNT CHECKBOOK REGISTER

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	CHECK NO.	PAYEE OR DEPOSIT SOURCE	CASE/FILE NO.	AMOUNT OF CHECK	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

4. Reconciliation Report - Rule 1.15A(b)(7).

Prepare and maintain "three-way" reconciliation reports of all client trust accounts preferably on a monthly basis but not less than on a quarterly basis, including reconciliations of ledger balances with client trust account balances. Under Rule 1.15A(c), a "three-way" reconciliation consists of the following three steps:

(1) Take the balance in the checkbook register at the end of the reconciliation period and compare it with the adjusted bank statement balance for that period. The bank

statement balance is adjusted by adding deposits not yet credited and subtracting any checks or other debits not yet posted to the account.

(2) Add together the ending balances of all client ledgers.

(3) Subtract the disbursements journal balance from the receipts journal balance by (i) taking the ending figure calculated for the previous period, (ii) adding the receipts journal balance for the period in question, and (iii) subtracting the disbursements journal balance for that period.

All three balances must be the same and equal to the adjusted bank statement (less for outstanding checks & net interest for IOLTA accounts, plus in-transit deposits).

TRUST ACCOUNT RECONCILIATION REPORT

PERIOD OF _____ **to** _____

TRUST ACCOUNT NO.: _____
ACCOUNT NAME: _____
FINANCIAL INSTITUTION: _____

Checkbook Balance:	**$**	_____
Receipts Minus Disbursement Journals Balance:	**(**	_____ **)**
Client Ledger Pages Balance:		_____

Bank Statement

Balance on _____	**$**	_____
Plus outstanding deposits		_____
Less net interest accrued	(	_____)
Less outstanding checks	(	_____)

Adjusted Bank Statement Balance: _____

Required Copies of Account Records: In addition to preparing and maintaining the above journals, Rule 1.15A(b) requires that copies of the following records generated in operating the client trust account be maintained:

- copies of all accountings, to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them - Rule 1.15A(b)(3);

- all check stubs, bank statements, records of deposit, and checks or other records of debits – Rule 1.15A(b)(4);

- copies of all retainer and compensation agreements with clients - Rule 1.15A(b)(5); and

- copies of all bills rendered to clients for legal fees and expenses - Rule 1.15A(b)(6).

Rule 1.15A(a) requires that all of the books and records required under the rule must be maintained for a period of seven years after termination of the representation. The records can be maintained by electronic, photographic or other media provided that printed copies can be produced and the records are readily accessible to the lawyer as set forth in Rule 1.15A(b).

In addition, Rule 1.15A(b)(8) requires a lawyer to make "appropriate arrangements" for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice. *See also* Comment [5] to Rule 1.3 (duty of diligence may require sole practitioner to a successor plan in place in the event of death or disability).

C. Tracking Client Trust Account Funds: Record Entries

1. Depositing Client Trust Account Funds

Deposit client funds in the client trust account promptly upon receipt. Generate the following:

a. Deposit slip (receipt for cash), which identifies client or file for whom deposit is being made;

b. Checkbook register deposit entry;

c. Client subsidiary ledger entry; and

d. Cash receipts journal entry.

Checks payable jointly to the client and the lawyer should be deposited in the client trust account and not endorsed over to the client.

2. Disbursing Client Trust Account Funds

Disbursements to the client or on behalf of the client must be made promptly after the deposit has been credited. Generate the following:

a. Check made payable to the client or third party, with notation of the client matter and purpose in memo portion of the check;

b. Checkbook register disbursement entry;

c. Client subsidiary ledger entry; and

d. Cash disbursements journal entry.

3. Proper Methods For Withdrawing Legal Fees

Before an earned legal fee may properly be withdrawn from a client trust account, the client should be given notice of the nature of the services rendered and the amount of the legal fee proposed to be paid to the lawyer. *See In re Smith*, 63 Ill. 2d 250, 347 N.E.2d 133 (1976). If no objection is received within a reasonable time, the lawyer may withdraw the fee from the client trust account.

Moreover, if no dispute over the fee exists, the lawyer's fees which are justly due and owing, may not remain in the client trust account, but MUST be promptly withdrawn. *See* Rule 1.15(f). If not, the lawyer is commingling his or her own funds with the clients' funds and, as a consequence, is endangering the integrity of the client trust account. *See In re Enstrom*, 104 Ill. 2d 410, 472 N.E.2d 446 (1984).

Disbursements out of the client trust account for earned legal fees should be made payable to the lawyer and not to a third party creditor of the lawyer. Otherwise, a lawyer creates the appearance of using the client trust account for the lawyer's own personal or business expenses. This could potentially subject the client trust account to attachment by the lawyer's creditors, thereby endangering existing client funds and the status of the account as a client trust account.

4. Reconciling Account Records with Monthly Bank Statements

Rule 1.15A(b)(7) requires that a "three-way" reconciliation be made for all IOLTA and non-IOLTA client trust accounts, on at least a quarterly basis.

Rule 1.15A(c) sets forth the three steps that consist of a "three-way" reconciliation as follows:

> (1) Take the balance in the checkbook register at the end of the reconciliation period and compare it with the adjusted bank statement balance for that period. The bank statement balance is adjusted by adding deposits not yet credited and subtracting any checks or other debits not yet posted to the account;
>
> (2) Add together the ending balances of all client ledgers; and
>
> (3) Subtract the disbursements journal balance from the receipts journal balance by
>
> (i) taking the ending figure calculated for the previous period,
>
> (ii) adding the receipts journal balance for the period in question, and
>
> (iii) subtracting the disbursements journal balance for that period. All three balances (figures from the check register, client ledgers, and receipts/disbursement journals) must agree with the adjusted bank statement balance.

The figures for Step 1, 2, and 3 (figures from the check register, client ledgers, and receipts/disbursement journals) must be equal and agree with the adjusted bank

statement balance. If they are not, look for entries that do not match or addition or subtraction errors, until all three figures are the same.

5. Interest and Bank Costs

a. For IOLTA accounts, interest credits are paid by the financial institution directly to the Lawyers Trust Fund of Illinois, and certain legitimate and reasonable bank costs are paid by the Lawyers Trust Fund directly to the bank. If your monthly bank statement reflects interest credited but not yet paid out to the Lawyers Trust Fund or bank charges not yet paid by the Lawyers Trust Fund, you should adjust the balance shown on the monthly bank statement accordingly. The interest and the charges should not be entered on your ledgers, cash journals, or checkbook register.

b. For non-IOLTA client trust accounts, where the interest is credited to individual clients or beneficiaries, after bank costs are deducted, you will not adjust the balance shown on the bank statement, but you must add the net interest to your client subsidiary ledger pages, your cash receipts journal, and your checkbook register.

6. Monthly client trust account reconciliation.

The bank statement balance must reconcile with the other ledger balances as follows:

a. Take the balance shown on the monthly bank statement. (For IOLTA accounts, that balance may have to be adjusted as discussed in (5)(a) above.)

b. Add any deposits not credited on the bank statements.

c. Subtract checks not debited on the bank statement.

d. The balance should be equal to the three balances described in Step 1, 2 and 3 -- the client subsidiary ledger pages balance, the cash disbursements and receipts journals balance, and the checkbook register balance.

Practice Tips:

- **Have an Accounting System** - You must have a way of accounting to a client or third persons as to how their funds were handled. Rule 1.15A does not prescribe any particular accounting system or method but does mandate that specific recordkeeping be performed and specific records for client trust accounts be maintained as set forth in Rule 1.15A(b)(1)-(8). Some common accounting record systems are discussed below. However, you must have a system that you and anyone else looking at your records can understand. If you don't know how to set up an accounting system, consult with an accountant. *See In re Sebela*, M.R. 10859, 92 CH 577 (Ill. 1995) (conversion of client funds occurred because lawyer had no accounting system, withdrew his fees on an "as needed" basis based on his memory and, consequently, paid himself more than what he was entitled).

- **Reconcile Monthly** - You should have a practice where you reconcile all of your accounts on a monthly basis, regardless of whether you do your own accounting or you have someone assisting you. if you fail to reconcile on a regular basis, you may not be aware of bank errors, miscalculations and employee embezzlement. Rule 1.15A(c) requires that "three-way" reconciliations (the three steps of which are described in paragraph (c)) be performed for IOLTA and non-IOLTA client trust accounts on at least on a quarterly basis and that records of those reconciliations be maintained. However, since most financial institutions require notification of any errors less than 90 days after a statement is issued, you run the risk of waiving your right to contest any bank errors and you could be held financially responsible for any discrepancies.

- **Don't Share Client Trust Accounts With Lawyers Not in the Same Firm** - A lawyer has a non-delegable fiduciary duty to safeguard client or third person property entrusted to the lawyer during a representation. If you are in a law firm, each lawyer in the law firm need not open up a separate client trust account for each lawyer in the firm. However, you must not allow lawyers that are not in your law firm to deposit trust funds into the law firm's client trust account; you are responsible for those funds. Conversely, if you deposit funds entrusted to you by a client or third person for safekeeping, you cannot deposit those funds into another lawyer's client trust account.

- **Do Not Withdraw Your Fees in the Form of Trust Checks Payable for Your Own Personal Expenses** - Only client related charges, such as court costs, expert witness fees or lawyers' fees, may be paid out of the client trust account. The lawyer should not withdraw earned fees from the client trust account in the form of trust checks payable to the lawyer's own creditors. An earned fee must be withdrawn promptly from the client trust account and deposited in the lawyer's own personal or business account. For example, a trust check made payable to the gas or electric company to pay the lawyer's gas or electric bill creates the appearance that the lawyer is using the client trust account as a personal account and thereby endanger its status as a client trust account, or that the lawyer is using client funds for personal purposes.

- **Withdraw Your Fees Promptly from the Client Trust Account Once You have Earned Them** - When a fee has been earned, the lawyer must promptly write a check, payable to the lawyer or the lawyer's law firm, for the full amount of the fee earned. The lawyer must not let earned fees accumulate in the client trust account and withdraw fees on an "as needed" basis; otherwise, commingling occurs and, consequently, the trust funds are put at risk. Also, the appearance is created that the lawyer is hiding money in the account to avoid creditors or income taxes. In which case, the client trust account could be subject to attachment or levy by the lawyer's creditors.

- **No Cash or ATM Withdrawals** – Rule 1.15(g) prohibits withdrawals from a client trust account must be made only by check payable to a named payee

or by electronic transfer and not by cash. No check may be made payable to "cash." No withdrawal of cash may be made from a deposit to a client trust account or by automated teller or cash dispensing machine.

- **Let Deposits Clear Before Writing Checks** - The important thing to remember is that disbursing funds before the deposit has cleared puts the funds of other clients or third persons at risk of loss, thereby resulting in conversion. Also, if there are insufficient funds at the time the trust check is presented for payment, the trust check will be dishonored and the financial institution will report the overdraft to the ARDC, irrespective of whether or not the trust check is honored. *See* discussion "You Can't Spend What You Don't Have or Timing is Everything" on Page 29.

- **If a Mistake Happens, Don't Panic** - If you find that an error occurred in making calculations or deposits, don't panic. Take remedial action. Call your financial institution. Failure to act not only may compound the problem but failure to notify the financial institution of any errors, forgeries, unauthorized signatures or alterations within a certain period of time may waive all claims that you may have against the financial institution regarding these problems.

7. Retention of Records

Rule 1.15A Required Records sets forth the "complete records" of all client trust account funds and other property maintained in trust pursuant to Rule 1.15 that must be kept by the lawyer for a period of seven years after termination of the representation. "Complete records" for all trust funds held in IOLTA and non-IOLTA client trust accounts that must be maintained is set forth in Rule 1.15A(b)(1)-(8). Rule 1.15A(b) expressly allows the records required under the rule to be maintained by electronic, photographic, or other media provided that printed copies can be produced, and the records are readily accessible to the lawyer.

Also, under Supreme Court Rule 769(2) Maintenance of Records, all financial records related to a lawyer's practice of law must also be maintained for a minimum of seven years after the fiduciary obligation ends. Financial records include, but are not limited to, bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports. Under the rule, the records maintained can be originals, copies, or computer-generated images. If a computer accounting software package is used for the client trust accounting, to guard against the potential loss of such computer-stored data, experts suggest that you print out a hard copy of the accounting records on a monthly basis. Also, it is suggested that the data is backed up on a regular basis.

VI. Sample Client Trust Account Transactions, Trust Account Trial Balances and Trust Account Reconciliation

A. Sample Client Trust Account Transactions

Julia Dolan is a sole practitioner. On January 31, 2023, the bank statement balance for Dolan's IOLTA client trust account is $10,241.66. These funds are identified as follows:

a. $10,000 represents escrow money which was deposited into Dolan's client trust account on January 1, 2023, on behalf of her client Ron Roper.

b. $200 represents funds of Julia Dolan which were deposited into the client trust account in order to maintain a minimum balance necessary to avoid bank service charges.

c. $41.66 represents the interest credited for the month of January which has yet to be paid by the bank to IOLTA.

The only client subsidiary ledger pages with outstanding balances on January 31, 2023, are those for Roper and Dolan. Because this is an IOLTA account, the interest figure ($41.66) does not appear on the client subsidiary ledger.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **Ron Roper**
Legal Matter/Adverse Party: **Real Estate Escrow-Hadley**
File or Case Number: **10-161**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
01/01/23	Deposit-Escrow			$10,000	$10,000

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **Julia Dolan, Attorney at Law**
Legal Matter/Adverse Party: **None**
File or Case Number: **None**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
01/01/09	Minimum balance amount to avoid service charge.			$200	$200

On February 1, 2023, Joan Smith, a client, gives Dolan a $1000 retainer. The fee agreement with Smith provides that the retainer is a security retainer to be placed in the client trust account and withdrawn as earned.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **Joan Smith**
Legal Matter/Adverse Party: **Marital Dissolution**
File or Case Number: **10-1057**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
02/01/23	Retainer-Smith			$1,000	$1,000

Cash Receipt Journal
Client Trust Account No. 123-456
February 2023

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/23	Smith - Check #2398	Joan Smith	50062	$1,000

On February 5, 2023, client James Johnson is ordered to endorse his federal and state tax refunds of $2,000 and deposit them into Dolan's client trust account. The refunds will be distributed upon further order of the court.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **James Johnson**
Legal Matter/Adverse Party: **Dissolution**
File or Case Number: **09-1058**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
02/05/23	Red/State Refund			$2,000	$2,000

James Johnson Continued

Cash Receipt Journal
Client Trust Account No. 123-456
February 2023

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/23	Smith - Check #2398	Joan Smith	50062	$1,000
02/05/23	Fed/State Refund	James Johnson	50145	$2,000

On February 13, 2023, Dolan receives a settlement check in the amount of $15,000 from Ace Insurance Company for her client Bill Grey. Dolan prepares a written settlement statement, in accordance with the terms of the written contingent fee agreement and Rule 1.5(c):

Personal Injury
Settlement Statement
Bill Grey vs. Ace Insurance Co.

Settlement Amount from Ace Insurance Co.		$ 15,000.00
Court Reporter Inc.	$ 400.00	$
Process Server Inc.	$ 60.00	$
Dr. Bailey, Expert	$ 340.00	$
Total Expenses		$ 800.00
Attorney Fees (1/3 gross rec.)		$ 5,000.00
Amount Due Bill Grey		$ 9,200.00

On February 20, 2023, Dolan makes the disbursements in accordance with the settlement statement after allowing seven days for the insurance company check to clear.

Name of Client: **Bill Grey**
Legal Matter/Adverse Party: **Personal Injury-Ace Ins. Co.**
File or Case Number: **05-1002**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
02/13/23	Ace Insurance Co.			$15,000	$15,000
02/20/23	Court Reporter Inc.	1005	$400		$14,600
02/20/23	Process Server Inc.	1006	$60		$14,540
02/20/23	Dr. Bailey	1007	$340		$14,200
02/20/23	Bill Grey	1008	$9,200		$5,000
02/20/23	Julia Dolan-Fees	1009	$5,000		$0

Cash Receipt Journal
Client Trust Account No. 123-456
February 2023

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/23	Smith - Check #2398	Joan Smith	50062	$1,000
02/05/23	Fed/State Refund	James Johnson	50145	$2,000
02/13/23	Ace Insurance Co.	Bill Grey	62001	$15,000

Cash Disbursements Journal
Client Trust Account No. 123-456

February 2023

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/23	1005	Court Reporter Inc.	Costs	Grey	$400
02/20/23	1006	Process Server Inc.	Costs	Grey	$60
02/20/23	1007	Dr. Bailey	Costs	Grey	$340
02/20/23	1008	Bill Grey	Settlement	Grey	$9,200
02/20/23	1009	Julia Dolan	Fees	Grey	$5,000

On February 21, 2023, the court orders that $1,500 be paid to Johnson's wife from the escrowed income tax refunds.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **James Johnson**
Legal Matter/Adverse Party: **Dissolution**
File or Case Number: **03-1058**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
02/05/23	Red/State Refund			$2,000	$2,000
02/21/23	Mrs. James Johnson	1010	$1,500		$500

Cash Disbursements Journal
Client Trust Account No. 123-456

February 2023

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/23	1005	Court Reporter Inc.	Costs	Grey	$400
02/20/23	1006	Process Server Inc.	Costs	Grey	$60
02/20/23	1007	Dr. Bailey	Costs	Grey	$340
02/20/23	1008	Bill Grey	Settlement	Grey	$9,200
02/20/23	1009	Julia Dolan	Fees	Grey	$5,000
02/21/23	1010	Mrs. J. Johnson	Ct. Order	Johnson	$1,500

On February 28, 2023, Dolan is retained by Sam Spade and paid a $5,000 retainer which under the fee agreement is to be deposited in the client trust account and withdrawn as earned.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **Sam Spade**
Legal Matter/Adverse Party: **Business Litigation-Olson**
File or Case Number: **10-1096**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
02/28/23	Retainer			$5,000	$5,000

Cash Receipt Journal
Client Trust Account No. 123-456
February 2023

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/23	Smith Check #2398	Joan Smith	50062	$1,000
02/05/23	Fed/State Refund	James Johnson	50145	$2,000
02/13/23	Ace Insurance Co.	Bill Grey	62001	$15,000
02/28/23	Spade Retainer	Sam Spade	64662	$5,000

On February 28, 2023, Dolan bills Joan Smith $250 for court costs paid by Dolan on Smith's behalf during February and issues a client trust account check for that amount made payable to herself.

CLIENT SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456

Name of Client: **Joan Smith**
Legal Matter/Adverse Party: **Marital Dissolution**
File or Case Number: **10-1057**

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
01/01/23	Retainer-Smith			$1,000	$1,000
02/28/23	Costs- J. Dolan	1011	$250		$750

Cash Disbursements Journal
Client Trust Account No. 123-456

February 2023

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/23	1005	Court Reporter Inc.	Costs	Grey	$400
02/20/23	1006	Process Server Inc.	Costs	Grey	$60
02/20/23	1007	Dr. Bailey	Costs	Grey	$340
02/20/23	1008	Bill Grey	Settlement	Grey	$9,200
02/20/23	1009	Julia Dolan	Fees	Grey	$5,000
02/21/23	1010	Mrs. J. Johnson	Ct. Order	Johnson	$1,500
02/28/23	1011	Julia Dolan	Costs	J. Smith	$250

B. Sample Client Trust Account Trial Balances

Before Dolan's IOLTA client trust account can be reconciled, the checkbook register, the cash balance and the client subsidiary ledger pages must balance.

1. **Checkbook Register Balance.** On February 28, 2023, Dolan's checkbook register balance is $16,450.

CHECKBOOK REGISTER

CHECK	DATE	PAYEE OR DEPOSIT SOURCE	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
	01/31/23	Balance			$10,200
	02/01/23	Joan Smith		$1,000	$11,200
	02/05/23	Johnson Tax Ref		$2,000	$13,200
	02/13/23	Ace. Ins. Co.		$15,000	$28,200
1005	02/20/23	Court Reporter	$400		$27,800
1006	02/20/23	Process Server	$60		$27,740

CHECK	DATE	PAYEE OR DEPOSIT SOURCE	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
1007	02/20/23	Dr. Bailey	$340		$27,400
1008	02/20/23	Bill Grey	$9,200		$18,200
1009	02/20/23	Julia Dolan	$5,000		$13,200
1010	02/21/23	Mrs. Johnson	$1,500		$11,700
	02/28/23	Sam Spade		$5,000	$16,700
1011	02/28/23	Julia Dolan	$250		$16,450

2. **Client Subsidiary Ledger Pages Trial Balance.** Dolan's client subsidiary ledger pages trial balance for February is calculated by totaling all of the client subsidiary ledger pages that have an outstanding balance on February 28, 2023.

CLIENT SUBSIDIARY LEDGER
TRIAL BALANCE

PERIOD OF 02/1/23 - 02/28/23
CLIENT TRUST ACCOUNT NO. 123-456

CLIENT	BALANCE ON 02/28/23
Julia Dolan	$200
Ron Roper	$10,000
Joan Smith	$750
James Johnson	$500
Sam Spade	$5,000
Trial Balance Total	$16,450

3. **Cash Balance.** Dolan's cash balance for February is calculated by taking the cash balance from January and adding the total February receipts and subtracting the total February disbursements.

CASH RECEIPTS JOURNAL
CLIENT TRUST ACCOUNT NO. 123-456

FEBRUARY 2023

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/23	Smith - Check #2398	Joan Smith	50062	$1,000
02/05/23	Fed/State Refund	James Johnson	50145	$2,000
02/13/23	Ace Insurance Co.	Bill Grey	62001	$15,000
02/28/23	Spade Retainer	Sam Spade	64662	$5,000
03/01/23		FEBRUARY TRIAL		$23,000

CASH DISBURSEMENTS JOURNAL
CLIENT TRUST ACCOUNT NO. 123-456

FEBRUARY 2023

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/23	1005	Court Reporter Inc.	Costs	Grey	$400
02/20/23	1006	Process Server Inc.	Costs	Grey	$60
02/20/23	1007	Dr. Bailey	Costs	Grey	$340
02/20/23	1008	Bill Grey	Settlement	Grey	$9,200
02/20/23	1009	Julia Dolan	Fees	Grey	$5,000
02/21/23	1010	Mrs. J. Johnson	Ct. Order	Johnson	$1,500
02/28/23	1011	Julia Dolan	Costs	J. Smith	$250
03/01/23			FEBRUARY TRIAL		$16,750

CASH BALANCE
PERIOD OF 02/01/23 – 02/28/23
CLIENT TRUST ACCOUNT NO. 123-456

Cash Balance from January		$ 10,200
Plus February Receipts	$ 23,00	
Minus February Disbursements		$ (16,750)
February Cash Balance	$ 16,450	$

4. **February Trial Balances.** The checkbook register balance, cash balance, and client subsidiary ledger pages trial balance must be identical.

Checkbook Register Balance	$16,450
Cash Balance	$16,450
Client Subsidiary Ledger Pages Trial Balance	$16,450

C. Sample Monthly Client Trust Account Reconciliation

After the checkbook register, cash balance, and client subsidiary ledger pages have been balanced, the February bank statement is reconciled with the February trial balances figure (*i.e.*, $16,450).

Julia Dolan
Attorney at Law
IOLTA Trust Account
125 Practice Avenue
New Justice, IL 00000-0000

ACCOUNT NUMBER: 123-456

CHECKING ACCOUNT SUMMARY FOR 02/01/23 THRU 02/28/23

Continued

OPENING BALANCE	DEPOSITS	WITHDRAWLS INTEREST	SERVICE & CHECKS	CLOSING CHARGE	BALANCE
$10,241.66	$18,000.00	$62.50	$16,451.66	$0.00	$11,852.50

Julia Dolan
Attorney at Law
IOLTA Trust Account
125 Practice Avenue
New Justice, IL 00000-0000

ACCOUNT NUMBER: 123-456

CHECKING ACCOUNT SUMMARY FOR 02/01/23 THRU 02/28/23

◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆ ◆

CHECKING ACCOUNT TRANSACTIONS

DEPOSITS	DATE	AMOUNT
50062	02/01/23	$ 1,000.00
50145	02/05/23	$ 2,000.00
62001	02/13/23	$ 15,000.00
Net Interest For February	02/28/23	$ 62.50

WITHDRAWALS	DATE	AMOUNT
Net Interest paid to IOLTA for January	02/28/23	$ 41.66

CHECKS			BALANCES	
ITEM	DATE	AMOUNT	DATE	BALANCE
1005	02/25/23	$ 400.00	02/06/23	$ 13,241.66
1006	02/24/23	$ 60.00	02/13/23	$ 28,241.66
1008*	02/21/23	$ 9,200.00	02/26/23	$ $12,081.66
1009	02/23/23	$ 5,000.00	02/28/23	$ 11,852.50
1010	02/26/23	$ 1,500.00		$
1011	02/28/23	$ 250.00		$

* denotes gap in check sequence

The bank statement balance is reconciled with the trial balances figure by adding: (1) any outstanding deposits; and by subtracting: (2) net interest accrued, and any outstanding checks. Accrued interest is subtracted because it will be paid directly to Lawyers Trust Fund and will thus never be added to the checkbook balance or the journal or ledger pages balance. (*See* discussion at Page 38.) In this example, the bank statement and the checkbook register reflect that check number 1007 in the amount of $340 is outstanding and that the $5,000 Spade deposit has not yet been credited. There are no monthly service charges and the interest accrued figure is taken from the bank statement.

MONTHLY RECONCILIATION
PERIOD OF 02/01/23- 02/28/23

CLIENT TRUST ACCOUNT NO. 123-456

Checkbook Balance		$ 16,450.00
Cash Balance From Journals		$ 16,450.00
Client Subsidiary Ledger Pages Trial Balance		$ 16,450.00
Bank Statement		
Balance on 02/28/23	$ 11,852.50	
Plus outstanding deposits	$ 5,000.00	
Less net interest accrued	$ (62.50)	
Less outstanding checks	$ (340.00)	
Adjusted Bank Statement Balance		$ 16,450.00

All of the records discussed above must be kept for a period of seven years after termination of the representation. The foregoing sample is used to illustrate the typical daily procedures necessary to maintain proper client trust account records. Lawyers may consult with a reputable accountant to help them set up an accounting system that they can understand and follow.

D. Sample Trust Account Record Forms

These sample recordkeeping forms are available on the ARDC website at https://www.iardc.org/Files/Sample%20Recordkeeping%20Account%20Forms%20for%20Client%20Trust%20Accounts.pdf.

Trust Account Receipts Journal - Rule 1.15A(b)(1)
Lists all receipts chronologically for all deposits in the trust account and identifies the date and source of each receipt.

Trust Account Disbursements Journal - Rule 1.15A(b)(1)
Lists all disbursements chronologically and identifies the recipient, purpose and date of each disbursement.

Trust Account Client Ledger Page – Rule 1.15A(b)(2)
A separate page for each client/matter showing chronologically all receipts, disbursements and balances for each client/matter.

Trust Account Checkbook Register - Rule 1.15A(b)(4)
Lists sequentially all trust account deposits and checks and reflects a current and accurate daily balance on the trust account.

Trust Account Monthly Reconciliation Report – Rule 1.15A(b)(7)
(Done at least quarterly)

Trust Account Record Retention Checklist

VII. Where to Find Help

- *ARDC Ethics Inquiry Program* - a telephone inquiry line that provides general information on where to find sources to help resolve hypothetical questions arising under the Rules. Call the ARDC at either the Chicago office at: 312/565-2600 or 800/826-8625 or the Springfield office at: 217/546-3523 or 800/252-8048.

- *Lawyers Trust Fund of Illinois (IOLTA)* - Lawyers Trust Fund of Illinois, Two Prudential Plaza, 65 East Wacker Drive, Suite 1900, Chicago, Illinois 60601; (312) 938-2906 or (800) 624-8962; Fax (312) 938-3091 or visit the Lawyers Trust Fund website at *www.ltf.org*.

- Bar associations – Illinois State Bar Association (ISBA) Committee on Professional Responsibility - advisory committee that receive inquiries and render opinions either addressed to the inquiring lawyer or published in the Illinois Bar Journal. The ISBA ethics advisory opinions may be obtained from the ISBA website at *www.illinoisbar.org*.

APPENDIX

IOLTA Enrollment Forms and Instructions

To establish an IOLTA account, the Lawyers Trust Fund of Illinois (LTF) has step-by-step instructions available on its website at www.ltf.org, and staff members at the Lawyers Trust Funds can provide assistance.

Lawyers Trust Fund of Illinois
65 East Wacker Drive, Suite 1900
Chicago, IL 60601
(312) 938-2906 [Main]
(312) 938-3091 [Fax]
1-800-624-8962 [Toll Free]

All forms required to open, manage and close IOLTA accounts can be found on the Lawyers Trust Fund website in downloadable format. If you have any questions or need forms faxed to you, please contact Director of Banking Terri Smith Ashford via email or at 312-938-3001 or 800-624-8962.

NOTICE TO FINANCIAL INSTITUTION TO ESTABLISH IOLTA ACCOUNT

Instructions for Lawyers

Fill out both pages of this form and return via email or fax to the Lawyers Trust Fund of Illinois.

To: _____
(Financial Institution)

_____
(Financial Institution Address)

_____
(City, State, Zip Code)

From: _____
(Lawyer/Firm)

_____
(Lawyer/Firm Address)

_____
(City, State, Zip Code)

Date:_____

LAWYERS TRUST FUND *of* ILLINOIS

Email:
IOLTAREPORT@LTF.ORG
Fax: 312.938.3091

Pursuant to Illinois Rule of Professional Conduct 1.15, the undersigned directs the financial institution to establish an interest- or dividend-bearing lawyer trust account with interest or dividends payable to the Lawyers Trust Fund of Illinois (hereinafter "IOLTA account") for the deposit of nominal and short-term client funds.

Instructions for Financial Institutions

The Federal Reserve System and the Federal Home Loan Bank Board have approved the establishment of IOLTA accounts by law firms, including professional corporations. The Lawyers Trust Fund will provide supporting documentation regarding government rulings upon request.

Eligible Financial Institution: IOLTA accounts may be maintained only at an eligible financial institution as defined in Rule 1.15(i)(3). Eligible financial institutions must offer IOLTA accounts that meet the Comparable Rate Requirement of Rule 1.15 and must agree to provide dishonored instrument notification pursuant to Rule 1.15(h).

Account Name: The IOLTA account and checks printed for customers' use **CANNOT** identify the Lawyers Trust Fund in its account title, as designee, trustee or owner. Instead, the account name should include the name of the lawyer or law firm and a designation such as client funds account, IOLTA account, or client trust account.

Tax Information: Any interest earned on this IOLTA account should be attributed to the TIN of the Lawyers Trust Fund of Illinois (contact LTF for details). IRS Form W-9 should bear the LTF's TIN as payee and certify exemption from backup withholding taxes. Contact the Lawyers Trust Fund for a signed Form W-9.

The Lawyers Trust Fund is tax-exempt. **No Form 1099 should be issued** for the IOLTA account. Further, a payor is not liable for a penalty under Section 6676(b) for filing an information return with a mismatched TIN number when, pursuant to IRS regulation Section 35a.9999-1, A-29, and IRS Publication 1281 (Rev. 8-90), p. 42, the payee is an exempt organization.

Interest calculation: Interest should be calculated on the average monthly balance in the account, or as otherwise computed in accordance with the financial institution's standard practices.

Interest remittance: Interest must be remitted electronically to the Lawyers Trust Fund **monthly** unless otherwise approved by the Lawyers Trust Fund. Remittances must be sent via **ACH** to **Bank of America (contact LTF for details). ONLY if approved,** checks can be mailed to: **Lawyers Trust Fund of Illinois, P.O. Box 64547, Chicago, Illinois 60664.**

Reporting requirements: Each remittance must be accompanied by an **Interest Remittance Report** that is sent electronically via secure or encrypted email to IOLTAREPORT@LTF.ORG unless otherwise approved by the Lawyers Trust Fund. If approved, reports can be submitted via fax to 312.938.3091.

For each account, the Interest Remittance Report must contain: 1) Bank routing number, 2) Account Number, 3) Name of the lawyer or law firm; 4) Account Status; 5) Dates of reporting period; 6) Rate of interest paid; 7) Gross interest; 8) Allowable service charges, if any; and 8) Net interest remitted.

Negative netting is not permitted. Under no circumstances can the negative interest balance be deducted from the corpus of an IOLTA account. Fees charged in excess of the earnings accrued on an individual account for any month cannot be taken out of earnings accrued on other IOLTA accounts nor from the principal of the account.

Questions: Call Monday - Friday, 9 a.m. to 4 p.m. (312) 938-2906 or via email to: IOLTAREPORT@LTF.ORG

NOTICE OF ENROLLMENT IN THE IOLTA PROGRAM

After completing send this notice to the Lawyers Trust Fund
via email: IOLTAREPORT@LTF.ORG
via fax: 312.938.3091

Date:_____

The undersigned, in accordance with Illinois Rule of Professional Conduct 1.15, has established an IOLTA account for the deposit of nominal and short-term client funds with the eligible financial institution specified below. I have directed the financial institution to remit interest on the account to the Lawyers Trust Fund of Illinois. My/my law firm's contact and account information are below.

FINANCIAL INSTITUTION INFORMATION:

_____ _____
(Account Name) (Account Number)

_____ _____
(Financial Institution) (Routing Number)

_____
(Financial Institution Address)

_____ _____ _____
(City) (State) (Zip Code)

_____ _____ _____
(Financial Institution Contact) (Telephone Number) (County)

LAWYER INFORMATION:

_____
(Lawyer or Law Firm) *Print Name*

_____
(By) *Signature*

_____
(Firm Address)

_____ _____ _____
(City) (State) (Zip Code)

_____ _____ _____
(Telephone Number) (County) (Email Address)

Revised 4 2022

Admin.1.Notice_Establish_Account.2_23

Suggested Sources for Researching Ethics Issues

1. *Annotated Model Rules of Professional Conduct*, (10th ed. 2023) - an ABA publication available from the ABA Center for Professional Responsibility (*www.americanbar.org*). Consists of the ABA Model Rules, as amended in 2002 and 2003, and legal background notes analyzing case law, opinions, law review articles and legal treatises.

2. *Restatement of the Law (Third), The Law Governing Lawyers*, American Law Institute (ALI) (2000) –two-volume set that is a highly regarded as a resource for researching legal ethics and professional responsibility. To order go to the ALI website at www.ali.org.

3. ABA/BNA, *The Lawyer's Manual on Professional Conduct* - multi-volume, subscription service, consisting of a substantive discussion on the state of the law on professional responsibility, the full text of the ABA Model Codes, recent ABA ethics opinions, digests of ethics opinions issued by state and local bar associations, and recent developments in the field of professional responsibility including opinions, case law and reports of conferences and law reviews. Updated bi-weekly. Available in print or electronic format. To subscribe call Bloomberg BNA at 800-372-1033 or visit the Bloomberg Law website at https://pro.bloomberglaw.com/.

4. Hazard, G., Hodes, W. & Jarvis, P., *Law of Lawyering*, 4th Ed. - looseleaf publication, updated annually, explaining the *ABA Model Rules of Professional Conduct* with examples of common practice issues and the authors' commentary. Published by Wolters Kluwer Legal & Regulatory U.S.

5. Ethics Opinions issued by the ABA Standing Committee on Ethics and Professional Responsibility, both formal opinions (beginning with 1924) and informal opinions (beginning with 1961), available in bound volumes from the ABA Center on Professional Responsibility. Most opinions can also be obtained from WESTLAW or LEXIS.

6. Illinois State Bar Association (ISBA) Advisory Opinions on Professional Conduct - prepared as an educational service to members of the ISBA, the opinions express the ISBA interpretation of the Illinois Rules of Professional Conduct and other relevant materials in response to a specific hypothesized fact situation. Opinions issued from 1980 to the present can be obtained from the ISBA website at Ethics | Illinois State Bar Association (isba.org).

7. *ARDC Ethics Inquiry Program* - provides general information on where to find sources to help resolve questions arising under the Rules. Call either the ARDC Chicago office at: 312/565-2600 or 800/826-8625 or Springfield office at: 217/546-3523or 800/252-8048.

Trust Accounting Software Resources

ABA Legal Technology Buyer's Guide: Not a comprehensive list, but a great resource. Includes practice management software as well.

Generic Accounting Programs

QuickBooks
Maintaining Client Trust Accounts with QuickBooks Online Essentials (2017)
- published by Minnesota State Bar Association. Available for order on Amazon.

Quicken
Using Quicken 2011 for Trust Accounting (2011)
https://oregonlawpracticemanagement.com/2011/01/24/using-quicken-2011-for-trust-accounting/
– published by the Oregon Law Practice Management.

Stand-Alone Programs

e.g., Timeslips (www.timeslips.com)

Trust Account Programs for Integrated Systems

Tabs3 (www.tabs3.com)

TrustBooks: (https://www.trustbooks.com/)

LexisNexis: PCLaw TimeMatters/Billing Matters (https://pclawtimematters.com/product-pclaw/)

AbacusNext: (www.abacusnext.com)

Clio: **(**http://www.clio.com)

EasySoft: **(**http://www.easysoft-usa.com/)

ProLaw: (http://www.elite.com/prolaw/)

Rocket Matter: **(**http://www.rocketmatter.com/)

Smokeball – (https://www.smokeball.com/)

RULE 756 Registration and Fees

***

(d) *Disclosure of Trust Accounts*. As part of registering under this rule, each lawyer shall identify any and all accounts maintained by the lawyer during the preceding 12 months to hold property of clients or third persons in the lawyer's possession in connection with a representation, as required under Rule 1.15(a) of the Illinois Rules of Professional Conduct, by providing the account name, account number and financial institution for each account. For each account, the lawyer shall also indicate whether each account is an IOLTA account, as defined in Rule 1.15(d) of the Illinois Rules of Professional Conduct. If a lawyer does not maintain a trust account, the lawyer shall state the reason why no such account is required.

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(g) *Removal from the Master Roll*. On February 1 of each year the Administrator shall remove from the master roll the name of any person who has not registered for that year. A lawyer will be deemed not registered for the year if the lawyer has failed to provide trust account information required by paragraph (d) of this rule or if the lawyer has failed to provide information concerning malpractice coverage required by paragraph (e) or information on voluntary pro bono service required by paragraph (f) of this rule. Any person whose name is not on the master roll and who practices law or who holds himself out as being authorized to practice law in this State is engaged in the unauthorized practice of law and may also be held in contempt of the court.

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Adopted January 25, 1973, effective February 1, 1973; amended, effective May 17, 1973, April 1, 1974, and February 17, 1977; amended August 9, 1983, effective October 1, 1983; amended April 27, 1984, and June 1, 1984, effective July 1, 1984; amended July 1, 1985, effective August 1, 1985; amended November 1, 1986; amended December 1, 1988, effective immediately; amended November 20, 1991, effective immediately; amended June 20, 1999, effective November 1, 1999; amended July 6, 2000, effective November 1, 2000; amended July 26, 2001, effective immediately; amended October 4, 2002, effective immediately; amended June 15, 2004, effective October 1, 2004; amended May 23, 2005, effective immediately; amended September 29, 2005, effective immediately; amended June 14, 2006, effective immediately; amended September 14, 2006, effective immediately; amended March 26, 2008, effective July 1, 2008.

RULE 766 Confidentiality and Privacy

(amended November 19, 2004, effective January 1, 2005)

(a) **Public Proceedings.** Proceedings under Rules 751 through 780 shall be public with the exception of the following matters, which shall be private and confidential:

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(10) information concerning trust accounts provided by lawyers as part of the annual registration pursuant to Rule 756(d);

RULE 769 Maintenance of Records

It shall be the duty of every attorney to maintain originals, copies or computer-generated images of the following:

(1) records which identify the name and last known address of each of the attorney's clients and which reflect whether the representation of the client is ongoing or concluded; and

(2) all financial records related to the attorney's practice, for a period of not less than seven years, including but not limited to bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports.

Adopted October 20, 1989, effective November 1, 1989; amended July 18, 1990, effective August 1, 1990, Adopted December 2, 1986, effective January 1, 1987; amended June 12, 1987, effective August 1, 1987; amended November 25, 1987, effective November 25, 1987; amended August 6, 1993, effective immediately; amended October 15, 1993, effective immediately; amended March 26, 2001, effective immediately; amended April 1, 2003, effective immediately.

Committee Comment

(April 1, 2003)

This amendment gives attorneys the option of maintaining records in forms that save space and reduce cost without increasing the risk of premature destruction. For example, CDs and DVDs have a normal life exceeding seven years, so an attorney might use them to maintain financial records. At present, however, floppy disks, tapes, hard drives, zip drives, and other magnetic media have insufficient normal life to meet the requirements of this rule.