RULE 1.15:SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Variations from ABA Model Rule are noted. Based on reports of state committees reviewing recent changes to the model rules. For information on individual state committee reports, see http://www.abanet.org/cpr/jclr/home.html.
As of February 25, 2020

Comments not included.

*Current links to state Rules of Professional conduct can be found on the ABA website: [http://www.abanet.org/cpr/links.html](http://www.abanet.org/cpr/links.html)*

| AL Effective 2/19/09 | Adds to beginning of Rule: **Definitions.** As used in this rule, the terms below shall have the following meaning:

"IOLTA account" means a pooled interest- or dividend-bearing trust account benefiting the Alabama Law Foundation or the Alabama Civil Justice Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in section (g).

"Interest- or dividend-bearing trust account" means a federally insured checking account or a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is 'well capitalized' or 'adequately capitalized' as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least $250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.

"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.

"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) Replaces general articles with "the" in several instances; Adds before "other property:" No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that
account or to obtain a waiver thereof. Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest.

(a) Changes “for a period of [five] years” to “for six (6) years;” Adds to end of paragraph:

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an 'Attorney Trust Account,' an 'Attorney Escrow Account,' or an 'Attorney Fiduciary Account.' A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a 'Business Account,' a 'Professional Account,' an 'Office Account,' a 'General Account,' a 'Payroll Account,' or a 'Regular Account.' However, nothing in this rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

Does not adopt MR (b) or (c);
(b) is similar to MR (d) but changes wording: Adds “from a source other than the client or the third person” after “has an interest;”
(c) is similar to MR (e) but changes “two or more…lawyer)” to “both the lawyer and another person;” changes “until the dispute is resolved” to “until there is an accounting and a severance of their interests;” Replaces last sentence with: “If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.”

Adds to end of paragraph:

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace the funds in the separate account.
(e) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment
order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution and the overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this Rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(f) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the
lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(g) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer’s services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (g) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.
A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.
2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.
3. A government (such as for municipal deposits) interest-bearing checking account.
4. A checking account paying preferred interest rates, such as money-market or indexed rates.
5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, which would otherwise qualify for investment options described in (1) through (4) above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be considered as comparable to IOLTA in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation and Alabama Civil Justice Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundations will certify participating financial institutions’ compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally
available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation or the Alabama Civil Justice Foundation, as the lawyer shall designate.

Interest or dividends shall be calculated in accordance with the institution’s standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution’s customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation or the Alabama Civil Justice Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(h) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:
As of February 25, 2020

(1) to provide legal aid to the poor;
(2) to provide law-student loans;
(3) to provide for the administration of justice;
(4) to provide law-related educational programs to the public;
(5) to help maintain public law libraries; and
(6) for such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(i) All interest or dividends transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(g) shall be distributed by it for one of more of the following purposes:

(1) to provide financial assistance to organizations or groups providing aid or assistance to:
   (A) underprivileged children;
   (B) traumatically injured children or adults;
   (C) the needy;
   (D) handicapped children or adults; or
   (E) drug and alcohol rehabilitation programs;
(2) to be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(j) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

(c) Replaces “the lawyer’s…paid in advance” and adds instead “funds received for future fees and expenses into a client trust account;”
(e) Adds “conflicting” before “interests;”

(f) Unless an election not to participate is submitted in accordance with the procedure set forth in paragraph (g), a lawyer or law firm shall establish and maintain an interest bearing insured depository account into which must be deposited funds of clients which are nominal in amount or are expected to be held for a short period of time, but only in compliance with the following provisions:

(1) No earnings from such account shall be made available to the lawyer or law firm and the lawyer or law firm shall have no right or claim to such earnings.
(2) Only funds of clients which are nominal in amount or are expected to be held for a short period of time may be deposited in such account. Funds which reasonably may be
expected to generate in excess of one hundred dollars interest may not be deposited in such account.

(3) The depository institution shall be directed by the lawyer or law firm establishing such account:

| Supreme Court Order No.1680 Page 128 of 271 |
| Effective Date: April 15, 2009 |

(a) To remit earnings from such account, net of any service charges or fees, as computed in accordance with the institution's standard accounting practice to the Alaska Bar Foundation, Inc., at least quarter-annually; and

(b) To transmit with each remittance of earnings a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied, with a copy of such statement to such lawyer or law firm.

(4) The lawyer or law firm shall review the account at reasonable intervals to determine if changed circumstances required further action with respect to the funds of any client.

(g) A lawyer shall indicate on the lawyer’s annual bar dues notice whether the lawyer or the lawyer’s law firm: 1) elects to maintain the account described in paragraph (f); 2) elects not to maintain the account described in paragraph (f); or 3) does not maintain a trust account. A lawyer or law firm who wishes to change a previous election may do so at any time by notifying the Alaska Bar Association in writing.

| AZ Effective 1/1/14 |
| (e): Replaces “is in possession” with “possesses”; Deletes “until the dispute is resolved” after “the property shall be kept separate by the lawyer”; Replaces “any” with “all” after “promptly distribute”; Deletes “the interests are not in dispute” and adds: |

there are no competing claims. Any other property shall be kept separate until one of the following occurs:

(1) the parties reach an agreement on the distribution of the property;
(2) a court order resolves the competing claims; or
(3) distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer’s intent to distribute the property to the client, as follows:

(1) The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party
that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer’s notice.

(2) If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of disbursement of the disputed funds and obtaining the client’s informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party’s substantive rights.

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<th>Title, adds: AND TRUST ACCOUNTS</th>
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<tr>
<td>(a) Safekeeping property.</td>
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<td>(1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property.</td>
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<td>(2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.</td>
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<tr>
<td>(3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.</td>
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<td>(4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.</td>
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<td>(5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.</td>
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<td>(6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.</td>
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(b) Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.

(1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.

(2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed $500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.

(4) Each trust account referred to in section (b) (1) shall be an interest-bearing trust account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company, and the institution shall be insured by an agency of the federal government.

(5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

(i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account (A@IOLTA@ account) for such funds. The account shall be maintained in compliance with the following requirements:

(i) The trust account shall be maintained in compliance
with sections (b)(1) - (b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;

(ii) No earnings from the account shall be made available to the lawyer or law firm; and,

(iii) The interest accruing on this account, net of reasonable check and deposit processing charges which shall only include any items deposited charge, monthly maintenance fee, per item check charge, and per deposit charge, shall be paid to the Arkansas IOLTA Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm.

(7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account (Anon-IOLTA® account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.

(8) The interest paid on the account shall not be less than, nor the fees and charges assessed greater than, the rate paid or fees and charges assessed, to any non-lawyer customers on accounts of the same class within the same institution.

(9) The decision whether to use an Anon-IOLTA® account specified in section (b)(6) or a Anon-IOLTA® account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

(i) The amount of interest which the funds would earn during the period they are expected to be deposited; and,

(ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(10) All lawyers who maintain accounts provided for in this Rule, must convert their client trust account(s) to interest-bearing account(s) with the interest to be paid to the Arkansas IOLTA Foundation, Inc. no later than six months from the date of the order adopting this Rule, unless the account falls within subsection (b)(7). Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(11) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.

(12) A lawyer or a law firm may be exempt from the
As of February 25, 2020

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<th>CA Effective 11/1/2018</th>
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<td>(a) All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labeled “Trust Account” or words of similar import, maintained in the State of California, or with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client’s business and the other jurisdiction.</td>
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<td>(b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer’s or law firm’s operating account, provided:</td>
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<td>(1) the lawyer or law firm discloses to the client in writing (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed; and</td>
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<td>(2) if the flat fee exceeds $1,000.00, the client’s agreement to deposit the flat fee in the lawyer’s operating account and the disclosures required by paragraph (b)(1) are set forth in a writing signed by the client.</td>
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<td>(c) Funds belonging to the lawyer or the law firm shall not be deposited or otherwise commingled with funds held in a trust account except:</td>
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<td>(1) funds reasonably sufficient to pay bank charges; and</td>
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<td>(2) funds belonging in part to a client or other person and in part presently or potentially to the lawyer or the law firm, in which case the portion belonging to the lawyer or law firm must be withdrawn at the earliest reasonable time after the lawyer or law firm’s interest in that portion becomes fixed. However, if a client or other person disputes the lawyer or law firm’s right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.</td>
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<td>(d) A lawyer shall:</td>
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<td>(1) promptly notify a client or other person of the receipt of funds, securities, or other property in which the lawyer knows or reasonably should know the client or other person has an interest;</td>
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<td>(2) identify and label securities and properties of a client or other person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;</td>
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|                        | (3) maintain complete records of all funds, securities, and other property of a client or other person coming into the possession of the lawyer or
law firm;
(4) promptly account in writing to the client or other person for whom the lawyer holds funds or property;
(5) preserve records of all funds and property held by a lawyer or law firm under this rule for a period of no less than five years after final appropriate distribution of such funds or property;
(6) comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar; and
(7) promptly distribute, as requested by the client or other person, any undisputed funds or property in the possession of the lawyer or law firm that the client or other person is entitled to receive.
(e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what “records” shall be maintained by lawyers and law firms in accordance with paragraph (d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective _______, as to what “records” shall be maintained by lawyers and law firms in accordance with subparagraph (d)(3).

(1) A lawyer shall, from the date of receipt of funds of the client or other person through the period ending five years from the date of appropriate disbursement of such funds, maintain:

(a) a written ledger for each client or other person on whose behalf funds are held that sets forth:
   (i) the name of such client or other person;
   (ii) the date, amount and source of all funds received on behalf of such client or other person;
   (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client or other person; and
   (iv) the current balance for such client or other person;
(b) a written journal for each bank account that sets forth:
   (i) the name of such account;
   (ii) the date, amount and client affected by each debit and credit; and
   (iii) the current balance in such account.
   (c) all bank statements and cancelled checks for each bank account; and
   (d) each monthly reconciliation (balancing) of (a), (b) and (c).

(2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client and other person through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a
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|   | written journal that specifies:  
(a) each item of security and property held;  
(b) the person on whose behalf the security or property is held;  
(c) the date of receipt of the security or property;  
(d) the date of distribution of the security or property; and  
(e) person to whom the security or property was distributed. |
| CO | CO Rules 1.15A-1.15E |
| CT | Adds (a): (a) As used in this Rule, the terms below shall have the following meanings:  
(1) “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, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.  
(2) An “eligible institution” means (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or (ii) an openend investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection (i) (3 ) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (i) (4 ) below, subject to the dispute resolution process provided in subsection (i) (4 ) (E) below.  
(3) “Federal Funds Target Rate” means the target level for the federal funds rate set by the Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term “Federal Funds Target Rate” means the upper limit of such range.  
(4) “Interest- or dividend-bearing account” means (i) an interest-bearing checking account, or (ii) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money market fund” as that term is defined by federal statutes |
and regulations under the Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least $250,000,000.

(5) “IOLT A account” means an interest- or dividend-bearing account established by a lawyer or law firm for clients’ funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (h) (6) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (h) (4) below.

(6) “Non-IOLT A account” means an interest or dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) “U.S. Government Securities” means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

CT (b) is the same as MR (a), but requires that the records be kept for a period of seven years.

CT (c) is the same as MR (b), but adds “or obtaining a waiver of fees and service charges on the account” after “paying bank service charges on that account.”

CT (d) is the same as MR, but adds to the beginning: “Absent a written agreement with the client otherwise”

CT (e) is the same as MR (d), but adds “or third person” after “by agreement with the client” in the second sentence.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) have interests, the property shall be kept separate by the lawyer until any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.

(g) The word “interest(s)” as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In the event a lawyer is notified by a third party or a third party’s agent of a
claim to funds held by the lawyer on behalf of a client, but it is unclear to
the lawyer whether the third party has a valid interest within the meaning
of this Rule, the lawyer may make a written request that the third party or
the third party’s agent provide the lawyer such reasonable information
and/or documentation as needed to assist the lawyer in determining
whether substantial grounds exist for the third party’s claim to the funds.
If the third party or third party’s agent fails to comply with such a request
within sixty days, the lawyer may distribute the funds in question to the
client.

Adds at the end:

(h) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and
law firms shall participate in the statutory program for the use of
interest earned on lawyers’ clients’ funds accounts to provide
funding for the delivery of legal services to the poor by nonprofit
corporations whose principal purpose is providing legal services to
the poor and for law school scholarships based on financial need.
Lawyers and law firms shall place a client’s or third person’s funds
in an IOLTA account if the lawyer or law firm determines, in good
faith, that the funds cannot earn income for the client in excess of the
costs incurred to secure such income. For the purpose of making this
good faith determination of whether a client’s funds cannot earn
income for the client in excess of the costs incurred to secure such
income, the lawyer or law firm shall consider the following factors:
(1) The amount of the funds to be deposited; (2) the expected
duration of the deposit, including the likelihood of delay in resolving
the relevant transaction, proceeding or matter for which the funds
are held;
(3) the rates of interest, dividends or yield at eligible institutions
where the funds are to be deposited; (4) the costs associated with
establishing and administering interest-bearing accounts or other
appropriate investments for the benefit of the client, including
service charges, minimum balance requirements or fees imposed by
the eligible institutions; (5) the costs of the services of the lawyer or
law firm in connection with establishing and maintaining the account
or other appropriate investments; (6) the costs of preparing any tax
reports required for income earned on the funds in the account or
other appropriate investments; and (7) any other circumstances that
affect the capability of the funds to earn income for the client in
excess of the costs incurred to secure
such income. No lawyer shall be subject to discipline for determining
in good faith to deposit funds in the interest earned on lawyers’
clients’ funds account in accordance with this subsection.
(h) An IOLTA account may only be established at an eligible
institution that meets the following requirements:
(1) No earnings from the IOLTA account shall be made available to
a lawyer or law firm.

(2) Lawyers or law firms depositing a client’s or third person’s funds in an IOLTA account shall direct the depository institution:

(A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution’s standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;

(B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such organization; and

(C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution’s normal procedures for reporting to its depositors.

(3) Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IO LTA accounts and non-IO LTA accounts and that these factors do not include the fact that the account is an IO LTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm
firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IO LT A account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IO LT A account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.

(B) Interest and dividends shall be calculated in accordance with the eligible institution’s standard practices for non-IOLTA customers.

(C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:

(A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under the program including the amount disbursed to each recipient of funds;

(B) Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court: (i) its proposed goals and objectives for the program; (ii) the procedures it has established to avoid discrimination in the awarding of grants;
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(iii) information regarding the insurance and fidelity bond it has procured; (iv) a description of the recommendations and advice it has received from the Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice; (v) the method it utilizes to allocate between the two uses of funds provided for in § 51-81c and the frequency with which it disburses funds for such purposes; (vi) the procedures it has established to monitor grantees to ensure that any limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds; (vii) the procedures it has established to ensure that no funds that have been awarded to grantees are used for lobbying purposes; and (viii) the procedures it has established to segregate funds to be disbursed under the program from other funds of the organization;

(C) Allow the judicial branch access to its books and records upon reasonable notice;

(D) Submit to audits by the judicial branch; and

(E) Provide for a dispute resolution process for resolving disputes as to whether a bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.

(5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:

(A) Establishing that all funds the organization might receive pursuant to subsection (h) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;

(B) Establishing that all interest and dividends earned on such funds, less allowable reasonable fees, if any, shall be used exclusively for such purposes;

(C) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;

(D) Establishing that the organization shall consult with and receive
recommendations from the Advisory Panel established by General Statutes § 51-81c regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;

(E) Establishing that the organization shall comply with the requirements of this Rule; and

(F) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection (h) shall prevent a lawyer or law firm from depositing a client’s or third person’s funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

(A) A separate clients’ funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or

(B) A pooled clients’ funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client’s or third person’s funds and the payment thereof to the client or third person.

(i) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

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

(3) copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) copies of bills for legal fees and expenses rendered to clients;
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(6) copies of records showing disbursements on behalf of clients;
(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;
(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;
(9) copies of monthly trial balances and at least quarterly reconciliations of the client trust accounts maintained by the lawyer; and
(10) copies of those portions of client files that are reasonably related to client trust account transactions.

(j) With respect to client trust accounts required by this Rule:
(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;
(2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item; and
(3) withdrawals shall be made only by check payable to a named payee and not to cash, or by authorized electronic transfer.

(k) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(l) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

(m) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

DE Effective 7/1/03
*Amendment effective 1/21/15

kept DE version of 1.15 which includes detailed provisions regarding financial recordkeeping. did not add new text or comment changes to the rule.

[there is also a new 1.15A on overdraft notification]

Rule 1.15: Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated solely for funds held in connection with the practice of law in this jurisdiction. Such funds shall be maintained in the state in which the
lawyer’s office is situated, or elsewhere with the consent of the client or third person. Funds of the lawyer that are reasonably sufficient to pay bank charges may be deposited therein; however, such amount may not exceed $2000 and must be separately stated and accounted for in the same manner as clients’ funds deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the completion of the events that they record.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer engaged in the private practice of law must maintain financial books and records on a current basis, and shall preserve the books and records for at least five years following the completion of the year to which they relate, or, as to fiduciary books and records, five years following the completion of that fiduciary obligation. The maintenance of books and records must conform with the following provisions:

1. All bank statements, cancelled checks (or images and/or copies thereof as provided by the bank), records of electronic transfers, and duplicate deposit slips relating to fiduciary and non-fiduciary accounts must be preserved. Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed.

2. Bank accounts maintained for fiduciary funds must be specifically designated as “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” and must be used only for funds held in a fiduciary capacity. A
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designation of the account as a “Rule 1.15A Attorney Trust Account” or “1.15A Trust Account” or “Rule 1.15A Attorney Escrow Account” or “1.15A Escrow Account,” must appear in the account title on the bank statement. Other related statements, checks, deposit slips, and other documents maintained for fiduciary funds, must contain, at a minimum, a designation of the account as “Attorney Trust Account” or “Attorney Escrow Account.”

(3) Bank accounts and related statements, checks, deposit slips, and other documents maintained for non-fiduciary funds must be specifically designated as "Attorney Business Account" or "Attorney Operating Account," and must be used only for funds held in a non-fiduciary capacity. A lawyer in the private practice of law shall maintain a nonfiduciary account for general operating purposes, and the account shall be separate from any of the lawyer's personal or other accounts.

(4) All records relating to property other than cash received by a lawyer in a fiduciary capacity shall be maintained and preserved. The records must describe with specificity the identity and location of such property.

(5) All billing records reflecting fees charged and other billings to clients or other parties must be maintained and preserved.

(6) Cash receipts and cash disbursement journals must be maintained and preserved for each bank account for the purpose of recording fiduciary and non-fiduciary transactions. A lawyer using a manual system for such purposes must total and balance the transaction columns on a monthly basis. Page 13 Del. Prof. Cond. R. 1.16

(7) A monthly reconciliation for each bank account, matching totals from the cash receipts and cash disbursement journals with the ending check register balance, must be performed. The reconciliation procedures, however, shall not be required for lawyers using a computer accounting system or a general ledger.

(8) The check register balance for each bank account must be reconciled monthly to the bank statement balance.

(9) With respect to all fiduciary accounts:

(A) A subsidiary ledger must be maintained and preserved with a separate account for each client or third party in which cash receipts and cash disbursement transactions and monthly balances are recorded.

(B) Monthly listings of client or third party balances must be prepared showing the name and balance of each client or third party, and the total
of all balances.

(C) No funds disbursed for a client or third party must be in excess of funds received from that client or third party. If, however, through error funds disbursed for a client or third party exceed funds received from that client or third party, the lawyer shall transfer funds from the non-fiduciary account in a timely manner to cover the excess disbursement.

(D) The reconciled total cash balance must agree with the total of the client or third party balance listing. There shall be no unidentified client or third party funds. The bank reconciliation for a fiduciary account is not complete unless there is agreement with the total of client or third party accounts.

(E) If a check has been issued in an attempt to disburse funds, but remains outstanding (that is, the check has not cleared the trust or escrow bank account) six months or more from the date it was issued, a lawyer shall promptly take steps to contact the payee to determine the reason the check was not deposited by the payee, and shall issue a replacement check, as necessary and appropriate. With regard to abandoned or unclaimed trust funds, a lawyer shall comply with requirements of Supreme Court Rule 73.

(F) No funds of the lawyer shall be placed in or left in the account except as provided in Rule 1.15(a).

(G) No funds which should have been disbursed shall remain in the account, including, but not limited to, earned legal fees, which must be transferred to the lawyer’s non-fiduciary account on a prompt and timely basis when earned.

(H) When a separate real estate bank account is maintained for settlement transactions, and when client or third party funds are received but not yet disbursed, a listing must be prepared on a monthly basis showing the name of the client or third party, the balance due to each client or third party, and the total of all such balances. The total must agree with the reconciled cash balance.

(10) If a lawyer maintains financial books and records using a computer system, the lawyer must cause to be printed each month a hard copy of all monthly journals, ledgers, reports, and reconciliations, and/or cause to be created each month an electronic backup of these documents to be stored in such a manner as to make them accessible for review by the lawyer and/or the auditor for the Lawyers’ Fund for Client Protection.

(e) A lawyer's financial books and records must be subject to examination
by the auditor for the Lawyers' Fund for Client Protection, for the purpose of verifying the accuracy of a certificate of compliance filed each year by the lawyer pursuant to Supreme Court Rule 69. The examination must be conducted so as to preserve, insofar as is consistent with these Rules, the confidential nature of the lawyer's books and records. If the lawyer's books and records are not located in Delaware, the lawyer may have the option either to produce the books and records at the lawyer's office in Delaware or to produce the books and records at the location outside of Delaware where they are ordinarily located. If the production occurs outside of Delaware, the lawyer shall pay any additional expenses incurred by the auditor for the purposes of an examination.

(f) A lawyer holding client funds must initially and reasonably determine whether the funds should or should not be placed in an interest-bearing depository account for the benefit of the client. In making such a determination, the lawyer must consider the financial interests of the client, the costs of establishing and maintaining the account, any tax reporting procedures or requirements, the nature of the transaction involved, the likelihood of delay in the relevant proceedings, whether the funds are of a nominal amount, and whether the funds are expected to be held by the lawyer for a short period of time. A lawyer must at reasonable intervals consider whether changed circumstances would warrant a different determination with respect to the deposit of client funds. Except as provided in these Rules, interest earned on client funds placed into an interest-bearing depository account for the benefit of the client (less any deductions for service charges or other fees of the depository institution) shall belong to the client whose funds are deposited, and the lawyer shall have no right or claim to such interest.

(g) A lawyer holding client funds who has reasonably determined, pursuant to subsection (f) of this Rule, that such funds need not be deposited into an interest-bearing depository account for the benefit of the client must maintain a pooled interest-bearing depository account for the deposit of the funds; provided, however, that this requirement shall not apply to a lawyer who either has obtained inactive status pursuant to Supreme Court Rule 69(d), or has obtained a Certificate of Retirement pursuant to Supreme Court Rule 69(f), or has formally elected to opt out of this requirement in accordance with the procedure set forth below in subparagraph (k).

(h) A lawyer who maintains such a pooled account shall comply with the following: (1) The account shall include only client's funds which are nominal amount or are expected to be held for a short period of time. (2) No interest from such an account shall be made available to a lawyer or law firm. (3) Lawyers or law firms depositing client funds in a pooled interest-bearing account under this paragraph (h) [(g)] shall direct the
depository institution: (a) To remit interest, net any service charges or fees, as computed in accordance with the institution's standard accounting practice, at least quarterly, to the Delaware Bar Foundation; and (b) To transmit with each remittance to the Delaware Bar Foundation a statement showing the name of the lawyer or law firm on whose accounting remittance is sent and the rate of interest applied; with a copy of statement to be transmitted to the lawyer or law firm by the Delaware Bar Foundation.

(i) The funds transmitted to the Delaware Bar Foundation shall be available for distribution for the following purposes: (1) To improve the administration of justice; (2) To provide and to enhance the delivery of legal services to the poor; (3) To support law related education; (4) For each other purposes that serve the public interest. The Delaware Bar Foundation shall recommend for the approval of the Supreme Court of the State of Delaware, such distributions as it may deem appropriate. Distributions shall be made only upon the Court's approval.

(j) Lawyers or law firms, depositing client funds in a pooled interest-bearing depository account under this paragraph shall not be required to advise the client of such deposit or of the purposes to which the interest accumulated by reason of such deposits is to be directed.

(k) The procedure available for opting out of the requirement to maintain pooled interest-bearing depository accounts are as follows: (1) Prior to December 15, 1983, a lawyer wishing to decline to maintain a pooled interest-bearing account[s] described in this paragraph for any calendar year may do so by submitting a Notice of Declination in writing to the Clerk of the Supreme Court ab initio or before December 15 of the preceding calendar year. Any such submission shall remain effective, unless revoked and need not be renewed for any ensuing year. (2) Any lawyer who has not filed a Notice of Declination on or before December 15, 1983, may elect not to maintain a pooled interest-bearing depository account for client funds as required and instead to maintain a pooled depository account for such funds that does not bear interest or that bears interest solely for the benefit of the clients who deposited the funds by certifying that the lawyer or law firm opts out of the obligation to comply with the requirements by timely submission of the Annual Registration Statement required by Supreme Court Rule 69(b)(i). Any such certification shall release the lawyer or law firm submitting it from participation effective as of the date that the certification is submitted and it shall remain effective until revoked as set forth below without need for renewal for any ensuing year. Page 15 Del. Prof. Cond. R. 1.16 (3) Notwithstanding the foregoing provisions of this subparagraph, any lawyer or law firm may petition the Court at any time and, for good cause shown, may be granted leave to opt out of the obligation to comply with the mandatory requirements of this
(l) An election to opt out of the obligation to comply with paragraph (h) hereof may be revoked at any time upon the opening by a non-participating lawyer or law firm of a pooled interest-bearing account as previously described and due notification thereof to the Court Administrator of the Supreme Court pursuant to Supreme Court Rule 69(g).

(m) A lawyer shall not disburse fiduciary funds from a bank account unless the funds deposited in the lawyer’s fiduciary account to be disbursed, or the funds which are in the lawyer’s unrestricted possession and control and are or will be timely deposited, are good funds as hereinafter defined. “Good funds” shall mean:

(1) cash;

(2) electronic fund ("wire") transfer;

(3) certified check;

(4) bank cashier's check or treasurer's check;

(5) U.S. Treasury or State of Delaware Treasury check;

(6) Check drawn on a separate trust or escrow account of an attorney engaged in the private practice of law in the State of Delaware held in a fiduciary capacity, including his or her client's funds;

(7) Check of an insurance company that is authorized by the Insurance Commissioner of Delaware to transact insurance business in Delaware;

(8) Check in an amount no greater than $10,000.00;

(9) Check greater than $10,000.00, which has been actually and finally collected and may be drawn against under federal or state banking regulations then in effect;

(10) Check drawn on an escrow account of a real estate broker licensed by the state of Delaware up to the limit of guarantee provided per transaction by statute.

RULE 1.15A TRUST ACCOUNT OVERDRAFT NOTIFICATION
(a) Attorney accounts designated as “Trust Account” or “Escrow Account” pursuant to Rule 1.15(d)(2) shall be maintained only in financial institutions approved by the Lawyers’ Fund for Client
Protection (the “Fund”). A financial institution may not be approved as a depository for attorney trust and escrow accounts unless it shall have filed with the Fund an agreement, in a form provided by the Fund, to report to the Office of Disciplinary Counsel (“ODC”) in the event any instrument in properly payable form is presented against an attorney trust or escrow account containing insufficient funds, irrespective of whether or not the instrument is honored.

(b) The Supreme Court may establish rules governing approval and termination of approved status for financial institutions and the Fund shall annually publish a list of approved financial institutions. No trust or escrow account shall be maintained in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days notice in writing to the Fund.

(c) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and the financial institution shall provide a copy of the dishonored instrument to the ODC no later than seven (7) calendar days following a request for the copy by the ODC.

(2) In the case of instruments that are presented against insufficient funds, but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby.

(d) Reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor. If an instrument presented against insufficient funds is honored, then the report shall be made within seven (7) calendar days of the date of presentation for payment against insufficient funds.

(e) Every attorney practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(f) Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable costs of producing the reports and records required by this rule.

(g) The terms used in this section are defined as follows:

(1) “Financial institution” includes banks, savings and loan associations, credit unions, savings banks, and any other business or persons who accept for deposit funds held in trust by attorneys.

(2) “Properly payable” refers to an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of Delaware.

(3) “Notice of dishonor” refers to the notice that a financial institution is required to give, under the laws of Delaware, upon presentation of an
(b): All trust funds shall be deposited with an “approved depository” as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia’s Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as “DC IOLTA Account” or “IOLTA Account.” The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as “Trust Account” or “Escrow Account.” The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal; or when the lawyer is participating in, and compliant with, the trust accounting rules and the IOLTA program of the jurisdiction in which the lawyer is licensed and principally practices.

(c): Adds subject to Rule 1.6 after “regarding such property” to end.

(d): State Rule (d) similar to MR (e). When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraph (a) and (b).

(e) Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer’s services in accordance with Rule 1.16(d).

(f) Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer’s funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.
<table>
<thead>
<tr>
<th>State</th>
<th>Effective Date</th>
<th>Rule Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>FL</td>
<td>5/22/06</td>
<td>Rule is substantially different: Compliance With Trust Accounting Rules. A lawyer shall comply with The Florida Bar Rules Regulating Trust Accounts.</td>
</tr>
</tbody>
</table>
| GA*  | 1/1/01        | *Has not amended Rule since the most recent amendments to the ABA Model Rules
Title: “Rule 1.15(I): Safekeeping Property-General;”
(a) Changes “in the state…third person;” time period is six years;
Does not have MR (b) or (c);
(b) is MR (d);
(c) is similar to MR (e) but changes “two or more…lawyer)” to “both the lawyer and another person;” replaces language after “the lawyer until” with: “there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved;”
Adds to end: “The maximum penalty for a violation of this Rule is disbarment.”
Also has Rules 1.15(II) and 1.15(III):
| HI    | 1/1/19        | (a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property, as a fiduciary. The lawyer shall not commingle such funds or property with his or her own or misappropriate such funds or property to his or her own use or benefit. Funds shall be kept in a separate account in Hawai‘i in accordance with Rule 11 of the Rules of the Supreme Court of the State of Hawai‘i, and Rule 4 of the Hawai‘i Rules Governing Trust Accounting. Other tangible property owned by a client or third person shall be identified as such, appropriately safeguarded, and a record kept of the item’s receipt and disbursement. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 6 years after the termination of the representation.
(b) A lawyer may deposit into a trust account the lawyer’s own funds reasonably sufficient to either pay bank charges or avoid paying bank charges on the account, or to cover unanticipated overages.
(c) Same as ABA.
(d) Same as ABA.
(e) Same as ABA. |
| ID    | 7/1/04        | Does not have (b).
Adds:
(e) Nothing in these Rules shall prohibit a lawyer or law firm from placing clients’ funds which are nominal in amount or to be held for a short period of time in one or more interest-bearing accounts for the |
benefit of the charitable purposes of a Court-approved Interest on Lawyer Trust Accounts (IOLTA) program.

(f) Unless an election not to do so is submitted in accordance with the procedure set forth in subsection (i) of this Rule, a lawyer or law firm with which the lawyer is associated who receives client funds shall maintain a pooled interest-bearing depository account for disposition of client funds that are nominal in amount or expected to be held for a short period of time. Such an account shall comply with the following provisions:

1. The account shall include all clients' funds which are nominal in amount or are expected to be held for a short period of time.
2. No interest from such an account shall be made available to a lawyer or law firm.
3. The determination of whether clients' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each lawyer or law firm.
4. Notification to clients whose funds are nominal in amount or to be held for a short period of time is not required.

(g) An interest-bearing trust account established pursuant to subsection (a) of this Rule shall be established in accordance with I.B.C.R. 302(a)(2).

(h) Lawyers or law firms depositing clients' funds which are nominal in amount or to be held for a short period of time in an interest-bearing depository account under subsection (f) of this Rule shall direct the depository institution:

1. to remit interest or dividends, net of reasonable service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, at least quarterly, to the Idaho Law Foundation;
2. to transmit with each remittance to the Idaho Law Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the average account balance of the period for which the report is made; and
3. to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(i) Interest transmitted to the Idaho Law Foundation shall, after deduction for the necessary and reasonable administrative expenses of the Idaho Law Foundation for operation of the IOLTA program, shall be distributed by that entity in proportions it deems appropriate, for the following purposes:

1. to provide legal aid to the poor;
2. to provide law related education programs for the public;
(3) to provide scholarships and student loans;
(4) to improve the administration of justice; and
(5) for such other programs for the benefit of the public as are specifically approved from time to time by the Supreme Court of Idaho.

(j) A lawyer or law firm that elects to decline to maintain accounts described in subsection (e) of this Rule shall submit a Notice of Declination in writing to the Executive Director of the Idaho State Bar or designee by February 1 of the year to which the Notice of Declination will apply.

(1) Notwithstanding the foregoing, any lawyer or law firm may petition the Court at any time and for good cause shown may be granted leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

(2) A lawyer or law firm that does not file with the Executive Director of the Idaho State Bar a Notice of Declination in accordance with the provisions of this Rule shall be required to maintain account in accordance with subsection (e) of this Rule.

(k) Each active member of the Idaho State Bar shall certify, each year, upon making application for licensure the following year that he or she has and intends to keep in force, in the state of Idaho, a separate bank account or accounts for the purpose of keeping money in trust for his or her clients, which account conforms to the requirements of this disciplinary rule, or that because of the nature of his or her practice no client funds are received. Certification shall be upon a form to be provided by the Idaho State Bar and shall include the following:

(1) The name and address of the lawyer or law firm filing the certification;
(2) The name and address of each financial institution in which the account or accounts are maintained;
(3) The number of each account maintained pursuant to this rule;
(4) The dates covered by the certification; and
(5) The signature, under penalty of perjury, of the lawyer making the certification.

IL Amendment Effective 7/1/2015

(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall 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. For the purposes of this Rule, a client trust account means an IOLTA account as defined in paragraph (j)(2), or a separate,
interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Other, tangible property shall be identified as such and appropriately safeguarded. Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.

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 and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and the date, payee and purpose of each disbursement;

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 reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances;

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 required by this Rule 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.

Each client trust account shall be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary prudence.
(c) Substitutes “in” for “into; inserts between “account” and “legal fees”; “funds received to secure payment of;” changes “earned or expenses” to “earned and expenses;”

Adds at end of (c): “Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer’s general account or other account belonging to the lawyer. An advance payment retained may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term “advance payment retainer” to describe the retainer, and states the following:

1. the special purpose for the advance payment retainer and an explanation 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;
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 an advance payment retainer, the agreement must so state and provide the lawyer’s reasons for that condition;”

Adds paragraph (f): All funds of clients or third persons held by a lawyer or law firm which are nominal in amount or are expected to be held for a short period of time, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more IOLTA accounts, as defined in paragraph (i)(2) (j)(2). A lawyer or law firm shall deposit all funds of clients or third persons which are not nominal in amount or expected to be held for a short period of time into a separate interest- or dividend-bearing client trust account with the client designated as income beneficiary. Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account. Each IOLTA account shall comply with the following provisions:

1. Each lawyer or law firm in receipt of nominal or short-term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois and which offers IOLTA accounts within the requirements of this Rule as administered by the Lawyers Trust Fund of Illinois.
2. Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to
its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.

(3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest-yield bank product:

(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest-bearing deposit account offered by the eligible institution to its non-IOLTA customers.

(b) for accounts with balances of $100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h).

(c) for accounts with balances of $100,000 or more, a money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million.

(4) As an alternative to the account options in paragraph (f)(3), the financial institution may pay a “safe harbor” yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher.

(5) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. The financial institution may assess only allowable reasonable fees, as defined in paragraph (i)(8). Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from
earnings accrued on other IOLTA accounts or from the principal of
the account.

Adds paragraph (g): A lawyer or law firm should exercise reasonable
judgment in determining whether funds of a client or third person are
nominal in amount or are expected to be held for a short period of time.

No charge of ethical impropriety or other breach of professional conduct
shall attend to a lawyer’s or law firm’s exercise of reasonable judgment
under this rule or decision to place client funds in an IOLTA account or a
non-IOLTA client trust account on the basis of that determination.

Ordinarily, in determining the type of account into which to deposit
particular funds for a client or third person, a lawyer or a law firm shall
take into consideration the following factors:

(1) the amount of interest which the funds would earn during the
period they are expected to be held and the likelihood of delay in the
relevant transaction or proceeding;

(2) the cost of establishing and administering the account,
including the cost of the lawyer’s services;

(3) 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.

Adds paragraph (h): All trust accounts, whether IOLTA or non-IOLTA,
shall be established in compliance with the following provisions on
dishonored instrument notification:

(1) A lawyer shall maintain trust accounts only in eligible
financial institutions that have filed with the Attorney Registration
and Disciplinary Commission an agreement, in a form provided by
the Commission, to report to the Commission in the event any
properly payable instrument is presented against a client trust account
containing insufficient funds, irrespective of whether or not the
instrument is honored. Any such agreement shall apply to all branches
of the financial institution and shall not be canceled except upon 30
days notice in writing to the Commission. The Commission shall
annually publish a list of financial institutions that have agreed to
comply with this rule and shall establish rules and procedures
governing amendments to the list.

(2) The overdraft notification agreement shall provide that all
reports made by the financial institution shall be in the following
format:

(a) In the case of a dishonored instrument, the report shall be
identical to the overdraft notice customarily forwarded to the
depositor, and should include a copy of the dishonored
instrument, if such a copy is normally provided to depositors; and

(b) In the case of instruments that are presented against
insufficient funds but which instruments are honored, the report
shall identify the financial institution, the lawyer or law firm, the
account number, the date of presentation for payment and the date
paid, as well as the amount of overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(3) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by paragraph (h) of this Rule. Fees charged for the reasonable cost of producing the reports and records required by paragraph (h) are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as those are defined in paragraph (i)(8).

Adds paragraph (i): 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 of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer’s exercise of reasonable judgment under this paragraph (i).

A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.

Adds paragraph (j): Definitions

(1) “Funds” denotes any form of money, including cash, payment instruments such as checks, money orders or sales drafts, and electronic fund transfers.

(2) “IOLTA account” 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 nominal or short-term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law.

(3) “Eligible financial institution” is 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 dishonored instrument notification regarding any type of client trust account as provided in paragraph (h) of this Rule; and that with respect to IOLTA accounts, offers IOLTA accounts within the requirements of paragraph (f) of this Rule.
(4) “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(5) “Money market fund” is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.

(6) “U.S. Government securities” refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement (“repo”) may be established only with an institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations.

(7) “Safe harbor” is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.

(8) “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.

(9) “Unidentified funds” are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

Adds paragraph (k) In the closing of a real estate transaction, a lawyer’s disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the “good-funds” requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds.
Good funds shall include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier’s check, teller’s check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the 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.

IN Effective 1/1/05

(a) Identical
(b) A lawyer may deposit his or her own funds reasonably sufficient to maintain a nominal balance in a client trust account.
(c) Identical
(d) – (e): Identical
(f) Except as provided in paragraph (g) of this rule, a lawyer or law firm shall create and maintain an interest-bearing trust account for clients’ funds which are nominal in amount or to be held for a short period of time so that they could not earn income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

(1) Client funds shall be deposited in a lawyer’s or law firm’s IOLTA account unless the funds can earn income for the client in excess of the costs incurred to secure such income. A lawyer or law firm shall establish a separate interest-bearing trust account for clients’ funds which are neither nominal in amount nor to be held for a short period of time and which could earn income for the client in excess of costs for a particular client or client’s matter. All of the interest on such account, net of any transaction costs, shall be paid to the client, and no earnings from such account shall be made
available to a lawyer or law firm.

(2) No earnings from such an IOLTA account shall be made available to a lawyer or law firm.

(3) The IOLTA account shall include all clients' funds which are nominal in amount or to be held for a short period of time.

(4) An IOLTA account may be established with any financial institution (i) authorized by federal or state law to do business in Indiana, (ii) insured by the Federal Deposit Insurance Corporation or its equivalent, and (iii) approved as a depository for trust accounts pursuant to Indiana Admission and Discipline Rules, Rule 23, Section 29. Funds in each IOLTA account shall be subject to withdrawal upon request and without delay and without risk to principal by reason of said withdrawal.

(5) Participating financial institutions shall maintain IOLTA accounts which pay the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account. All interest earned net of fees or charges shall be remitted to the Indiana Bar Foundation (the "Foundation"), which is designated in paragraph (i) of this rule to organize and administer the IOLTA program, and the depository institution submits reports thereon as set forth below.

(6) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by the Foundation, direct the depository institution:

   (A) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the
account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, solely to the Foundation. The depository institution may remit the interest or dividends on all of its IOLTA accounts in a lump sum; however, the depository institution must provide, for each individual IOLTA account, the information to the lawyer or law firm and to the Foundation required by subparagraphs (f)(6)(B) and (f)(6)(C) of this rule;

(B) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and such other information as is reasonably required by the Foundation;

(C) to transmit to the depositing lawyer or law firm a periodic account statement for the IOLTA account reflecting the amount of interest paid to the Foundation, the rate of interest applied, the average account balance for the period for which the interest was earned, and such other information as is reasonably required by the Foundation; and

(D) to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period ("excess charge"), or bill the excess charge to the Foundation.

(7) Any IOLTA account which has or may have the net effect of costing the IOLTA program more in fees than earned in interest over a period of time may, at the discretion of the Foundation, be exempted from and removed from the IOLTA program. Exemption of an IOLTA account from the IOLTA program revokes the permission to use the Foundation's tax identification number for that account. Exemption of such account from the IOLTA program shall not relieve the lawyer and/or law firm from the obligation to maintain the property of clients and third persons separately, as required above, in a non-interest bearing account.

(8) The IOLTA program will issue refunds when interest has been remitted in error, whether the
error is the bank’s or the lawyer’s. Requests for refunds must be submitted in writing by the bank, the lawyer, or the law firm on a timely basis, accompanied by documentation that confirms the amount of interest paid to the IOLTA program. As needed for auditing purposes, the IOLTA program may request additional documentation to support the request. The refund will be remitted to the appropriate financial institution for transmittal at the lawyer’s direction after appropriate accounting and reporting. In no event will the refund exceed the amount of interest actually received by the IOLTA program.

(9) All interest transmitted to the Foundation shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by the Foundation and approved at least annually by the Supreme Court of Indiana, for the following purposes:
(A) to pay or provide for all costs, expenses and fees associated with the administration of the IOLTA program;
(B) to establish appropriate reserves;
(C) to assist or establish approved pro bono programs as provided in Rule 6.5;
(D) for such other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

(10) The information contained in the statements forwarded to the Foundation under subparagraph (f)(6) of this rule shall remain confidential and the provisions of Rule 1.6 (Confidentiality of Information), are not hereby abrogated; therefore, the Foundation shall not release any information contained in any such statement other than as a compilation of data from such statements, except as directed in writing by the Supreme Court.

(11) The Foundation shall have full authority to and shall, from time to time, prepare and submit to the Supreme Court for approval, forms, procedures, instructions and guidelines necessary and appropriate to implement the provisions set forth in this rule and, after approval thereof by the Court, shall promulgate same.

(g) Every lawyer admitted to practice in this State shall annually certify to this Court, pursuant to Ind.Admis.Disc.R. 23(21), that
all client funds which are nominal in amount or to be held for a short period of time by the lawyer or the lawyer's law firm so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account, or that the lawyer is exempt because:

(1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to subparagraph (f)(7) of this rule; or

(2) the lawyer:
   (A) is not engaged in the private practice of law;
   (B) does not have an office within the State of Indiana;
   (C) is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;
   (D) is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;
   (E) has been exempted by an order of general or special application of this Court which is cited in the certification; or
   (F) compliance with paragraph (f) would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographic distance between the lawyer’s principal office and the closest depository institution which is participating in the IOLTA program, or on other compelling and necessitous factors.

(h) In the exercise of a lawyer's good faith judgment in determining whether funds of a client can earn income in excess of costs a lawyer shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;

(3) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to
individual clients;

(4) any other circumstances that affect the ability of the client’s funds to earn a net return for the client; and

(3) the nature of the transaction(s) involved.

The determination of whether a client's funds are nominal or short-term so that they could not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(i) The Foundation is hereby designated as the entity to organize and administer the IOLTA program established by paragraph (f) of this rule in accordance with the following provisions:

(1) The Board of Directors of the Foundation (the "Board") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.

(2) The Board shall receive the net earnings from IOLTA accounts established in accordance with paragraph (f) of this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.

(3) The Board shall, by grants, appropriations and other appropriate measures, make disbursements from the IOLTA program funds, including current and accumulated net earnings, in accordance with the plan of distribution approved by the Supreme Court from time to time referenced in subparagraph (f)(8) of this rule.

(4) The Board shall maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant selected by the Board. The Board shall annually cause to be presented to the Supreme Court a reviewed or audited financial statement of its IOLTA program receipts and expenditures for the prior year. The report shall not identify any clients of lawyers or law firms or reveal confidential information. The statement shall be filed with the Clerk of the Supreme Court and a summary thereof shall be published in the next available issue of one or more state-wide publications for attorneys, such as Res Gestae and The Indiana Lawyer.
(5) The president and other members of the Board shall administer the IOLTA program without compensation, but may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties, and shall be indemnified by the Foundation against any liability or expense arising directly or indirectly out of the good faith performance of their duties.

(6) The Board shall monitor attorney compliance with the provisions of this rule and periodically report to the Supreme Court those attorneys not in compliance with the provisions of Rule 1.15.

(7) In the event the IOLTA program or its administration by the Foundation is terminated, all assets of the IOLTA program, including any program funds then on hand, shall be transferred in accordance with the Order of the Supreme Court terminating the IOLTA program or its administration by the Foundation; provided, such transfer shall be to an entity which will not violate the requirements the Foundation must observe regarding transfer of its assets in order to retain its tax-exempt status under the Internal Revenue Code of 1986, as amended, or similar future provisions of law.

IA Effective 7/1/05
(a): deletes at the end of the 2nd sentence: “maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person.” [requires that records be preserved for six years.]

Adds as (f): “All client trust accounts shall be governed by Iowa Court Rules chapter 45.”

KS Effective 7/1/07
Same as MR

KY Effective 7/15/09
Amendment Effective Jan. 1, 2014
(b) Upon receiving funds or other property in which a client has an interest, a lawyer shall promptly notify the client. Except as stated in this Rule or otherwise permitted by law or by agreement with the client a lawyer shall promptly deliver to the client any funds or other property that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding such property.

(c) When in the course of representation a lawyer is in possession of funds or other property in which the lawyer and client claim interests and are not in agreement regarding those interests, the funds or other property in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or
(a) Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank or savings and loan association: 1) authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government; 2) in the state where the lawyer’s primary office is situated, if not within Louisiana; or 3) elsewhere with the consent of the client or third person. No earnings on a client trust account may be made available to or utilized by a lawyer or law firm. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b): adds “or obtaining a waiver of those charges” after “on that account”

(c), adds at the end: “The lawyer shall deposit legal fees and expenses into the client trust account consistent with Rule 1.5(f).”

(d), adds after first sentence: "For purposes of this rule, the third person’s interest shall be one of which the lawyer has actual knowledge, and shall be limited to a statutory lien or privilege, a final judgment addressing disposition of those funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property."

includes (f) with details on financial recordkeeping and includes a section on IOLTA.

(f) Every check, draft, electronic transfer, or other withdrawal instrument or authorization from a client trust account shall be personally signed by a lawyer or, in the case of electronic, telephone, or wire transfer, from a client trust account, directed by a lawyer or, in the case of a law firm, one or more lawyers authorized by the law firm. A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

(g) A lawyer shall create and maintain an “IOLTA Account,” which is a pooled interest-bearing client trust account for funds of clients or third persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client of third person in excess of the costs incurred to secure such income.

(1) IOLTA Accounts shall be of a type approved and authorized by the Louisiana Bar Foundation and maintained only in “eligible” financial institutions, as approved and certified by the Louisiana Bar Foundation. The Louisiana Bar Foundation shall establish regulations, subject to approval by the Supreme Court of Louisiana, governing the determination that a financial institution is eligible to hold IOLTA Accounts and shall at least annually publish a list of LBF-approved/certified eligible financial institutions. Participation in the IOLTA program is voluntary for financial institutions.

IOLTA Accounts shall be established at a bank or savings and loan association.
association authorized by federal or state law to do business in Louisiana, the deposits of which are insured by an agency of the federal government or at an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Louisiana which shall be invested solely in or fully collateralized by U.S. Government Securities with total assets of at least $250,000,000 and in order for a financial institution to be approved and certified by the Louisiana Bar Foundation as eligible, shall comply with the following provisions:

(A) No earnings from such an account shall be made available to a lawyer or law firm.

(B) Such account shall include all funds of clients or third persons which are nominal in amount or to be held for such a short period of time the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income.

(C) Funds in each interest-bearing client trust account shall be subject to withdrawal upon request and without delay, except as permitted by law.

(2) To be approved and certified by the Louisiana Bar Foundation as eligible, financial institutions shall maintain IOLTA Accounts which pay an interest rate comparable to the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when IOLTA Accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA Account. The eligible institution shall calculate interest and dividends in accordance with its standard practice for non-IOLTA accounts, but the eligible institution may elect to pay a higher interest or dividend rate on IOLTA Accounts.

(3) To be approved and certified by the Louisiana Bar Foundation as eligible, a financial institution may achieve rate comparability required in (g)(2) by:

(A) Establishing the IOLTA Account as:

1. an interest-bearing checking account;
2. a money market deposit account with or tied to checking;
3. a sweep account which is a money market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities;
4. an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. A daily financial institution repurchase agreement may be established only with an eligible institution that is “well-capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-
end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(B) Paying the comparable rate on the IOLTA checking account in lieu of establishing the IOLTA Account as the higher rate product; or
(C) Paying a “benchmark” amount of qualifying funds equal to 60% of the Federal Fund Target Rate as of the first business day of the quarter or other IOLTA remitting period; no fees may be deducted from this amount which is deemed already to be net of “allowable reasonable fees.”

(4) Lawyers or law firms depositing the funds of clients or third persons in an IOLTA Account shall direct the depository institution:
(A) To remit interest or dividends, net of any allowable reasonable fees on the average monthly balance in the account, or as otherwise computed in accordance with an eligible institution’s standard accounting practice, at least quarterly, to the Louisiana Bar Foundation, Inc.;
(B) to transmit with each remittance to the Foundation, a statement, on a form approved by the LBF, showing the name of the lawyer or law firm for whom the remittance is sent and for each account: the rate of interest or dividend applied; the amount of interest or dividends earned; the types of fees deducted, if any; and the average account balance for each account for each month of the period in which the report is made; and
(C) to transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

(5) “Allowable reasonable fees” for IOLTA Accounts are: per check charges; per deposit charges; a fee in lieu of minimum balance; sweep fees and a reasonable IOLTA Account administrative fee. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA Account. Fees or service charges that are not “allowable reasonable fees” include, but are not limited to: the cost of check printing; deposit stamps; NSF charges; collection charges; wire transfers; and fees for cash management. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA Accounts.

(6) A lawyer is not required independently to determine whether an interest rate is comparable to the highest rate or dividend generally available and shall be in presumptive compliance with Rule 1.15(g) by maintaining a client trust account of the type approved and authorized by the Louisiana Bar Foundation at an “eligible” financial institution.
(1) The IOLTA program shall be a mandatory program requiring participation by lawyers and law firms, whether proprietorships, partnerships, limited liability companies or professional corporations.

(2) The following principles shall apply to funds of clients or third persons which are held by lawyers and law firms:

(a) No earnings on the IOLTA Accounts may be made available to or utilized by a lawyer or law firm.

(b) Upon the request of, or with the informed consent of a client or third person, a lawyer may deposit funds of the client or third person into a non-IOLTA, interest-bearing client trust account and earnings may be made available to the client or third person, respectively, whenever possible upon deposited funds which are not nominal in amount or are to be held for a period of time long enough that the funds would be expected to earn income for the client or third person in excess of the costs incurred to secure such income; however, traditional lawyer-client relationships do not compel lawyers either to invest such funds or to advise clients or third persons to make their funds productive.

(c) Funds of clients or third-persons which are nominal in amount or to be held for such a short period of time that the funds would not be expected to earn income for the client or third person in excess of the costs incurred to secure such income shall be retained in an IOLTA Account at an eligible financial institution as outlined above in section (g), with the interest or dividend (net of allowable reasonable fees) made payable to the Louisiana Bar Foundation, Inc., said payments to be made at least quarterly.

(d) In determining whether the funds of a client or third person can earn income in excess of costs, a lawyer or law firm shall consider the following factors:

(1) The amount of the 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 rates of interest or yield at financial institutions where the funds are to be deposited;

(4) The cost of establishing and administering non-IOLTA accounts for the benefit of the client or third person including service charges, the costs of the lawyer’s services, and the costs of preparing any tax reports required for income accruing to the benefit of the client or third person;

(5) The capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients or third persons;

(6) Any other circumstances that affect the ability of the funds of the client or third person to earn a positive return for the client or third person.

The determination of whether funds to be invested could be utilized to provide a positive net return to the client or third person rests in the sound judgment of the lawyer or law firm involved.
of each lawyer or law firm. The lawyer or law firm shall review its IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

(e) Although notification of a lawyer’s participation in the IOLTA Program is not required to be given to clients or third persons whose funds are held in IOLTA Accounts, many lawyers may want to notify their clients or third persons of their participation in the program in some fashion. The Rules do not prohibit a lawyer from advising all clients or third persons of the lawyer’s advancing the administration of justice in Louisiana beyond the lawyer’s individual abilities in conjunction with other public-spirited members of the profession. The placement of funds of clients or third persons in an IOLTA Account is within the sole discretion of the lawyer in the exercise of the lawyer’s independent professional judgment; notice to the client or third person is for informational purposes only.

(3) The Louisiana Bar Foundation shall hold the entire beneficial interest in the interest or dividend income derived from client trust accounts in the IOLTA program. Interest or dividend earned by the program will be paid to the Louisiana Bar Foundation, Inc. to be used solely for the following purposes:

(a) to provide legal services to the indigent and to the mentally disabled;
(b) to provide law-related educational programs for the public;
(c) to study and support improvements to the administration of justice; and
(d) for such other programs for the benefit of the public and the legal system of the state as are specifically approved from time to time by the Supreme Court of Louisiana.

(4) The Louisiana Bar Foundation shall prepare an annual report to the Supreme Court of Louisiana that summarizes IOLTA income, grants, operating expenses and any other problems arising out of administration of the IOLTA program. In addition, the Louisiana Bar Foundation shall also prepare an annual report to the Supreme Court of Louisiana that summarizes all other Foundation income, grants, operating expenses and activities, as well as any other problems which arise out of the Foundation’s implementation of its corporate purposes. The Supreme Court of Louisiana shall review, study and analyze such reports and shall make recommendations to the Foundation with respect thereto.

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### 1.15 Safekeeping Property, Client Trust Accounts, Interest on Trust Accounts

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

(b) (1) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred. All such funds shall be
As of February 25, 2020

Proceeds from the sale of the client's property, if any, shall be deposited in one or more identifiable accounts maintained in the state in which the law office is situated at a financial institution authorized to do business in such state. No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay institutional service charges may be deposited therein; and

(ii) Funds belonging in part to a client and in part presently or potentially to a lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive the funds is disputed by the client; in that event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) A lawyer shall:

(i) Promptly notify a client of the receipt of the client’s funds, securities, or other properties;

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe-deposit box or other place of safekeeping as soon as practicable;

(iii) Maintain complete records of all funds, securities and other properties of a client coming into possession of the lawyer and render prompt and appropriate accounts to the client regarding them, which records shall be kept by the lawyer and shall be preserved for a period of eight years after termination of the representation; and

(iv) Promptly pay or deliver to the client, as requested by the client, the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(3) Unless the client directs otherwise, when a lawyer or law firm reasonably expects that client funds will earn interest or dividends for the client in excess of the costs incurred to secure such income, such funds shall be deposited in a client trust account that may be either

(i) separate trust account for the particular client or client’s matter, on which the earnings net of any transaction costs or other account-related charges will be paid or credited to the client; or

(ii) A pooled trust account with subaccounting which will provide for computation of earnings accrued on each client’s funds and the payment thereon, net of any transaction costs or other account-related charges to the client.

(4) All funds of any client held by the lawyer or law firm that are small in amount or held for a short period of time so that they cannot earn interest or dividends for the client in excess of the costs incurred to secure such income shall be deposited in an Interest on Lawyer’s Trust Account (IOLTA) account and shall be subject to the following conditions:

(i) The financial institution in which the account is established shall be authorized to do business in Maine, shall be insured by the Federal Deposit Insurance Corporation or National Credit Union Share Insurance Fund, and shall be an eligible institution selected by the lawyer in the
exercise of ordinary prudence. “Eligible Institution” is one determined by
the Maine Bar Foundation in accordance with Rule 6(a)(2), (3) and (4);
(ii) Funds deposited in the account shall be subject to withdrawal upon
request and without delay;
(iii) Within 30 days after the opening of any IOLTA account that is to be
maintained hereunder, the lawyer or law firm shall file with the Board of
Overseers of the Bar an order directing the financial institution to remit
any net interest or dividends that may accrue on the account to the Maine
Bar Foundation, a nonprofit corporation incorporated under the laws of
the State of Maine that has in force a determination letter from the
Internal Revenue Service that it qualifies as an exempt organization under
Section 501(c)(3) of the Internal Revenue Code of 1954 as from time to
time amended;
(iv) No interest or dividends on the account shall be paid to the lawyer or
law firm, and the lawyer or law firm shall not receive any direct or
indirect pecuniary benefit by reason of the remittance of interest in
accordance with subparagraph (iii); and
(v) The determination of whether funds are small in amount or held for a
short period of time so that they cannot earn interest or dividends for the
client in excess of the costs incurred to secure such income, shall rest in
the sound judgment of the lawyer or law firm. No lawyer shall be charged
with an ethical impropriety or other breach of professional conduct based
on the good faith exercise of such judgment.

(5) A lawyer or a law firm, holding funds of the United States
government that by law may not earn interest shall deposit those funds in
one or more insured, non-interest bearing accounts, whether or not the
lawyer or firm has made the election provided by this paragraph for other
client funds.

(6) If the circumstances on which a lawyer or law firm has based a
determination to deposit client funds in an account under paragraph (4) of
this subdivision change, so that interest or dividends in excess of costs
may reasonably be expected to be earned on such funds, the lawyer or
law firm shall transfer the principal amount originally deposited to the
appropriate account established under paragraph (3) of this subdivision.

(7) For purposes of this rule, the following definitions apply:
(i) “Interest or dividends in excess of costs” means the net of interest or
dividends earned on a particular amount of one client’s funds over the
administrative costs allocable to that amount. In estimating the gross
amount of interest or dividends to be earned, the lawyer or law firm shall
consider the principal amount involved; available interest or dividend
rates; and the time the funds are likely to be held, taking into account the
likelihood of delay in any relevant proceeding or transaction.
(ii) “Administrative costs” means that portion of the following costs
properly allocable to a particular amount of one client’s funds paid to a
lawyer or law firm:
(A) Financial institutional service charges for opening, maintaining, or
closing an account, or accounting for the deposit and withdrawal of funds and payment of interest or dividends.

(B) Reasonable charges of the lawyer or law firm for opening, maintaining or closing an account; accounting for the deposit and withdrawal of funds and payment of interest or dividends; and obtaining information and preparing or forwarding any returns or reports that may be required by a revenue taxing agency as to the interest or dividends earned on a client’s funds.

(iii) “Retainer” means a fee paid to an attorney for professional services that is earned upon the attorney’s engagement. A retainer payment is the property of the attorney when received. “Retainer” does not include a payment by a client as an advance payment that will be credited toward fees for professional services as the attorney earns the fees.

(c) [Reserved – included in (b), above.]

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(f) Upon termination of representation, a lawyer shall return to the client or retain and safeguard in a retrievable format all information and data in the lawyer’s possession to which the client is entitled. Unless information and data are returned to the client or as otherwise ordered by a court, the lawyer shall retain and safeguard such information and data for a minimum of eight (8) years, except for client records in the lawyer’s possession that have intrinsic value in the particular version, such as original signed documents, which must be retained and safeguarded until such time as they are out of date and no longer of consequence. A lawyer may enter into a voluntary written agreement with the client for a different period. In retaining and disposing of files, a lawyer shall employ means consistent with all other duties under these rules, including the duty to preserve confidential client information.

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<td>(a): replaces the rest of the 2nd sentences after the word “maintained,” with “pursuant to Title 16, Chapter 600 of the Maryland Rules.”</td>
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<td>(c): adds to beginning “Unless the client gives informed consent, confirmed in writing, to a different arrangement,”</td>
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<th>MA Amendment</th>
<th>(a) Definitions:</th>
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<td>(1) “Trust property” means property of clients or third persons that is in a lawyer's possession in connection with a representation and includes</td>
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| Effective 7/1/2015 | property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise. Trust property does not include documents or other property received by a lawyer as investigatory material or potential evidence. Trust property in the form of funds is referred to as “trust funds.”

(2) “Trust account” means an account in a financial institution in which trust funds are deposited. Trust accounts must conform to the requirements of this Rule.

(b) Segregation of Trust Property. A lawyer shall hold trust property separate from the lawyer's own property.

(1) Trust funds shall be held in a trust account

(2) No funds belonging to the lawyer shall be deposited or retained in a trust account except that:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein, and

(ii) Trust funds belonging in part to a client or third person and in part currently or potentially to the lawyer shall be deposited in a trust account, but the portion belonging to the lawyer must be withdrawn at the earliest reasonable time after the lawyer’s interest in that portion becomes fixed. A lawyer who knows that the right of the lawyer or law firm to receive such portion is disputed shall not withdraw the funds until the dispute is resolved. If the right of the lawyer or law firm to receive such portion is disputed within a reasonable time after notice is given that the funds have been withdrawn, the disputed portion must be restored to a trust account until the dispute is resolved.

(3) A lawyer shall deposit into a trust account legal fees and expenses that have all been paid in advance, to be withdrawn by the lawyer only as fees are earned or as expenses incurred.

(4) All trust property shall be appropriately safeguarded. Trust property other than funds shall be identified as such.

(c) Prompt Notice and Delivery of Trust Property to Client or Third Person. Upon receiving trust funds or other trust property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or as otherwise permitted by law or by agreement with the client or third person on whose behalf a lawyer holds trust property, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

(d) Accounting.

(1) Upon final distribution of any trust property or upon request by the client or third person on whose behalf a lawyer holds trust property, the lawyer shall promptly render a full written accounting regarding such property.

(2) On or before the date on which a withdrawal from a trust account is made for the purpose of paying fees due to a lawyer, the lawyer shall
As of February 25, 2020

deliver to the client in writing (i) an itemized bill or other accounting showing the services rendered, (ii) written notice of amount and date of the withdrawal, and (iii) a statement of the balance of the client’s funds in the trust account after the withdrawal.

(e) Operational Requirements for Trust Accounts.

(1) All trust accounts shall be maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person on whose behalf the trust property is held, except that all funds required by this Rule to be deposited in an IOLTA account shall be maintained in this Commonwealth.

(2) Each trust account title shall include the words “trust account,” “escrow account,” “client funds account,” “conveyancing account,” “IOLTA account,” or words of similar import indicating the fiduciary nature of the account.

(3) For each trust account opened, the lawyer shall submit written notice to the bank or other depository in which the trust account is maintained, confirming to the depository that the account will hold trust funds within the meaning of this Rule. The lawyer shall retain a copy executed by the bank and the lawyer for the lawyer’s own records. The notice shall identify the bank, account, and type of account, whether pooled, with interest paid to the IOLTA Committee (IOLTA account), or individual account with interest paid to the client or third person on whose behalf the trust property is held. For purposes of this Rule, one notice is sufficient for a master or umbrella account with individual subaccounts.

(4) No withdrawal from a trust account shall be made by a check which is not prenumbered. No withdrawal shall be made in cash or by automatic teller machine or any similar method. No withdrawal shall be made by a check payable to “cash” or “bearer” or by any other method which does not identify the recipient of the funds.

(5) Every withdrawal from a trust account for the purpose of paying fees to a lawyer or reimbursing a lawyer for costs and expenses shall be payable to the lawyer or the lawyer’s law firm.

(6) Each lawyer who has a law office in this Commonwealth and who holds trust funds shall deposit such funds, as appropriate, in one of two types of interest bearing accounts: either (i) a pooled account (“IOLTA account”) for all trust funds which in the judgment of the lawyer are nominal in amount, or are to be held for a short period of time, or (ii) for all other trust funds, an individual account with the interest payable as directed by the client or third person on whose behalf the trust property is held. The foregoing deposit requirements apply to funds received by lawyers in connection with real estate transactions and loan closings, provided, however, that a trust account in a lending bank in the name of a lawyer representing the lending bank and used exclusively for depositing and disbursing funds in connection with that particular bank’s loan transactions, shall not be required but is permitted to be established as an IOLTA account. All IOLTA accounts shall be established in
compliance with the provisions of paragraph (g) of this rule.

(7) Property held for no compensation as a custodian for a minor family member is not subject to the Operational Requirements for Trust Accounts set out in this paragraph (e) or to the Required Accounts and Records in paragraph (f) of this rule. As used in this subsection, "family member" refers to those individuals specified in section (e)(2) of rule 7.3.

(f) Required Accounts and Records: Every lawyer who is engaged in the practice of law in this Commonwealth and who holds trust property in connection with a representation shall maintain complete records of the receipt, maintenance, and disposition of that trust property, including all records required by this paragraph. Records shall be preserved for a period of six years after termination of the representation and after distribution of the property. Records may be maintained by computer subject to the requirements of subparagraph 1G of this paragraph (f) or they may be prepared manually.

(1) Trust Account Records. The following books and records must be maintained for each trust account:

A. Account Documentation. A record of the name and address of the bank or other depository; account number; account title; opening and closing dates; and the type of account, whether pooled, with net interest paid to the IOLTA Committee (IOLTA account), or account with interest paid to the client or third person on whose behalf the trust property is held (including master or umbrella accounts with individual subaccounts).

B. Check Register. A check register recording in chronological order the date and amount of all deposits; the date, check or transaction number, amount, and payee of all disbursements, whether by check, electronic transfer, or other means; the date and amount of every other credit or debit of whatever nature; the identity of the client matter for which funds were deposited or disbursed; and the current balance in the account.

C. Individual Client Records. A record for each client or third person for whom the lawyer received trust funds documenting each receipt and disbursement of the funds of the client or third person, the identity of the client matter for which funds were deposited or disbursed, and the balance held for the client or third person, including a subsidiary ledger or ledger for each client matter for which the lawyer receives trust funds documenting each receipt and disbursement of the funds of the client or third person with respect to such matter. A lawyer shall not disburse funds from the trust account that would create a negative balance with respect to any individual client.

D. Bank Fees and Charges. A ledger or other record for funds of the lawyer deposited in the trust account pursuant to paragraph (b)(2)(i) of this Rule to accommodate reasonably expected bank charges. This ledger shall document each deposit and expenditure of the lawyer’s funds in the account and the balance remaining.

E. Reconciliation Reports. For each trust account, the lawyer shall
prepare and retain a reconciliation report on a regular and periodic basis but in any event no less frequently than every sixty days. Each reconciliation report shall show the following balances and verify that they are identical:

(i) The balance which appears in the check register as of the reporting date.

(ii) The adjusted bank statement balance, determined by adding outstanding deposits and other credits to the bank statement balance and subtracting outstanding checks and other debits from the bank statement balance.

(iii) For any account in which funds are held for more than one client matter, the total of all client matter balances, determined by listing each of the individual client matter records and the balance which appears in each record as of the reporting date, and calculating the total. For the purpose of the calculation required by this paragraph, bank fees and charges shall be considered an individual client record. No balance for an individual client may be negative at any time.

F. Account Documentation. For each trust account, the lawyer shall retain contemporaneous records of transactions as necessary to document the transactions. The lawyer must retain:

(i) bank statements.

(ii) all transaction records returned by the bank, including canceled checks and records of electronic transactions.

(iii) records of deposits separately listing each deposited item and the client or third person for whom the deposit is being made.

G. Electronic Record Retention. A lawyer who maintains a trust account record by computer must maintain the check register, client ledgers, and reconciliation reports in a form that can be reproduced in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.

(2) Business Accounts. Each lawyer who receives trust funds must maintain at least one bank account, other than the trust account, for funds received and disbursed other than in the lawyer’s fiduciary capacity.

(3) Trust Property Other than Funds. A lawyer who receives trust property other than funds must maintain a record showing the identity, location, and disposition of all such property.

(4) Dissolution of Law Firm. Upon dissolution of a law firm, the partners shall make reasonable efforts to ensure the maintenance of client trust account records specified in this Rule.

(g) Interest on Lawyers’ Trust Accounts.

(1) The IOLTA account shall be established with any bank, savings and loan association, or credit union authorized by Federal or State law to do business in Massachusetts and insured by the Federal Deposit Insurance Corporation or similar State insurance programs for State chartered institutions. At the direction of the lawyer, funds in the IOLTA account in
excess of $100,000 may be temporarily reinvested in repurchase agreements fully collateralized by U.S. Government obligations. Funds in the IOLTA account shall be subject to withdrawal upon request and without delay.

(2) Lawyers creating and maintaining an IOLTA account shall direct the depository institution:
(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the IOLTA Committee;
(ii) to transmit with each remittance to the IOLTA Committee a statement showing the name of the lawyer who or law firm which deposited the funds; and
(iii) at the same time to transmit to the depositing lawyer a report showing the amount paid, the rate of interest applied, and the method by which the interest was computed.

(3) Lawyers shall certify their compliance with this Rule as required by S.J.C. Rule 4:02, § (2).

(4) This court shall appoint members of a permanent IOLTA Committee to fixed terms on a staggered basis. The representatives appointed to the committee shall oversee the operation of a comprehensive IOLTA program, including:
(i) the receipt of all IOLTA funds and their disbursement, net of actual expenses, to the designated charitable entities, as follows: sixty seven percent (67%) to the Massachusetts Legal Assistance Corporation and the remaining thirty three percent (33%) to other designated charitable entities in such proportions as the Supreme Judicial Court may order;
(ii) the education of lawyers as to their obligation to create and maintain IOLTA accounts under this Rule;
(iii) the encouragement of the banking community and the public to support the IOLTA program;
(iv) the obtaining of tax rulings and other administrative approval for a comprehensive IOLTA program as appropriate;
(v) the preparation of such guidelines and rules, subject to court approval, as may be deemed necessary or advisable for the operation of a comprehensive IOLTA program;
(vi) establishment of standards for reserve accounts by the recipient charitable entities for the deposit of IOLTA funds which the charitable entity intends to preserve for future use; and
(vii) reporting to the court in such manner as the court may direct.

(5) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall receive IOLTA funds from the IOLTA Committee and distribute such funds for approved purposes. The Massachusetts Legal Assistance Corporation may use IOLTA funds to further its corporate purpose and other designated charitable entities may use IOLTA funds either for (a) improving the administration of
As of February 25, 2020

justice or (b) delivering civil legal services to those who cannot afford them.

(6) The Massachusetts Legal Assistance Corporation and other designated charitable entities shall submit an annual report to the court describing their IOLTA activities for the year and providing a statement of the application of IOLTA funds received pursuant to this Rule.

(h) Dishonored Check Notification.

All trust accounts shall be established in compliance with the following provisions on dishonored check notification:

(1) A lawyer shall maintain trust accounts only in financial institutions which have filed with the Board of Bar Overseers an agreement, in a form provided by the Board, to report to the Board in the event any properly payable instrument is presented against any trust account that contains insufficient funds, and the financial institution dishonors the instrument for that reason.

(2) Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty days' notice in writing to the Board.

(3) The Board shall publish annually a list of financial institutions which have signed agreements to comply with this rule, and shall establish Rules and procedures governing amendments to the list.

(4) The dishonored check notification agreement shall provide that all reports made by the financial institution shall be identical to the notice of dishonor customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors. Such reports shall be made simultaneously with the notice of dishonor and within the time provided by law for such notice, if any.

(5) Every lawyer practicing or admitted to practice in this Commonwealth shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(6) The following definitions shall be applicable to this subparagraph:

(i) “Financial institution” includes (a) any bank, savings and loan association, credit union, or savings bank, and (b) with the written consent of the client or third person on whose behalf the trust property is held, any other business or person which accepts for deposit funds held in trust by lawyers.

(ii) “Notice of dishonor” refers to the notice which a financial institution is required to give, under the laws of this Commonwealth, upon presentation of an instrument which the institution dishonors.

(iii) “Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this Commonwealth.

MI* Rules effective

*Made only partial amendments effective 1/1/2011 since the most recent amendments to the ABA Model Rules (amended Rules 3.1, 3.3, 3.4, 3.5, 3.6, 5.5, and 8.5 and adopted new Rules 2.4, 5.7, and 6.6.
|  | **Rule 1.15 Safekeeping Property.**  
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<td><strong>(a) Definitions.</strong></td>
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| (1) “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, sweep fees, and a reasonable IOLTA account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA accounts or from the principal of the account. | (2) An “eligible institution” for IOLTA accounts is a bank, credit union, or savings and loan association authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Michigan. The eligible institution must pay no less on an IOLTA account than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets the same minimum balance or other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance with the eligible institution’s standard practice, but institutions may elect to pay a higher interest or dividend rate and may elect to waive any fees on IOLTA accounts. | (3) “IOLTA account” refers to an interest- or dividend-bearing account, as defined by the Michigan State Bar Foundation, at an eligible institution from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. | (4) “Non-IOLTA account” refers to an interest- or dividend-bearing account from which funds may be withdrawn upon request as soon as permitted by law in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Michigan, the deposits of which are insured by an agency of the federal government. Such an account shall be established as: | (A) a separate client trust account for the particular client or matter on which the net interest or dividend will be paid to the client or third person, or  
(B) a pooled client trust account with subaccounting by the bank or savings and loan association or by the lawyer, |
which will provide for computation of net interest or dividend earned by each client or third person’s funds and the payment thereof to the client or third person.

(5) “Lawyer” includes a law firm or other organization with which a lawyer is professionally associated.

(b) A lawyer shall:

(1) promptly notify the client or third person when funds or property in which a client or third person has an interest is received;
(2) preserve complete records of such account funds and other property for a period of five years after termination of the representation; and
(3) promptly pay or deliver any funds or other property that the client or third person is entitled to receive, except as stated in this rule or otherwise permitted by law or by agreement with the client or third person, and, upon request by the client or third person, promptly render a full accounting regarding such property.

(c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(d) A lawyer shall hold property of clients or third persons in connection with a representation separate from the lawyer’s own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.

(e) In determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, a lawyer shall consider the following factors:

(1) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of (a) the amount of the funds to be deposited; (b) the expected duration of the deposit, including the like-likelihood of delay in the matter for which the funds are held; and (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
(2) the cost of establishing and administering non-IOLTA accounts for the client or third person’s benefit, including service charges or fees, the lawyer’s services, preparation of tax reports, or other associated costs;
(3) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and
(4) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.

(f) A lawyer may deposit the lawyer’s own funds in a client trust
account only in an amount reasonably necessary to pay financial institution service charges or fees or to obtain a waiver of service charges or fees.

(g) Legal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred.

(h) No interest or dividends from the client trust account shall be available to the lawyer.

(i) The lawyer shall direct the eligible institution to:

(1) remit the interest and dividends from an IOLTA account, less allowable reasonable fees, if any, to the Michigan State Bar Foundation at least quarterly;

(2) transmit with each remittance a report that shall identify each lawyer for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and

(3) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.

(j) A lawyer’s good-faith decision regarding the deposit or holding of such funds in an IOLTA account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a non-IOLTA account.

(a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable interest bearing trust accounts as set forth in paragraphs (d) through (g). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein;

(2) funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein.

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established, and the lawyer must provide the client or third person with:

(i) written notice of the time, amount, and purpose of the withdrawal; and

(ii) an accounting of the client’s or third person’s funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have
been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.
(c) A lawyer shall:
(1) promptly notify a client or third person of the receipt of the client’s or third person’s funds, securities, or other properties;
(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them;
(4) promptly pay or deliver to the client or third person as requested the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive; and
(5) except as specified in Rule 1.5(b)(1) and (2), deposit all fees received in advance of the legal services being performed into a trust account and withdraw the fees as earned.
(d) Each trust account referred to in paragraph (a) shall be an interest bearing account in a bank, savings bank, trust company, savings and loan association, savings association, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence.
(e) A lawyer who receives client or third person funds shall maintain a pooled interest bearing trust account for deposit of funds that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to the Lawyer Trust Account Board established by the Minnesota Supreme Court.
(f) All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:
(1) separate interest bearing trust account for the particular third person, client, or client’s matter on which the interest, net of any transaction costs, will be paid to the client or third person; or
(2) pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client’s or third person’s funds and the payment thereof, net of any transaction costs, to the client.
(g) In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:
(1) the amount of interest which the funds would earn during the period they are expected to be deposited;
(2) the cost of establishing and administering the account, including the cost of the lawyer’s services;
(3) the capability of financial institutions described in paragraph (d) to calculate and pay interest to individual clients.
(h) Every lawyer engaged in private practice of law shall maintain or
cause to be maintained on a current basis books and records sufficient to
demonstrate income derived from, and expenses related to, the lawyer’s
private practice of law, and to establish compliance with paragraphs (a)
through (f). Equivalent books and records demonstrating the same
information in an easily accessible manner and in substantially the same
detail are acceptable. The books and records shall be preserved for at
least six years following the end of the taxable year to which they relate
or, as to books and records relating to funds or property of clients or third
persons, for at least six years after completion of the employment to
which they relate.

(i) Every lawyer subject to paragraph (h) shall certify, in connection with
the annual renewal of the lawyer’s registration and in such form as the
Clerk of the Appellate Courts may prescribe, that the lawyer or the
lawyer’s law firm maintains books and records as required by paragraph
(h). The Lawyers Professional Responsibility Board shall publish
annually the books and records required by paragraph (h).

(j) Lawyer trust accounts shall be maintained only in financial institutions
approved by the Office of Lawyers Professional Responsibility. Every
check, draft, electronic transfer, or other withdrawal instrument or
authorization shall be personally signed or, in the case of electronic,
telephone, or wire transfer, directed by one or more lawyers authorized
by the law firm.

(k) A financial institution shall be approved as a depository for lawyer
trust accounts if it files with the Office of Lawyers Professional
Responsibility an agreement, in a form provided by the Office, to report
to the Office in the event any properly payable instrument is presented
against a lawyer trust account containing insufficient funds, irrespective
of whether the instrument is honored. The Lawyers Professional
Responsibility Board shall establish rules governing approval and
termination of approved status for financial institutions, and shall
annually publish a list of approved financial institutions. No trust account
shall be maintained in any financial institution that does not agree to
make such reports. Any such agreement shall apply to all branches of the
financial institution and shall not be canceled except upon three days
notice in writing to the Office.

(l) The overdraft notification agreement shall provide that all reports
made by the financial institution shall be in the following format:
(1) in the case of a dishonored instrument, the report shall be identical to
the overdraft notice customarily forwarded to the depositor, and should
include a copy of the dishonored instrument, if such a copy is normally
provided to depositors;
(2) in the case of an instrument that is presented against insufficient funds
but which instrument is honored, the report shall identify the financial
institution, the lawyer or law firm, the account number, the date of
presentation for payment, and the date paid, as well as the amount of
overdraft created thereby.
Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(o) Definitions.
“Financial Institution” includes banks, savings and loan associations, savings banks, and any other businesses or persons that accept for deposit funds held in trust by lawyers.
“Properly payable” refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.
“Notice of dishonor” refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

MS Effective 1/3/05
(a): replaces “[five]” with “seven”
(b) and (c): retains former MR
Adds (d): Nothing in these Rules shall prohibit a lawyer or law firm from placing clients’ funds which are nominal in amount or to be held for a short period of time in one or more interest-bearing accounts for the benefit of the charitable purposes of a court-approved Interest on Lawyer Trust Accounts (IOLTA) program.
Adds (e): Unless an election not to do so is submitted in accordance with the procedures set forth in subsection (g) of this Rule, a lawyer or law firm with which the lawyer is associated who receives client funds shall maintain a pooled interest-bearing depository account for the deposit of client funds that are nominal in amount or expected to be held for a short period of time. Such an account shall comply with the following provisions:
(1) No earnings from such an account shall be made available to a lawyer or firm.
(2) The account shall include all clients’ funds which are nominal in amount or to be held for a short period of time.
(3) An interest-bearing trust account may be established with any bank or savings and loan association authorized by federal or state law to do business in Mississippi and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any successor thereof. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.
(4) The rate of interest payable on any interest-bearing trust account shall
not be less than the rate paid by the depository institution to regular, nonlawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the lawyer or law firm on some or all of deposit funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

Adds (f): Lawyers or law firms depositing clients’ funds which are nominal in amount or to be held for a short period of time in an interest-bearing depository account under subsection (e) of this Rule shall direct that a depository institution:

1. To remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Mississippi Bar Foundation, Inc.;
2. To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and
3. To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

Adds (g): A lawyer or law firm that elects not to maintain the account described by subsection (e) of this Rule shall, on or before November 1, 1993, make such election on a Notice of Election form provided by the Mississippi Bar. A lawyer admitted to the Mississippi Bar after August 1, 1993, who elects not to maintain such an account shall submit an appropriate Notice of Election within ninety (90) days after admission to the Bar.

1. If a Notice of Election is not submitted within the applicable time, the lawyer or law firm shall be required to maintain the account described in subsection (e) of this Rule.
2. Any lawyer or law firm may withdraw from participation in the program effective August 1 of any year by submitting an appropriate Notice of Election during the preceding month of July. A lawyer who wishes to change a previous election not to participate may do so at any time by notifying the Executive Director of the Mississippi State Bar.
3. Notwithstanding any provisions to the contrary herein, the Mississippi Bar may for good cause permit withdrawal from participation in the program at any time.

Adds (h): A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, "collected funds" means funds deposited,
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finally settled, and credited to the lawyer's trust account.

(1) Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Provided the lawyer has other sources of funds available at the time of disbursement (other than client or third party funds) sufficient to replace any uncollected funds, not withstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances:

(i) when the deposit is made by certified check or cashier's check;
(ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;
(iii) when the deposit is made by a check issued by the United States, the State of Mississippi, or any agency or political subdivision of the State of Mississippi; or
(iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the State of Mississippi.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon obtaining knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered guilty of professional misconduct based upon the disbursement of uncollected funds.

(2) A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

MO (a) differs from ABA Model substantially. It reads:

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Client or third party funds shall be kept in a separate account designated as a "Client Trust Account" or words of similar import maintained in the state where the lawyer's office is situated or elsewhere if the client or
third person consents.

(1) Every client trust account shall be either an IOLTA account, non-IOLTA trust account, or exempt trust account. No earnings from an IOLTA account, a non-IOLTA trust account, or exempt trust account shall be made available to any lawyer or law firm, nor shall any lawyer or law firm have a right or claim to such earnings. Other property shall be identified as such and appropriately safeguarded.
(2) A client trust account, whether IOLTA, non-IOLTA, or exempt must be in an approved institution. Every lawyer practicing or admitted to practice in this jurisdiction, as a condition thereof, shall be conclusively deemed to have consented to the overdraft reporting and production requirements mandated by the regulations adopted by the advisory committee.
(3) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;
(4) Receipts shall be deposited intact and records of deposit shall be sufficiently detailed to identify each item;
(5) Withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer; and
(6) No disbursement shall be made based upon a deposit:

(A) if the lawyer has reasonable cause to believe the funds have not actually been collected by the financial institution in which the trust account is held; and 

(B) until a reasonable period of time has passed for the funds to be actually collected by the financial institution in which the trust account is held.

(7) A reconciliation of the account shall be performed reasonably promptly each time an official statement from the financial institution is provided or available.

(b) Same as ABA Model.

(c) Same as ABA Model, except add exception that reads: “except that an advanced flat fee which does not exceed $2,000 is
exempted from this requirement and may be deposited into another account.”

(d) Same as ABA Model except that the exception reads “Except as stated in Rules 4-1.145 to 4-1.155” instead of “Except as stated in these Rules”

(e) Same as ABA Model.

Adds (f)-(h)

(f) Complete records of client trust accounts shall be maintained and preserved for a period of at least six years after the later of:

(1) termination of the representation, or

(2) the date of the last disbursement of funds.
Client trust account records may be maintained by electronic, photographic, or other media provided that they otherwise comply with Rules 4-1.145 to 4-1.155 and that printed copies can be produced. These records shall be readily accessible to the lawyer.

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records. Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of client trust account records.

Complete records shall include at a minimum:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement;

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

(3) fee agreements, engagement letters, retainer agreements and compensation agreements with clients;

(4) accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

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

(6) records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) reconciliations of the client trust accounts maintained by the lawyer;

(10) those portions of client files that are reasonably related to client trust account transactions; and

(11) records of credit card transactions with clients to the extent permitted by law and the payment card industry data security standard.

(g) Unless exempt as provided in Rule 4-1.145(a)(6) or all of the lawyer's trust accounts are non-IOLTA trust accounts, a lawyer or law firm shall establish and maintain one or more IOLTA accounts into which shall be deposited all funds of clients or third persons in compliance with the provisions in Rules 4-1.145 to 4-1.155.
(h) Every lawyer shall certify in connection with this Court's annual enrollment statement the financial institutions in which the lawyer has one or more trust accounts and that the lawyer or the law firm with which the lawyer is associated either maintains an IOLTA account with an eligible and approved institution or is exempt because the:

1. lawyer is not engaged in the practice of law;
2. nature of the lawyer's or law firm's practice is such that the lawyer or law firm does not hold client or third party funds;
3. lawyer is primarily engaged in the practice of law in another jurisdiction and not regularly engaged in the practice of law in this state;
4. lawyer is associated in a law firm with at least one lawyer who is admitted to practice and maintains an office in a jurisdiction other than the state of Missouri and the lawyer or law firm maintains a pooled trust account for the deposit of funds of clients or third persons in a financial institution located in such other jurisdiction and any interest or dividends, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds or to a nonprofit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located; or
5. The lawyer maintains an exempt account.

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<tr>
<td>(a)</td>
<td>Did not add new MR (b) and (c)</td>
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<td></td>
<td>(a): second sentence is different: Funds shall be kept in accordance with Rule 1.18 and this Rule</td>
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<td>(b) same as MR (d)</td>
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<td>(c): did not make changes; kept old MR (c)</td>
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<td>(a)</td>
<td>A lawyer shall hold funds or other property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. All funds received or held for the benefit of clients by a lawyer or firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts designated as a trust account maintained in the state where the</td>
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| NH Effective 5/1/2014 | (a) Deletes period after “lawyer’s own property.” and replaces with comma. Deletes MR sentence “Funds shall be kept in a separate account.... or third person.” Adds following text: “in accordance with the provisions of the New Hampshire Supreme Court Rules. The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules. Sufficient of all other property of clients or third persons shall be kept by the lawyer and shall be preserved for a period of six years after final distribution of such other property or any portion thereof.” Deletes MR sentence “Complete records of such account... after termination of the representation.”  
(b) Changes “necessary” to “appropriate”  
(c) Identical to MR  
Adds (d): “Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier’s check, certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution.”  
(e) Identical to MR (d)  
(f) Identical to MR (e) |
|---------------------|---------------------------------------------------------------|
| NJ Effective 1/1/04 | (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in a financial institution in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third person. New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.  
Does not include MR (b), but includes similar language in (a).  
do not have MR (c).  
(b), MR (d), does not include last phrase of MR which states that upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such property.  
(c), MR (e), does not have any of the changes made by E2k to this |
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| NM Effective 11/2/09 | Changed to Rule 16-115;  
(a) Renamed “A. Holding another’s property separately;” Changes “five years” to “five (5) years;”  
(b) Renamed “B. Client trust account deposits; discretionary;”  
(c) Renamed “C. Client trust account deposits; mandatory;”  
(d) Renamed “D. Notification of receipt of funds or property;”  
(e) Renamed “E. Severance of interest.” |
|----------------------|----------------------------------------------------------------------------------|

| NY Effective 4/1/09 | **RULE 1.15: PRESERVING IDENTITY OF FUNDS AND PROPERTY OF OTHERS; FIDUCIARY RESPONSIBILITY; COMMINGLING AND MISAPPROPRIATION OF CLIENT FUNDS OR PROPERTY; MAINTENANCE OF BANK ACCOUNTS; RECORD KEEPING; EXAMINATION OF RECORDS**  
(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.  
A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.  
(b) Separate Accounts.  
(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer’s practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. “Banking institution” means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer’s own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer’s firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.  
(2) A lawyer or the lawyer’s firm shall identify the special |
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bank account or accounts required by Rule 1.15(b)(1) as an “Attorney Special Account,” or “Attorney Trust Account,” or “Attorney Escrow Account,” and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate, provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or the lawyer’s firm.

(3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.

(4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

(1) promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest;

(2) identify and label securities and properties of a client or third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;

(3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them; and

(4) promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.

(d) Required Bookkeeping Records.

(1) A lawyer shall maintain for seven years after the events that they record:

(i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer’s practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;

(ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names
of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;

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

(iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;

(v) copies of all bills rendered to clients;

(vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer’s regular employ, for services rendered or performed;

(vii) copies of all retainer and closing statements filed with the Office of Court Administration; and

(viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.

(2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining “copies” by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers’ Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.
(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer’s estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers’ Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.
Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance, by one of them or by a successor firm, of the records specified in Rule 1.15(d).

(i) Availability of Bookkeeping Records: Records Subject to Production in Disciplinary Investigations and Proceedings.
The financial records required by this Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto, and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this Rule shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the attorney-client privilege.

(j) Disciplinary Action.
A lawyer who does not maintain and keep the accounts and records as specified and required by this Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of
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<th>NC</th>
<th>*Amendment effective April 5, 2018</th>
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<td>This rule has four subparts: Rule 1.15–1, Definitions; Rule 1.15–2, General Rules; Rule 1.15–3, Records and Accountings; and Rule 1.15–4, Trust Account Management in Multiple-Lawyer Firm. The subparts set forth the requirements for preserving client property, including the requirements for preserving client property in a lawyer’s trust account. The comment for all four subparts as well as the annotations appear after the text for Rule 1.15–4.</td>
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**Rule 1.15-1 Definitions**

For purposes of this Rule 1.15, the following definitions apply:

(a) "Bank" denotes a bank, savings and loan association, or credit union chartered under North Carolina or federal law.

(b) "Client" denotes a person, firm, or other entity for whom a lawyer performs, or is engaged to perform, any legal services.

(c) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.

(d) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.

(e) “Electronic transfer” denotes a paperless transfer of funds.

(f) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.

(g) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.

(h) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers.

(i) "General trust account" denotes any trust account other than a dedicated trust account.

(j) "Instrument" denotes an instrument under the Uniform Commercial Code, a payment item or advice accepted for credit by a bank, or a requisition or order for the electronic transfer of funds.

(k) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.

(l) "Professional fiduciary services" denotes compensated services (other than legal services) rendered by a lawyer as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.

(m) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of trust funds.

(n) "Trust funds" denotes funds belonging to someone other than the lawyer.
lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.

**Rule 1.15-2 General Rules**

(a) Entrusted Property. All entrusted property shall be identified, held, and maintained separate from the property of the lawyer, and shall be deposited, disbursed, and distributed only in accordance with this Rule 1.15.

(b) Deposit of Trust Funds. All trust funds received by or placed under the control of a lawyer shall be promptly deposited in either a general trust account or a dedicated trust account of the lawyer.

(c) Deposit of Fiduciary Funds. All fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in a fiduciary account or a general trust account of the lawyer.

(d) Safekeeping of Other Entrusted Property. A lawyer may also hold entrusted property other than fiduciary funds (such as securities) in a fiduciary account. All entrusted property received by a lawyer that is not deposited in a trust account or fiduciary account (such as a stock certificate) shall be promptly identified, labeled as property of the person or entity for whom it is to be held, and placed in a safe deposit box or other suitable place of safekeeping. The lawyer shall disclose the location of the property to the client or other person for whom it is held. Any safe deposit box or other place of safekeeping shall be located in this state, unless the lawyer has been otherwise authorized in writing by the client or other person for whom it is held.

(e) Location of Accounts. All trust accounts shall be maintained at a bank in North Carolina or a bank with branch offices in North Carolina except that, with the written consent of the client, a dedicated trust account may be maintained at a bank that does not have offices in North Carolina or at a financial institution other than a bank in or outside of North Carolina. A lawyer may maintain a fiduciary account at any bank or other financial institution in or outside of North Carolina selected by the lawyer in the exercise of the lawyer's fiduciary responsibility.

(f) Funds in Accounts. A trust or fiduciary account may only hold entrusted property. Third party funds that are not received by or placed under the control of the lawyer in connection with the performance of legal services or professional fiduciary services may not be deposited or maintained in a trust or fiduciary account. Additionally, no funds belonging to the lawyer shall be deposited or maintained in a trust or fiduciary account of the lawyer except:

1. funds sufficient to open or maintain an account, pay any bank service charges, or pay any tax levied on the account; or
2. funds belonging in part to a client or other third party and in part currently or conditionally to the lawyer.

(g) Mixed Funds Deposited Intact. When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently
or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer shall withdraw the amounts to which the lawyer is or becomes entitled. If the lawyer's entitlement is disputed, the disputed amounts shall remain in the trust account or fiduciary account until the dispute is resolved.

(h) Items Payable to Lawyer. Any item drawn on a trust account or fiduciary account for the payment of the lawyer’s fees or expenses shall be made payable to the lawyer and shall indicate on the item by client name, file number, or other identifying information the client from whose balance the item is drawn. Any item that does not include this information may not be used to withdraw funds from a trust account or fiduciary account for the payment of the lawyer’s fees or expenses.

(i) No Bearer items. No item shall be drawn on a trust account or fiduciary account made payable to cash or bearer and no cash shall be withdrawn from a trust account or fiduciary account by any means.

(j) Debit Cards Prohibited. Use of a debit card to withdraw funds from a general or dedicated trust account or a fiduciary account is prohibited.

(k) No Benefit to Lawyer or Third Party. A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

(l) Bank Directive. Every lawyer maintaining a trust account or fiduciary account at a bank shall file with the bank a written directive requiring the bank to report to the executive director of the North Carolina State Bar when an instrument drawn on the account is presented for payment against insufficient funds. No trust account or fiduciary account shall be maintained in a bank that does not agree to make such reports.

(o) Notification of Receipt. A lawyer shall promptly notify his or her client of the receipt of any entrusted property belonging in whole or in part to the client.

(p) Duty to Report Misappropriation. A lawyer who discovers or reasonably believes that entrusted property has been misappropriated or misapplied shall promptly inform the Trust Account Compliance Council (TACC) in the North Carolina State Bar Office of Council. Discovery of intentional theft or fraud must be reported to the TACC immediately. When an accounting or bank error results in an unintentional and inadvertent use of one client’s trust funds to pay the obligations of another client, the event must be reported unless the misapplication is discovered and rectified on or before the next quarterly reconciliation required by Rule 1.15-3(d)(1). This rule requires disclosure of information otherwise protected by Rule 1.6 if necessary to report the misappropriation or misapplication.

(q) Interest on Deposited Funds. Except as authorized by Rule 1.15-4, any interest earned on a trust account or fiduciary account, less any amounts deducted for bank service charges and taxes, shall belong to the
client or other person or entity entitled to the corresponding principal amount. Under no circumstances shall the lawyer be entitled to any interest earned on funds deposited in a trust account or fiduciary account.

(r) Abandoned Property. If entrusted property is unclaimed, the lawyer shall make due inquiry of his or her personnel, records and other sources of information in an effort to determine the identity and location of the owner of the property. If that effort is successful, the entrusted property shall be promptly transferred to the person or entity to whom it belongs. If the effort is unsuccessful and the provisions of G.S. 116B-18 are satisfied, the property shall be deemed abandoned, and the lawyer shall comply with the requirements of Chapter 116B of the General Statutes concerning the escheat of abandoned property.

(s) Check Signing and Electronic Transfer Authority.

(1) Every trust account check must be signed by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer.

(2) Every electronic transfer from a trust account must be initiated by a lawyer, or by an employee who is not responsible for performing monthly or quarterly reconciliations and who is supervised by a lawyer.

(3) Prior to exercising signature or electronic transfer authority, a lawyer or supervised employee shall take a one-hour trust accounting management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature or transfer authority.

(4) Trust account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures other than “digital signatures” as defined in 21 CFR 11.3(b)(5).

Rule 1.15-3 Records and Accountings

(a) Check Format. All general trust accounts, dedicated trust accounts, and fiduciary accounts must use business-size checks that contain an Auxiliary On-Us field in the MICR line of the check.

(b) Minimum Records for Accounts at Banks. The minimum records required for general trust accounts, dedicated trust accounts, and fiduciary accounts maintained at a bank shall consist of the following:

(1) all records listing the source and date of receipt of any funds deposited in the account including, but not limited to, bank receipts, deposit slips and wire and electronic transfer confirmations, and, in the case of a general trust account, all records also listing the name of the client or other person to whom the funds belong;

(2) all canceled checks or other items drawn on the account, or digital images thereof furnished by the bank, showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the client name, file number, or other identifying information of the client from whose balance each item is drawn, provided, that:
(A) digital images must be legible reproductions of the front and back of the original items with no more than six images per page and no images smaller than 1-3/16 x 3 inches; and
(B) the bank must maintain, for at least six years, the capacity to reproduce electronically additional or enlarged images of the original items or records related thereto upon request within a reasonable time.
(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds belong;
(4) all bank statements and other documents received from the bank with respect to the trust account, including, but not limited to notices of return or dishonor of any item drawn on the account against insufficient funds;
(5) in the case of a general trust account, a ledger containing a record of receipts and disbursements for each person or entity from whom and for whom funds are received and showing the current balance of funds held in the trust account for each such person or entity; and
(6) any other records required by law to be maintained for the trust account.
(c) Minimum Records for Accounts at Other Financial Institutions. The minimum records required for dedicated trust accounts and fiduciary accounts at financial institutions other than a bank shall consist of the following:
(1) all records listing the source and date of receipt of all funds deposited in the account including, but not limited to, depository receipts, deposit slips, and wire and electronic transfer confirmations;
(2) a copy of all checks or other items drawn on the account, or digital images thereof furnished by the depository, showing the amount, date, and recipient of the disbursement, provided, that the images satisfy the requirements set forth in Rule 1.15-3(b)(2);
(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the account (including electronic transfers or debits) or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement;
(4) all statements and other documents received from the depository with respect to the account, including, but not limited to notices of return or dishonor of any item drawn on the account for insufficient funds; and
(5) any other records required by law to be maintained for the account.
(d) Reconciliations of General Trust Accounts.
(1) Quarterly Reconciliations. For each general trust account, a reconciliation report shall be prepared at least quarterly. Each reconciliation report shall show all of the following balances and verify that they are identical:
(A) The balance that appears in the general ledger as of the reporting date;
(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and
(C) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.
(2) Monthly Reconciliations. Each month, the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance for the trust account.
(3) The lawyer shall review, sign, date, and retain a copy of the reconciliations of the general trust account for a period of six years in accordance with Rule 1.15-3(g).
(e) Accountings for Trust Funds. The lawyer shall render to the client a written accounting of the receipts and disbursements of all trust funds (i) upon the complete disbursement of the trust funds, (ii) at such other times as may be reasonably requested by the client, and (iii) at least annually if the funds are retained for a period of more than one year.
(f) Accountings for Fiduciary Property. Inventories and accountings of fiduciary funds and other entrusted property received in connection with professional fiduciary services shall be rendered to judicial officials or other persons as required by law. If an annual or more frequent accounting is not required by law, a written accounting of all transactions concerning the fiduciary funds and other entrusted property shall be rendered to the beneficial owners, or their representatives, at least annually and upon the termination of the lawyer's professional fiduciary services.
(g) Minimum Record Keeping Period. A lawyer shall maintain, in accordance with this Rule 1.15, complete and accurate records of all entrusted property received by the lawyer, which records shall be maintained for at least the six (6) year period immediately preceding the lawyer's most recent fiscal year end.
(h) Audit by State Bar. The financial records required by this Rule 1.15 shall be subject to audit for cause and to random audit by the North Carolina State Bar; and such records shall be produced for inspection and copying in North Carolina upon request by the State Bar.
(i) Reviews.
(1) Each month, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.
(2) Each quarter, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of
representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.

(3) The lawyer shall take the necessary steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.

(4) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(g).

(j) Retention of Records in Electronic Format. Records required by Rule 1.15-3 may be created, updated, and maintained electronically, provided:

(1) the records otherwise comply with Rule 1.15-3, to wit: electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a “digital signature” as defined in 21 CFR 11.3(b)(5);

(2) printed and electronic copies of the records in industry-standard formats can be made on demand; and

(3) the records are regularly backed up by an appropriate storage device.

Rule 1.15-4 Alternative Trust Account Management Procedure for Multi-Member Firm

(a) Trust Account Oversight Officer (TAOO). Lawyers in a law firm of two or more lawyers may designate a partner in the firm to serve as the trust account oversight officer (TAOO) for any general trust account into which more than one firm lawyer deposits trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), shall agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4. More than one partner may be designated as a TAOO for a law firm.

(b) Limitations on Delegation. Designation of a TAOO does not relieve any lawyer in the law firm of responsibility for the following:

(1) oversight of the administration of any dedicated trust account or fiduciary account that is associated with a legal matter for which the lawyer is primary legal counsel or with the lawyer’s performance of professional fiduciary services; and

(2) review of the disbursement sheets or statements of costs and receipts, client ledgers, and trust account balances for those legal matters for
which the lawyer is primary legal counsel.

(c) Training of the TAOO.

(1) Within the six months prior to beginning service as a TAOO, a lawyer shall,

(A) read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar Trust Account Handbook;

(B) complete one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;

(C) complete two hours of training (live, online, or self-guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics; and

(D) become familiar with the law firm’s accounting system for trust accounts.

(2) During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph (c)(1)(C).

(d) Designation and Annual Certification.

The written agreement designating a lawyer as the TAOO described in paragraph (a) shall contain the following:

(1) A statement by the TAOO that the TAOO agrees to oversee the operation of the firm’s general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in paragraph (e) of this rule;

(2) Identification of the trust accounts that the TAOO will oversee;

(3) An acknowledgement that the TAOO has completed the training described in paragraph (c)(1) and a description of that training;

(4) A statement certifying that the TAOO understands the law firm’s accounting system for trust accounts; and

(5) An acknowledgement that the lawyers in the firm remain professionally responsible for the operation of the firm’s trust accounts in compliance with Rule 1.15.

Each year on the anniversary of the execution of the agreement, the TAOO and the managing lawyers shall execute a statement confirming the continuing designation of the lawyer as the TAOO, certifying compliance with the requirements of this rule, describing the training undertaken by the TAOO as required by paragraph (c)(2), and reciting the statements required by subparagraphs (d)(1), (2), (4), and (5). During the lawyer’s tenure as TAOO and for six years thereafter, the agreement and all subsequent annual statements shall be maintained with the trust
account records (see Rule 1.15-3(g)).

(e) Mandatory Oversight Measures.
In addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm’s trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).

(a), changes second sentence: Funds shall be deposited in one or more identifiable interest bearing trust accounts in accordance with the provisions of paragraph (f).
Fourth sentence: adds “in the manner prescribed in paragraph (h)” after “by the lawyer” and then ends sentence.
Adds to end: Guidance regarding what constitutes complete records is provided in the Appendix to this Rule.

(b): A lawyer may accept credit card payments or electronic funds transfer payments for unearned fees as temporary deposits into the lawyer's general operating account if the funds in which a client or a third-party has an interest are promptly transferred from the general operating account to the client trust account. A lawyer may deposit the lawyer's own funds in a client trust account only for the purpose of paying bank service charges and fees associated with credit card payments electronic funds transfer payments related to that account, but only in an amount necessary for that purpose.
(d): adds “in connection with a representation” after “receiving”
Adds: (f) Each trust account referred to in paragraph (a) shall be an interest bearing trust account in a bank, savings bank, trust company, saving and loan association, savings association, credit union, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence authorized by federal or state law to do business in North Dakota and insured by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Federal Savings and Loan Insurance Corporation. Interest bearing trust funds shall be placed in accounts in which withdrawals or transfers can be made by the depositing lawyer or law firm without delay, subject only to any notice period which the depository institution is required to reserve by law or regulation.

(1) A lawyer who receives funds of clients or third persons shall maintain a pooled interest bearing trust account for deposit of all such funds received that are nominal in amount or expected to be held for a short period of time. The interest accruing on this account, net of any transaction costs, shall be paid to and administered by the North Dakota Bar Foundation in accordance with Administrative Rule 24 of the Supreme Court of North Dakota. The North Dakota Bar Foundation holds the entire beneficial interest in all interest monies accruing on this account.
(2) All funds of a client or third person shall be deposited in the account specified in paragraph (f)(1) unless they are deposited in:
(i) a separate interest bearing trust account for the particular client or third person on which the interest, net of any transaction costs, will be paid to the client or third person; or
(ii) a pooled interest bearing trust account with subaccounting which will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client or third person.

(3) In determining whether to use the account specified in paragraph (f)(1) or an account specified in paragraph (f)(2), a lawyer should take into consideration the following factors when deciding whether the funds to be invested may be utilized to provide a positive net return to the client or third person:
(i) the amount of interest which the funds would earn during the period they are expected to be deposited;
(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's or third person's benefit; and
(iii) the capability of financial institutions described in paragraph (f) to calculate and pay interest on individual accounts or subaccounts.

(4) As to accounts under paragraph (f)(1), a lawyer or law firm shall direct the depository institution:
(i) to remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the North Dakota Bar Foundation (the foundation); and
(ii) to transmit with each remittance to the foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing lawyer or law firm.

Adds: (g) Lawyers who are admitted to practice in a jurisdiction other than the state of North Dakota and lawyers who are associated in a law firm with at least one lawyer who is admitted to practice in a jurisdiction other than the state of North Dakota are exempt from the requirements of paragraph (f) if the lawyer or law firm maintains a pooled interest bearing trust account for the deposit of funds of clients or third persons in a financial institution located outside the state of North Dakota and the interest, net of any service charges and fees, from the account is being remitted to the client or third person who owns the funds, or to a non-profit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located. This exemption shall not relieve a lawyer from any of the other obligations imposed by this rule.
As of February 25, 2020

Adds: (h) A lawyer shall maintain or cause to be maintained on a current basis records sufficient to demonstrate compliance with the provisions of this Rule. Such records shall be preserved for at least six years after termination of the representation.

Adds: (i) A lawyer shall certify, in connection with the annual renewal of the lawyer's license and in such form as the clerk of the supreme court of North Dakota may prescribe, that the lawyer is complying with the provisions of this Rule.

Adds: (i) A lawyer shall certify, in connection with the annual renewal of the lawyer's license and in such form as the clerk of the supreme court of North Dakota may prescribe, that the lawyer is complying with the provisions of this Rule.

(j) The form required in subsection (i) shall also contain a provision for each licensed lawyer to certify (1) whether the lawyer represents private clients; (2) if the lawyer represents private clients, whether the lawyer is currently covered by professional liability insurance; and (3) whether the lawyer intends to maintain such insurance during the next twelve months. A lawyer shall notify the clerk in writing within 30 days if the lawyer's professional liability coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption. This information shall be disclosed to the public upon request.

(k) Lawyer trust accounts, as referred to in paragraphs (a) and (f), shall be maintained only in eligible financial institutions approved by the Disciplinary Board. Every check, draft, electronic transfer, or other withdrawal instrument or authorization must be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the law firm.

(l) A financial institution, to be approved as a depository for lawyer trust accounts, shall file with the Disciplinary Board an agreement, in a form provided by the Board, to report to the Board if any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. The Disciplinary Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account may be maintained in any financial institution that does not agree to make overdraft notification reports. Any overdraft notification agreement must apply to all branches of the financial institution and may not be canceled except upon three days notice in writing to the Board.
The overdraft notification agreement must provide that all reports made by the financial institution be in the following format:

(1) in the case of a dishonored instrument, the report must be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if a copy is normally provided to depositors;

(2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report must identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

Reports must be made simultaneously with the notice of dishonor* and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report must be made within five banking days of the date of presentation for payment against insufficient funds.

Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, consent to the reporting and production requirements of this Rule.

Nothing in this rule precludes a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

With respect to client trust accounts required by this Rule:

(1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer may be an authorized signatory or authorize transfers from a client trust account;

(2) receipts must be deposited intact and records of deposit should be sufficiently detailed to identify each item; and

(3) withdrawals must be made only by check payable to a named payee and not payable to cash, or by authorized electronic transfer.

Trust account records may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records must be readily accessible to the lawyer.

Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records.
(s) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of trust account records.

**APPENDIX**

Rule 1.15(a) requires that a lawyer practicing in this jurisdiction shall maintain "$[c]omplete records" of trust account transactions. The American Bar Association's Model Rules for Client Trust Account Records identifies the kinds of records that should be maintained in meeting the Rule's requirement:

(1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

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

(3) copies of retainer and compensation agreements with clients as required by N.D.R. Prof. Conduct 1.5;

(4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

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

(6) copies of records showing disbursements on behalf of clients;

(7) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(8) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(9) copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyer; and

(10) copies of those portions of client files that are reasonably related to client trust account transactions.
This Appendix identifies the basic financial records that a lawyer should maintain with regard to all trust accounts of a law firm. These include the standard books of account and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client and third person funds as required by this Rule. Consistent with paragraph (h) of this Rule, lawyers must maintain client trust account records for a period of six years after termination of each particular legal engagement or representation.

With respect to physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks identified in Appendix paragraph (7), the "Check Clearing for the 21st Century Act" or "Check 21 Act", codified at 12 U.S.C. § 5001 et.seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at 12 U.S.C. § 5002(16) as "paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in 12 U.S.C. § 5005(2), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet-based websites. It is the lawyer's responsibility to download electronic images. Electronic images must be maintained for the requisite number of years and must be readily available for printing upon request or must be printed and maintained for the requisite number of years.

The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the inter-bank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should review Appendix paragraph (8).
There are five types of check conversions where a lawyer should consider maintaining records identified in Appendix paragraph (8). First, in a "point-to-point purchase conversion", a paper check is converted into a debit at the point of purchase and the paper check is returned to the issuer. Second, in a "back-office conversion", a paper check is presented at the point of purchase and is later converted into a debit and the paper check is destroyed. Third, in an "account-receivable conversion", a paper check is converted into a debit and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone and the information is converted to a debit. Fifth, in a "web-initiated debit", an electronic payment is initiated through a secure web environment. All electronic funds transfers must be recorded and a lawyer should not re-use a check number that has been previously used in an electronic transfer transaction.

The potential of these records to serve as safeguards may be realized if the monthly trial balances and quarterly reconciliations identified in Appendix paragraph (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions.

In some situations, documentation in addition to that listed in Appendix paragraphs (1) through (9) may be necessary for a complete understanding of a trust account transaction. The type of document that a lawyer should retain under Appendix paragraph (10) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically should be retained under Appendix paragraph (10) include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on
behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client).

OH (revised, effective 1/1/10)

Title: adds “Funds and” after “Safekeeping”
(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer’s office is situated. The account shall be designated as a “client trust account,” “IOLTA account,” or with a clearly identifiable fiduciary title. Other property shall be identified as such and appropriately safeguarded. Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first. For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:
(1) maintain a copy of the fee agreement with each client;
(2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:
   (i) the name of the client;
   (ii) the date, amount, and source of all funds received on behalf of such client;
   (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;
   (iv) the current balance for such client.
(3) maintain a record for each bank account that sets forth all of the following:
   (i) the name of such account;
   (ii) the date, amount, and client affected by each credit and debit;
   (iii) the balance in the account.
(4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;
(5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule.
(b): adds “or obtaining a waiver of” after “paying”
(d): inserts “lawful” before “interest” in first sentence, adds after first sentence: “For purposes of this rule, the third person’s interest shall be one of which the lawyer has actual knowledge and shall be limited to a statutory lien, a final judgment addressing disposition of the funds or property, or a written agreement by the client or the lawyer on behalf of the client guaranteeing payment from the specific funds or property;” adds “or a third person, confirmed in writing” after “agreement with the
client”
Breaks language after “upon” into separate sentence and adds “funds and” before “property”
(e): adds “funds or other” before first use of “property,” removes parentheses around “one of whom may be the lawyer” and replaces with commas, replaces “the property shall be kept separate by the lawyer” with “the lawyer shall hold the funds or other property pursuant to division (a) of this rule”
Adds (f) Upon dissolution of any law firm, the former partners, managing partners, or supervisory lawyers shall promptly account for all client funds and shall make appropriate arrangements for one of them to maintain all records generated under division (a) of this rule.
Adds (g) A lawyer, law firm, or estate of a deceased lawyer who sells a law practice shall account for and transfer all funds held pursuant to this rule to the lawyer or law firm purchasing the law practice at the time client files are transferred.
Adds (h) A lawyer, a lawyer in the lawyer’s firm, or a firm that owns an interest in a business that provides a law-related service shall:
(1) maintain funds of clients or third persons that cannot earn any net income for the clients or third persons in an interest-bearing trust account that is established in an eligible depository institution as required by sections 3953.231, 4705.09, and 4705.10 of the Revised Code or any rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code.
(2) notify the Ohio Legal Assistance Foundation, in a manner required by rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code, of the existence of an interest-bearing trust account;
(3) comply with the reporting requirement contained in Gov. Bar R. VI, Section 1(F).

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| When in connection with a representation, a lawyer possesses funds or other property in which both the lawyer and another person claim interests, the funds or other property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion of the funds shall be promptly distributed.

Adds (f)-(o):
(f) Where funds or other items of property entrusted to a lawyer have been impressed with a specific purpose as to their use, they shall retain that specific character unless otherwise authorized by a client or third person or prohibited by law. Where funds are impressed with a specific purpose, a lawyer may not subject them to a counterclaim, set off for fees, or subject them to a lien.
(g) Effective January 1, 2009, all members of the Bar who are required under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients' funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or modified. The Oklahoma Bar Association will provide on-line access and/or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Oklahoma Bar Association, Oklahoma Bar Foundation or the Office of the General Counsel of the Oklahoma Bar Association will be grounds for appropriate discipline.

(h) A lawyer or law firm that holds funds of clients or third parties in connection with a representation shall create and maintain an interest-bearing demand trust account and shall deposit therein all such funds to the extent permitted by applicable banking laws, that are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(1) the account may be established with any bank or savings and loan association authorized by federal or state law to do business in Oklahoma and insured by the Federal Deposit Insurance Corporation;

(2) the rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;

(3) the depository institution shall be directed:

(i) to remit interest or dividends, as the case may be, on the
average monthly balance in the account, at least quarterly, to the Oklahoma Bar Foundation, Inc. ("Foundation"); and (ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or the law firm for whom the remittance is sent, the account number, the period of time covered by the statement, the rate of interest applied and the average daily balance of the account;

(4) the lawyer or law firm shall not deposit funds belonging to the lawyer or law firm in the account, except that funds necessary to comply with the depository institution’s minimum balance requirements for the maintenance of the account or funds needed to pay applicable fees and service charges may be deposited therein;

(5) in determining whether to use the interest-bearing account herein specified, the lawyer shall consider whether the funds to be invested could be utilized to provide a positive net return to the client, taking into consideration the following factors:

(i) the amount of interest that the funds would earn during the period they are expected to be deposited; (ii) the cost of establishing and administering the account, including the cost of the lawyer’s services and the cost of preparing any tax reports required for interest accruing to a client’s benefit; and (iii) the capability of financial institutions to calculate and pay interest to individual clients;

(6) in the event that any client asserts a claim against a lawyer based upon such lawyer’s determination to place client advances in the account because such balance is nominal in amount or to be held for a short period of time, the Foundation shall, upon written request by such lawyer, review such claim and either:

(i) approve such claim (if such balances are found not to be nominal in amount or short in duration) and remit directly to the claimant any sum of interest remitted to the Foundation on account of such funds; or
(ii) reject such a claim (if such balances are found to be nominal in amount or short in duration) and advise the claimant in writing of the grounds therefor. In the event of any subsequent litigation involving such a claim, the Foundation shall interplead any such sum of interest and shall assume the defense of the action;

(7) The requirements of subparagraph (h) shall not apply if:
(i) it is not feasible for the lawyer or law firm to establish an interest-bearing trust account for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution which offers such an account in the community where the principal office of the lawyer or law firm is situated, or
(ii) those financial institutions which offer such an account in the community where the principal office of the lawyer or law firm is situated impose fees and service charges that routinely exceed the interest generated by the account; and

(8) Information necessary to determine compliance or justifiable reason for noncompliance with the requirements of subparagraph (h) shall be included in the reporting required by subparagraph (g) of this rule. If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred to the office of the General Counsel of the Oklahoma Bar Association for appropriate investigation and proceedings.

(i) When a lawyer receives funds subject to this rule that are not required to be deposited in an interest bearing account payable to the Oklahoma Bar Foundation pursuant to (h), the lawyer may create and maintain either an interest bearing or a noninterest bearing account, provided that any interest earned by the funds belongs to the client, shall be distributed according to the client’s instructions, and shall not be used by the lawyer for any purpose without the client’s express consent.

(j) Beginning January 1, 2008 and in addition to the requirements previously set forth in this Rule, lawyer trust accounts shall be maintained only in financial institutions approved by the Office of the General Counsel. The Office shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions.

(k) A financial institution may be approved as a depository for lawyer trust accounts if it files with the Office of the General Counsel an agreement, a Trust Account Overdraft Reporting Agreement (TAORA) form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Office.

(l) The Trust Account Overdraft Reporting Agreement shall provide that
all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

(3) Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall be deemed to have consented to the reporting and production requirements mandated by this rule.

(n) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(o) Definitions

"Financial Institution" – includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

"Properly payable" – refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Notice of dishonor" – refers to the notice, which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument, which the institution dishonors.

OR
Effective 12/1/06, and effective 1/1/14

1.15-1
(a): A lawyer shall hold property of clients or third persons that is in a lawyer's possession separate from the lawyer's own property. Funds, including advances for costs and expenses and escrow and other funds held for another, shall be kept in a separate "Lawyer Trust Account"
maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Each lawyer trust account shall be an interest bearing account in a financial institution selected by the lawyer or law firm in the exercise of reasonable care. Lawyer trust accounts shall conform to Rule 1.15-2. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) and (c) Identical but refer to “lawyer trust account” rather than “client trust account.”

(d) and (e) Identical

Adds:

Rule 1.15-2 IOLTA ACCOUNTS and Trust Account Overdraft Notification

(a) A lawyer trust account for client funds that cannot earn interest in excess of the costs of generating such interest (“net interest”) shall be referred to as an IOLTA (Interest on Lawyer Trust Accounts) account. A lawyer or law firm establishing an IOLTA account shall so advise the Oregon Law Foundation in writing within 30 days of its establishment.

(b) All client funds shall be deposited in the lawyer’s or law firm’s IOLTA account unless a particular client’s funds can earn net interest. All interest earned by funds held in the IOLTA account shall be paid to the Oregon Law Foundation as provided in this rule.

(c) Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client’s benefit and the net interest earned by funds in such an account shall be held in trust as property of the client in the same manner as is provided in paragraphs (a) through (d) of Rule 1.15-1 for the principal funds of the client. The interest bearing account shall be either:

(1) a separate account for each particular client or client matter; or
(2) a pooled lawyer trust account with subaccounting which will provide for computation of interest earned by each client's funds and the payment thereof, net of any bank service charges, to each client.

(d) In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

(1) the amount of the 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 rates of interest at financial institutions where the funds are to be deposited;
(4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client’s benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm’s services, and the cost of preparing any tax-related documents to report or account for income accruing to the client’s benefit; (5) the capability of
financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and
(6) any other circumstances that affect the ability of the client’s funds to earn a net return for the client.
(e) The lawyer or law firm shall review the IOLTA account at reasonable intervals to determine whether circumstances have changed that require further action with respect to the funds of a particular client.
(f) If a lawyer or law firm determines that a particular client’s funds in an IOLTA account either did or can earn net interest, the lawyer shall transfer the funds into an account specified in paragraph (c) of this rule and request a refund for the lesser of either: of any interest earned by the client’s funds and that may have been remitted to the Oregon Law Foundation; or the interest the client’s funds would have earned had those funds been placed in an interest bearing account for the benefit of the client at the same bank.
(1) The request shall be made in writing to the Oregon Law Foundation within a reasonable period of time after the interest was remitted to the Foundation and shall be accompanied by written verification from the financial institution of the interest amount.
(2) The Oregon Law Foundation will not refund more than the amount of interest it received from the client’s funds in question. The refund shall be remitted to the financial institution for transmittal to the lawyer or law firm, after appropriate accounting and reporting.
(g) No earnings from a lawyer trust account shall be made available to a lawyer or the lawyer’s firm.
( h) A lawyer or law firm may maintain a lawyer trust account only at a financial institution that:
(1) is authorized by state or federal banking laws to transact banking business in the state where the account is maintained;
(2) is insured by the Federal Deposit Insurance Corporation or an analogous federal government agency;
(3) has entered into an agreement with the Oregon Law Foundation:
(i) to remit to the Oregon Law Foundation, at least quarterly, interest earned on the average daily balance in the lawyer’s or law firm’s IOLTA account, less reasonable service charges, if any; and
(ii) to deliver to the Oregon Law Foundation a report with each remittance showing the name of the lawyer or law firm for whom the remittance is sent, the number of the IOLTA account as assigned by the financial institution, the average daily account balance for each month for which the remittance is made, the rate of interest applied, the period for which the remittance is made, and the amount and description of any service charges deducted during the remittance period; and
(4) has entered into an overdraft notification agreement with the Oregon State Bar Disciplinary Counsel when any properly payable instrument is presented against such account containing insufficient funds, whether or
not the instrument is honored.

( i) Overdraft notification agreements with financial institutions shall require that the following information be provided in writing to Disciplinary Counsel within ten banking days of the date the item was returned unpaid:

1. the identity of the financial institution;
2. the identity of the lawyer or law firm;
3. the account number; and
4. either (i) the amount of the overdraft and the date it was created; or (ii) the amount of the returned instrument and the date it was returned.

( j) Agreements between financial institutions and the Oregon State Bar shall apply to all branches of the financial institution and shall not be canceled except upon a thirty-day notice in writing to Disciplinary Counsel.

( k) Nothing in this rule shall preclude financial institutions which participate in any trust account overdraft notification program from charging lawyers or law firms for the reasonable costs incurred by the financial institutions in participating in such program.

( l) Every lawyer who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing of the same information required by paragraph ( i). The lawyer shall include a full explanation of the cause of the overdraft.

(a) The following definitions are applicable to Rule 1.15:

(1) Eligible Institution. An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to Pa.R.D.E. 221(h).

(2) Fiduciary. A Fiduciary is a lawyer acting as a personal representative, guardian, conservator, receiver, trustee, agent under a durable power of attorney, or other similar position.

(3) Fiduciary Funds. Fiduciary Funds are Rule 1.15 Funds which the lawyer holds as a Fiduciary. Fiduciary Funds may be either Qualified Funds or Nonqualified Funds.

(4) Financial Institution. A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company.
registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.

(5) Interest On Lawyer Trust Account (IOLTA) Account. An IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law. Qualified Funds are to be held or deposited in an IOLTA Account.

(6) IOLTA Board. The IOLTA Board is the Pennsylvania Interest On Lawyers Trust Account Board.

(7) Non-IOLTA Account. A Non-IOLTA Account is an income producing Trust Account from which funds may be withdrawn upon request as soon as permitted by law in which a lawyer deposits Rule 1.15 Funds. Only Nonqualified Funds are to be held or deposited in a Non-IOLTA Account. A Non-IOLTA Account shall be established only as:

(i) a separate client Trust Account for the particular client or matter on which the net income will be paid to the client or third person; or

(ii) a pooled client Trust Account with subaccounting by the Eligible Institution or by the lawyer, which will provide for computation of net income earned by each client’s or third person’s funds and the payment thereof to the client or third person.

(8) Nonqualified Funds. Nonqualified Funds are Rule 1.15 Funds, whether cash, check, money order or other negotiable instrument, which are not Qualified Funds.

(9) Qualified Funds. Qualified Funds are Rule 1.15 Funds which are nominal in amount or are reasonably expected to be held for such a short period of time that sufficient income will not be generated to justify the expense of administering a segregated account.

(10) Rule 1.15 Funds. Rule 1.15 Funds are funds which the lawyer receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer’s status as such. When the term “property” appears with “Rule 1.15 Funds,” it means property of a client or third person which the lawyer receives in any of the foregoing capacities.

(11) Trust Account. A Trust Account is an account in an Eligible Institution in which a lawyer holds Rule 1.15 Funds. A Trust Account
must be maintained either as an IOLTA Account or as a Non-IOLTA Account.

(b) A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.

(c) Required Records. Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter.) A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l):

(1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and

(2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

(3) The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records. These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or
demand by either agency made pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board Rules, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.

(4) A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.

(d) Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.

(e) Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

(f) When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

(g) The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or
authorize transfers from a Trust Account or any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).

(h) A lawyer shall not deposit the lawyer’s own funds in a Trust Account except for the sole purpose of paying service charges on that account, and only in an amount necessary for that purpose.

(i) A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

(j) At all times while a lawyer holds Rule 1.15 Funds, the lawyer shall also maintain another account that is not used to hold such funds.

(k) All Nonqualified Funds which are not Fiduciary Funds shall be placed in a Non-IOLTA Account or in another investment vehicle specifically agreed upon by the lawyer and the client or third person which owns the funds.

(l) All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

(m) All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.

(n) A lawyer shall be exempt from the requirement that all Qualified Funds be placed in an IOLTA Account only upon exemption requested and granted by the IOLTA Board. If an exemption is granted, the lawyer must hold Qualified Funds in a Trust Account which is not income producing. Exemptions shall be granted if:

(1) the nature of the lawyer’s practice does not require the routine maintenance of a Trust Account in Pennsylvania;

(2) compliance with this paragraph would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographical distance between the lawyer’s principal office and the closest Eligible Institution, or on other compelling and necessitous factors; or

(3) the lawyer’s historical annual Trust Account experience, based on
information from the Eligible Institution in which the lawyer deposits funds, demonstrates that the service charges on the account would significantly and routinely exceed any income generated.

(o) An account shall not be considered an IOLTA Account unless the Eligible Institution at which the account is maintained shall:

(1) Remit at least quarterly any income earned on the account to the IOLTA Board;

(2) Transmit to the IOLTA Board with each remittance and to the lawyer who maintains the IOLTA Account a statement showing at least the name of the account, service charges or fees deducted, if any, the amount of income remitted from the account, and the average daily balance, if available; and

(3) Pay a rate of interest or dividends no less than the highest interest rate or dividend generally available from the Eligible Institution to its Non-IOLTA customers when the IOLTA Account meets the same minimum balance or other eligibility qualifications, and comply with the Regulations of the IOLTA Board with respect to service charges, if any.

(p) A lawyer shall not be liable in damages or held to have breached any fiduciary duty or responsibility because monies are deposited in an IOLTA Account pursuant to the lawyer’s judgment in good faith that the monies deposited were Qualified Funds.

(q) There is hereby created the Pennsylvania Interest On Lawyers Trust Account Board, which shall administer the IOLTA program. The IOLTA Board shall consist of nine members who shall be appointed by the Supreme Court. Two of the appointments shall be made from a list provided to the Supreme Court by the Pennsylvania Bar Association in accordance with its own rules and regulations. With respect to these two appointments, the Pennsylvania Bar Association shall submit three names to the Supreme Court, from which the Court shall make its final selections. The term of each member shall be three years and no member shall be appointed for more than two consecutive three year terms. The Supreme Court shall appoint a Chairperson. In order to administer the IOLTA program, the IOLTA Board shall promulgate rules and regulations consistent with this Rule for approval by the Supreme Court.

(r) The IOLTA Board shall comply with the following:

(1) The IOLTA Board shall prepare an annual audited statement of its financial affairs.
(2) The IOLTA Board shall submit to the Supreme Court for its approval a copy of its audited statement of financial affairs, clearly setting forth in detail all funds previously approved for disbursement under the IOLTA program and the IOLTA Board’s proposed annual budget, designating the uses to which IOLTA Funds are recommended.

(3) Upon approval of the Supreme Court, the IOLTA Board shall distribute and/or expend IOLTA Funds.

(s) Income earned on IOLTA Accounts (IOLTA Funds) may be used only for the following purposes:

(1) delivery of civil legal assistance to the poor and disadvantaged in Pennsylvania by non-profit corporations described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended;

(2) educational legal clinical programs and internships administered by law schools located in Pennsylvania;

(3) administration and development of the IOLTA program in Pennsylvania; and

(4) the administration of justice in Pennsylvania.

(t) The IOLTA Board shall hold the beneficial interest in IOLTA Funds. Monies received in the IOLTA program are not state or federal funds and are not subject to Article VI of the act of April 9, 1929 (P. L. 177, No. 175) known as The Administrative Code of 1929, or the act of June 29, 1976 (P. L. 469, No. 117).

(u) Every attorney who is required to pay an active annual assessment under Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (relating to periodic assessment of attorneys; voluntary inactive status) shall pay an additional annual fee of $30.00 for use by the IOLTA Board. Such additional assessment shall be added to, and collected with and in the same manner as, the basic annual assessment, but the statement mailed by the Attorney Registration Office pursuant to Rule 219 shall separately identify the additional assessment imposed pursuant to this subdivision. All amounts received pursuant to this subdivision shall be credited to the IOLTA Board.

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adds as (f): A lawyer shall not disburse funds from an account containing the funds of more than one client or third person unless the funds are collected funds; provided, however, a lawyer may treat as equivalent to collected funds cash, verified and documented electronic fund transfers, or other deposits treated by the depository bank as equivalent to cash, properly endorsed government checks, certified checks, cashiers checks or other checks drawn by a bank, and any other instrument payable at or through a bank, if the amount of such other instrument does not exceed $5,000 and the lawyer has reasonable and prudent belief that the deposit of such other instrument will be collected promptly. However, such collected funds shall not be disbursed prior to deposit into the lawyer’s trust account. If the actual collection of deposits treated as the equivalent of collected funds does not occur, the lawyer shall, as soon as practical but in no event more than five working days after notice of noncollection, deposit replacement funds in the account.

adds as (g): A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.

adds as (h): Every lawyer maintaining a law office trust account shall file with the financial institution a written directive requiring the institution to report to the Commission on Lawyer Conduct when any properly payable instrument drawn on the account is presented for payment against insufficient funds. No law office trust account shall be maintained in a financial institution that does not agree to make such reports. The inadvertent failure of the institution to provide the report required by this rule shall not be construed to establish a breach of duty of care, or contract with, the Court or any third party who may sustain a loss as a result of an overdraft of a lawyer trust account.

SD  *Amendment effective 4/1/2017

(A) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. Funds shall be kept in a separate account maintained in the state where the lawyer’s office is situated, or elsewhere with the consent of the client or third party. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation. A lawyer may deposit the lawyer’s own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose. A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(B) Upon receiving funds or other property in which a client or third party has an interest, a lawyer shall promptly notify the client or third party. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client
or third party any funds or other property that the client or third party is entitled to receive and, upon request by the client or third party, shall promptly render a full accounting regarding such property.

(C) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(D) Preserving Identity of Funds and Property of Client.

(1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(i) Funds reasonably sufficient to pay bank charges may be deposited therein.

(ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(2) A lawyer shall:

(i) Promptly notify a client of the receipt of his funds, securities, or other properties.

(ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to his client regarding them.

(iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.

(3) A lawyer shall create and maintain an interest-bearing account for clients’ funds which are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(i) No earnings from such an account shall be made available to a lawyer or firm.
(ii) The account shall include all clients’ funds which are nominal in amount or to be held for a short period of time.

(iii) An interest-bearing trust account shall be established with any bank authorized by federal or state law to do business in South Dakota and insured by the Federal Deposit Insurance Corporation. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.

(iv) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, nonlawyer depositors unless reduced to offset bank administrative costs. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of deposit funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(4) Lawyers or law firms depositing client funds in a trust savings account shall direct the depository institution:

(i) To remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution’s standard accounting practice, at least quarterly, to the South Dakota Bar Foundation;

(ii) To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and

(iii) To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(E) Considerations

(1) This is a mandatory program for lawyers and law firms, whether proprietorships, partnerships or professional corporations or other business organization for the practice of law who hold clients’ or third party’s funds.

(2) The program shall apply to all clients whose funds on deposit are either nominal in amount or to be held for a short period of time.

(3) The following principles shall apply to clients’ funds which are
As of February 25, 2020

held by lawyers and law firms:
(i) No earnings from the funds may be made available to any lawyer or law firm.

(ii) Upon request of the client, earnings may be made available to the client whenever possible upon deposited funds which are neither nominal in amount nor are to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys to either invest clients’ funds or to advise clients to make their funds productive.

(iii) Clients’ funds which are nominal in amount or to be held for a short period of time shall be retained in an interest-bearing checking or savings trust account, with the interest (net of any service charge or fees) made payable to the South Dakota Bar Foundation.

(iv) The determination of whether clients’ funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each attorney or law firm. Such judgment is not subject to review. In making this determination the lawyer or law firm may consider the cost of establishing, maintaining and accounting for an individual client interest bearing trust account against the anticipated interest which would accrue to the benefit of the client.

(v) Notification of clients whose funds are nominal in amount or to be held for a short period of time is unnecessary for lawyers and law firms.

(4) The following principles shall apply to those clients’ funds held in individual trust accounts established by lawyers or law firms not participating in the program:

(i) No earnings from the funds may be made available to any lawyer or law firm.

(ii) Upon request of a client, earnings may be made available to client whenever possible on deposited funds which are neither nominal in amount nor to be held for a short period of time; however, traditional attorney-client relationships do not compel attorneys either to invest clients’ funds or to advise clients to make their funds productive.

(iii) Clients’ funds which are nominal in amount or to be held for short periods of time, and for which individual income generation and allocation is not arranged with a financial institution, must be retained in a non-interest-bearing, demand trust account.
(iv) The determination of whether clients’ funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each attorney or law firm.

(5) Interest paid to the South Dakota Bar Foundation will be used for the following purposes:

(i) To help prevent crime;

(ii) To facilitate and improve the delivery of civil and criminal legal services and the administration of justice;

(iii) To encourage law-related education in the schools (K–12);

(iv) To encourage law-related education of adults including seminars and programs for charitable, civic and senior citizens groups;

(v) To give the general public information about how the courts and lawyers function; and

(vi) To issue publications educating the public about the United States legal system.

(6) Nonresident attorneys licensed to practice in South Dakota who comply with applicable IOLTA requirements in the state wherein they maintain their office are exempt from paragraph (3).

(7) A lawyer or law firm may petition the Supreme Court for a one-year exemption from mandatory participation in IOLTA upon the following grounds:

(i) The expected interest to be earned on the trust account is likely to be exceeded by bank charges imposed for participating in IOLTA; and

(ii) There is no reasonable alternative bank available to the lawyer or law firm whereby the likely interest to be earned would exceed bank charges for participating in IOLTA; or

(iii) Upon convincing grounds satisfactory to the Supreme Court for an exemption.

(iv) A petition for exemption may be filed in subsequent years if the petitioning lawyer or law firm meets the requirements of sections 7 (i), and 7 (ii) or section 7 (iii).

(v) The petition shall include documents establishing the grounds for exemption.

(vi) The petition for exemption shall be submitted to the Clerk of the
As of February 25, 2020

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<tr>
<th>State</th>
<th>Notes</th>
<th>Textual Content</th>
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<tbody>
<tr>
<td>TN</td>
<td>*Amendment effective 10/4/2016</td>
<td>Changes title to “Safekeeping Property and Funds”&lt;br&gt; Adds “and funds” after “property” throughout&lt;br&gt; (a) Deletes language after first sentence;&lt;br&gt; (b) Replaces language with:&lt;br&gt; Funds belonging to clients or third persons shall be deposited in a separate account maintained in a financial institution, deposits of which are insured by the Federal Deposit Insurance Corporation (FDIC) and/or National Credit Union Association (NCUA), having a deposit-accepting office located in the state where the lawyer’s office is situated (or elsewhere with the consent of the client or third person) and which participates in the required overdraft notification program as required by Supreme Court Rule 9, Section 29.1. A lawyer may deposit the lawyer’s own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose. Other property shall be identified as such and appropriately safeguarded. Complete records of such funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.&lt;br&gt;&lt;br&gt;(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.&lt;br&gt;&lt;br&gt;(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an “interest on Lawyers’ Trust Account” (“IOLTA”), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.&lt;br&gt;&lt;br&gt;(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer’s exercise of good faith judgment in making such a determination.</td>
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<tr>
<td>TX</td>
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<td>Texas Rule 1.14 is MR Rule 1.15</td>
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(a) Replaces “property…that is” with “property belonging in whole or part to clients or third persons that are;” in second sentence adds “Such” before “funds;” adds “designated as a trust or escrow” before “maintained;” changes “Other property” to “Other client property;” time period is five years; Does not have MR (b) or (c); (b) is MR (d) (c) is similar to MR (e): *When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interest. All funds in a trust or escrow account shall be disbursed only to those persons entitled to receive them by virtue of the representation or by law. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separated by the lawyer until the dispute is resolved, and the undisputed portion shall be distributed appropriately.*

<table>
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<th>UT Effective 11/1/05</th>
<th>(a): adds as the third sentence: The account may only be maintained in a financial institution that agrees to report to the Office of Professional Conduct in the event any instrument in properly payable form is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored.</th>
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<th>VT Amendments Effective 5/9/16</th>
<th>Text of ABA (a) becomes (a)(1); Replaces “in a separate account…third person” with “in accordance with Rules 1.15A and B;” Changes “five years” to “six years;” Adds (a)(2): “For purposes of these rules, property held “in connection with a representation” means funds or property of a client or third party that is in the lawyer’s possession as a result of a representation in a lawyer-client relationship or as a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment. “Fiduciary relationship” includes, but is not limited to, agent, attorney-in-fact, conservator, guardian, executor, administrator, personal representative, special administrator, or trustee;” (b) Replaces “a client trust account” with “an account in which client funds are held;” adds “bank” before “service charges;” adds “reasonably” before “necessary” (c) Adds to beginning of sentence “Unless a lawyer has entered into a nonrefundable fee agreement that complies with Rule 1.5(f);” Deletes “into a client trust account;” Adds: (f) Except as provided in paragraph (g): (1) a lawyer shall not disburse funds held for a client or third person unless the funds are “collected funds.” For purposes of this rule, “collected funds” means funds that a lawyer reasonably believes have been deposited, finally settled, and credited to the lawyer’s trust account. (2) a lawyer shall not use, endanger, or encumber money</th>
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hold in trust for a client or third person for purposes of carrying out the business of another client or person without the permission of the owner given after full disclosure of the circumstances.

(g) In the following circumstances, a lawyer may disburse trust account funds deposited for or on behalf of a client or third person in reliance on that deposit even though the deposit does not constitute collected funds if the lawyer reasonably believes that the instrument or instruments deposited will clear and will constitute collected funds in the lawyer’s trust account within a reasonable period of time:

(1) When the deposit is either a certified check, cashier’s check, money order, official check, treasurer’s check, or other such check issued by, or drawn on, a federally insured bank, savings bank, savings and loan association, or credit union, or of any holding company or wholly owned subsidiary of any of the foregoing; or
(2) When the deposit is a check drawn on the IOLTA account of an attorney licensed to practice law in the State of Vermont or on the IORTA account of a real estate broker licensed under 26 V.S.A. Chapter 41; or
(3) When the deposit is a check issued by the United States of America or any agency thereof, or by the State of Vermont or any agency or political subdivision thereof; or
(4) When the deposit is a personal check or checks in an aggregate amount that does not exceed $1,000 per transaction; or
(5) When the deposit is a check or draft issued by an insurance company, title insurance company, or title insurance agency, licensed to do business in Vermont.

(h) If an uncollected deposit in reliance upon which a lawyer has disbursed trust account funds fails, the lawyer, upon obtaining knowledge of the failure, shall immediately act to protect the funds or other property of the lawyer’s other clients or third persons held by the lawyer in accordance with this rule.”

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<th>VA Amendments Effective 11/1/2013</th>
<th>(a) Depositing Funds.</th>
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<td>(1) All funds received or held by a lawyer or law firm on behalf of a client or a third party, or held by a lawyer as a fiduciary, other than reimbursement of advances for costs and expenses shall be deposited in one or more identifiable trust accounts; all other property held on behalf of a client should be placed in a safe deposit box or other place of safekeeping as soon as practicable.</td>
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<td>(2) For lawyers or law firms located in Virginia, a lawyer trust account shall be maintained only at a financial institution approved</td>
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by the Virginia State Bar, unless otherwise expressly directed in writing by the client for whom the funds are being held.

(3) No funds belonging to the lawyer or law firm shall be deposited or maintained therein except as follows:

(i) funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution or to maintain a required minimum balance to avoid the imposition of service fees, provided the funds deposited are no more than necessary to do so; or

(ii) funds in which two or more persons (one of whom may be the lawyer) claim an interest shall be held in the trust account until the dispute is resolved and there is an accounting and severance of their interests. Any portion finally determined to belong to the lawyer or law firm shall be withdrawn promptly from the trust account.

(b) Specific Duties. A lawyer shall:

(1) promptly notify a client of the receipt of the client’s funds, securities, or other properties;

(2) identify and label securities and properties of a client, or those held by a lawyer as a fiduciary, promptly upon receipt;

(3) maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them;

(4) promptly pay or deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the lawyer that such person is entitled to receive; and

(5) not disburse funds or use property of a client or third party without their consent or convert funds or property of a client or third party, except as directed by a tribunal.

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Cash receipts and disbursements journals for each trust account, including entries for receipts, disbursements, and transfers, and
also including, at a minimum: an identification of the client matter; the date of the transaction; the name of the payor or payee; and the manner in which trust funds were received, disbursed, or transferred from an account.

(2) A subsidiary ledger containing a separate entry for each client, other person, or entity from whom money has been received in trust. The ledger should clearly identify:

(i) the client or matter, including the date of the transaction and the payor or payee and the means or methods by which trust funds were received, disbursed or transferred; and

(ii) any unexpended balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) Reconciliations.
(i) At least quarterly a reconciliation shall be made that reflects the trust account balance for each client, person or other entity.

(ii) A monthly reconciliation shall be made of the cash balance that is derived from the cash receipts journal, cash disbursements journal, the trust account checkbook balance and the trust account bank statement balance.

(iii) At least quarterly, a reconciliation shall be made that reconciles the cash balance from (d)(3)(ii) above and the subsidiary ledger balance from (d)(3)(i).

(iv) Reconciliations must be approved by a lawyer in the law firm.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

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<tr>
<th>WA Effective 9/1/06</th>
<th>Required Trust Account Records</th>
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<tr>
<td>(a) A lawyer must maintain current trust account records. They may be in electronic or manual form and must be retained for at least seven years after the events they record. At minimum, the records must include the following:</td>
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<td>(1) Checkbook register or equivalent for each trust account, including entries for all receipts, disbursements, and transfers, and containing at least:</td>
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<td>(i) identification of the client matter for which trust funds were received, disbursed, or transferred;</td>
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<td>(ii) the date on which trust funds were received, disbursed, or transferred;</td>
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<td>(iii) the check number for each disbursement;</td>
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<td>(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and</td>
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<td>(v) the new trust account balance after each receipt, disbursement, or transfer;</td>
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<td>(2) Individual client ledger records containing either a separate page for each client or an equivalent electronic record showing all individual receipts, disbursements, or transfers, and also containing:</td>
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<tr>
<td>(i) identification of the purpose for which trust funds were received, disbursed, or transferred;</td>
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<tr>
<td>(ii) the date on which trust funds were received, disbursed, or transferred;</td>
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<td>(iii) the check number for each disbursement;</td>
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<tr>
<td>(iv) the payor or payee for or from which trust funds were received, disbursed, or transferred; and</td>
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</table>
(v) the new client fund balance after each receipt, disbursement, or transfer;
(3) Copies of any agreements pertaining to fees and costs;
(4) Copies of any statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf;
(5) Copies of bills for legal fees and expenses rendered to clients;
(6) Copies of invoices, bills or other documents supporting all disbursements or transfers from the trust account;
(7) Bank statements, copies of deposit slips, and cancelled checks or their equivalent;
(8) Copies of all trust account client ledger reconciliations; and
(9) Copies of those portions of clients’ files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them.

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

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<th>WV</th>
<th>*Amendment effective 1/1/2015</th>
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<td>(a) Adds “designated as a “client’s trust account” in an institution whose accounts are federally insured and” before “maintained in the state”; adds “in a separate account” before “elsewhere”; adds sentence “Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting.”</td>
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Adds: (f) IOLTA (Interest on Lawyers Trust Accounts). A lawyer receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds at an eligible financial institution in compliance with the State Bar Administrative Rule 10.

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<th>WI</th>
<th>*Amendment effective April 4, 2016</th>
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| (a) Definitions. In this section: (1) "Draft account" means an account from which funds are withdrawn through a properly payable instrument or an electronic transaction. (2) "Electronic transaction" means a paperless transfer of funds to or from a trust or fiduciary account. Electronic transactions do not include transfers initiated by voice or automated teller or cash dispensing machines. (3) "Fiduciary" means an agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, trustee, or other position requiring the lawyer to safeguard the property of a client or 3rd party. (4) "Fiduciary account" means an account in which a lawyer deposits fiduciary property. (5) "Fiduciary property" means funds or property of a client or 3rd party that is in a lawyer's possession in a fiduciary capacity. Fiduciary property includes, but is not limited to, property held as agent, attorney-in-fact, conservator, guardian, personal representative, special administrator, or trustee, subject to the exceptions identified in sub. (m). (6) "Financial institution" means a bank, savings bank, trust company, credit union,
savings and loan association, or investment institution, including a brokerage house. (7) "Immediate family member" means a lawyer's spouse, registered domestic partner, child, stepchild, grandchild, sibling, parent, stepparent, grandparent, aunt, uncle, niece, or nephew. (8) "Interest on Lawyer Trust Account or 'IOLTA account'" means a pooled interest-bearing or dividend-paying draft trust account, separate from a lawyer's business and personal accounts, which is maintained at an IOLTA participating institution. Typical funds that would be placed in an IOLTA account include earnest monies, loan proceeds, settlement proceeds, collection proceeds, cost advances, and advanced payments of fees that have not yet been earned. An IOLTA account is subject to the provisions of SCR Chapter 13 and the trust account provisions of subs. (a) to (i), including the IOLTA account provisions of subs. (c) and (d). (9) "IOLTA participating institution" means a financial institution that voluntarily offers IOLTA accounts and certifies to WisTAF annually that it meets the IOLTA account requirements of sub. (d). (10) "Properly payable instrument" means an instrument that, if presented in the normal course of business, is in a form requiring payment pursuant to the laws of this state. (11) "Trust account" means an account in which a lawyer deposits trust property. (12) "Trust property" means funds or property of clients or 3rd parties that is in a lawyer's possession in connection with a representation, which is not fiduciary property. (13) "WisTAF" means the Wisconsin Trust Account Foundation, Inc. (b) Segregation and safekeeping of trust property. (1) Separate account. A lawyer shall hold in trust, separate from the lawyer's own property, that property of clients and 3rd parties that is in the lawyer's possession in connection with a representation. All funds of clients and 3rd parties paid to a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts. (2) Identification and location of account. Each trust account shall be clearly designated as a "Client Account," a "Trust Account," or words of similar import. The account shall be identified as such on all account records, including signature cards, monthly statements, checks, and deposit slips. An acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration, does not clearly designate the account as a client account or trust account. Each trust account shall be maintained in a financial institution that is authorized by federal or state law to do business in Wisconsin and that is located in Wisconsin or has a branch office located in Wisconsin and which agrees to comply with the overdraft notice requirements of sub. (h). A trust account may be maintained at a financial institution located in the jurisdiction where the lawyer principally practices law if that jurisdiction has an overdraft notification requirement. (3) Lawyer funds. No funds belonging to a lawyer or law firm, except funds reasonably sufficient to pay monthly account service charges, may be deposited or retained in a trust account. Each lawyer or law firm that receives trust funds shall maintain at least one draft account, other than the trust
account, for funds received and disbursed other than in a trust capacity, which shall be entitled "Business Account," "Office Account," "Operating Account," or words of similar import. (4) Trust property other than funds. Unless a client otherwise directs in writing, a lawyer shall keep securities in bearer form in a safe deposit box at a financial institution authorized to do business in Wisconsin. The safe deposit box shall be clearly designated as a "Client Account" or "Trust Account." The lawyer shall clearly identify and appropriately safeguard other property of a client or 3rd party. (5) Insurance and safekeeping requirements. Each trust account shall be maintained at a financial institution that is insured by the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Share Insurance Fund (NCUSIF), the Securities Investor Protection Corporation (SIPC), or any other investment institution financial guaranty insurance. IOLTA accounts shall also comply with the requirements of sub. (d)(3). Lawyers using the alternative to the E-Banking Trust Account shall comply with the requirements of sub. (f)(3)c. Except as provided in subs. (b)(4) and (d)(3)b. and c., trust property shall be held in an account in which each individual owner's funds are eligible for insurance. (c) Types of trust accounts. (1) IOLTA accounts. A lawyer or law firm who receives client or 3rd-party funds that the lawyer or law firm determines to be nominal in amount or that are expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or 3rd party in excess of the costs to secure that income, shall maintain a pooled interest-bearing or dividend-paying draft trust account in an IOLTA participating institution. (2) Non-IOLTA accounts. A lawyer or law firm who receives client or 3rd-party funds that the lawyer or law firm determines to be capable of earning income for the benefit of the client or 3rd party shall maintain an interest-bearing or dividend-paying non-IOLTA trust account. A non-IOLTA trust account shall be established as any of the following: a. A separate interest-bearing or dividend-paying trust account maintained for the particular client or 3rd party, the interest or dividends on which shall be paid to the client or 3rd party, less any transaction costs. b. A pooled interest-bearing or dividend-paying trust account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each client's or 3rd party's funds and the payment of the interest or dividends to the client or 3rd party, less any transaction costs. c. An income-generating investment vehicle selected by the client and designated in specific written instructions from the client or authorized by a court or other tribunal, on which income shall be paid to the client or 3rd party or as directed by the court or other tribunal, less any transaction costs. d. An income-generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the bankruptcy trustee or by a bankruptcy court order, or otherwise consistent with 11 U.S.C. § 345. e.
A draft account or other account that does not bear interest or pay dividends because it holds funds the lawyer has determined are not eligible for deposit in an IOLTA account because they are neither nominal in amount nor expected to be held for a short term such that the funds cannot earn income for the client or 3rd party in excess of the costs to secure the income, provided that the account has been designated in specific written instructions from the client or 3rd party. (3) Selection of account. In deciding whether to use the account specified in par. (1) or an account or investment vehicle specified in par. (2), a lawyer shall determine, at the time of the deposit, whether the client or 3rd-party funds could be utilized to provide a positive net return to the client or 3rd party by taking into consideration all of the following: a. The amount of interest, dividends, or other income that the funds would earn or pay during the period the funds are expected to be on deposit. b. The cost of establishing and administering a non-IOLTA trust account, including the cost of the lawyer’s services and the cost of preparing any tax reports required for income accruing to a client’s or 3rd party’s benefit. c. The capability of the financial institution, lawyer, or law firm to calculate and pay interest, dividends, or other income to individual clients or 3rd parties. d. Any other circumstance that affects the ability of the client’s or 3rd party’s funds to earn income in excess of the costs to secure that income for the client or 3rd party. (4) Professional judgment. The determination whether funds to be invested could be utilized to provide a positive net return to the client or 3rd party rests in the sound judgment of the lawyer or law firm. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct. (d) Interest on Lawyer Trust Account (IOLTA) requirements. (1) Location. An IOLTA account shall be maintained only at an IOLTA participating institution. (2) Certification by IOLTA participating institutions. a. Each IOLTA participating institution shall certify to WisTAF annually that the financial institution meets the requirements of sub. (d)(3) to (6) for IOLTA accounts and that it will report overdrafts on draft trust accounts and draft fiduciary accounts of lawyers and law firms to the office of lawyer regulation, pursuant to the institution’s agreements with those lawyers and law firms. WisTAF shall by rule adopted under SCR 13.03(1) establish the date by which IOLTA participating institutions shall certify their compliance. b. WisTAF shall confirm annually, by a date established by WisTAF by rule adopted under SCR 13.03(1), the accuracy of a financial institution's certification under sub. (d)(2)a. by reviewing one or more of the following: 1. The IOLTA comparability rate information form submitted by the financial institution to WisTAF. 2. Rate and product information published by the financial institution. 3. Other publicly or commercially available information regarding products and interest rates available at the financial institution. c. WisTAF shall publish annually, no later than the date on which the state bar mails annual dues statements to
members of the bar, a list of all financial institutions that have certified, and have been confirmed by WisTAF as IOLTA participating institutions. WisTAF shall update the published list located on its website to add newly confirmed IOLTA participating institutions and to remove financial institutions that WisTAF cannot confirm as IOLTA participating institutions. d. Prior to removing any financial institution from the list of IOLTA participating institutions or failing to include any financial institution on the list of IOLTA participating institutions, WisTAF shall first provide the financial institution with notice and sufficient time to respond. In the event a financial institution is removed from the list of IOLTA participating institutions, WisTAF shall notify the office of lawyer regulation and provide that office with a list of the lawyers and law firms maintaining IOLTA accounts at that financial institution. The office of lawyer regulation shall notify those lawyers and law firms of the removal of the financial institution from the list, and provide time for those lawyers and law firms to move their IOLTA accounts to an IOLTA participating institution. e. Lawyers and law firms may rely on the most recently published list of IOLTA participating institutions for purposes of compliance with sub. (c)(1), except when the office of lawyer regulation notifies the lawyer or law firm of removal, in accordance with sub. (d)(2). (3) Safekeeping requirements. a. An IOLTA participating institution shall comply with the insurance and safety requirements of sub. (b)(5). b. A repurchase agreement utilized for an IOLTA account may be established only at an IOLTA participating institution deemed to be "well-capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations. c. An open-end money market fund utilized for an IOLTA account may be established only at an IOLTA participating institution in a fund that holds itself out as a money market fund as defined under the Investment Act of 1940 and, at the time of investment, has total assets of at least $250,000,000. (4) Income requirements. a. Beneficial owner. The interest or dividends accruing on an IOLTA account, less any allowable reasonable fees, as allowed under par. (5), shall be paid to WisTAF, which shall be considered the beneficial owner of the earned interest or dividends, pursuant to SCR Chapter 13. b. Interest and dividend requirements. An IOLTA account shall bear the highest non-promotional interest rate or dividend that is generally available to non-IOLTA customers at the same branch or main office location when the IOLTA account meets or exceeds the same eligibility qualifications, if any, including a minimum balance, required at that same branch or main office location. In determining the highest rate or dividend available, the IOLTA participating institution may consider factors in addition to the IOLTA account balance that are customarily considered by the institution at that branch or main office location when setting interest rates or dividends for its customers, provided the institution does not discriminate between IOLTA accounts and accounts of non-IOLTA customers and that these
factors do not include that the account is an IOLTA account. However, IOLTA participating institutions may voluntarily choose to pay higher rates. c. IOLTA account. An IOLTA participating institution may establish an IOLTA account as, or convert an IOLTA account to, any of the following types of accounts, assuming the particular financial institution at that branch or main office location offers these account types to its non-IOLTA customers, and the particular IOLTA account meets the eligibility qualifications to be established as this type of account at the particular branch or main office location: 1. A business checking account with an automated or other automatic investment sweep feature into a daily financial institution repurchase agreement or open-end money market fund. A daily financial institution repurchase agreement must be invested in United States government securities. An open-end money market fund must consist solely of United States government securities or repurchase agreements fully collateralized by United States government securities, or both. In this par. c.1., "United States government securities" include securities of government-sponsored entities, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation; 2. A checking account paying preferred interest rates, such as money market or indexed rates; 3. An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account or business checking account with interest; and 4. Any other suitable interest-bearing or dividend-paying account offered by the institution to its non-IOLTA customers. d. Options for compliance. An IOLTA participating institution may: 1. Establish the comparable product for qualifying IOLTA accounts, subject to the direction of the lawyer or law firm; or, 2. Pay the highest non-promotional interest rate or dividend, as defined in sub. (d)(4)b., less any allowable reasonable fees charged in connection with the comparable highest interest rate or dividend product, on the IOLTA checking account in lieu of actually establishing the comparable highest interest rate or dividend product. e. Paying rates above comparable rates. An IOLTA participating institution may pay a set rate above its comparable rates on the IOLTA checking account negotiated with WisTAF that is fixed over a period of time set by WisTAF, such as 12 months. (5) Allowable reasonable fees on IOLTA accounts. a. Allowable reasonable fees on an IOLTA account are as follows: 1. Per check charges. 2. Per deposit charges. 3. Fees in lieu of minimum balance. 4. Sweep fees. 5. An IOLTA administrative fee approved by WisTAF. 6. Federal deposit insurance fees. b. Allowable reasonable fees may be deducted from interest earned or dividends paid on an IOLTA account, provided that the fees are calculated in accordance with an IOLTA participating institution's standard practice for non-IOLTA customers. Fees in excess of the interest earned or dividends paid on the IOLTA account for any month or quarter shall not be taken from
As of February 25, 2020

interest or dividends of any other IOLTA accounts. No fees that are authorized under SCR 20:1.15(d)(5) shall be assessed against or deducted from the principal of any IOLTA account. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account. IOLTA participating institutions may elect to waive any or all fees on IOLTA accounts. (6) Remittance and reporting requirements. A lawyer or law firm shall direct the IOLTA participating institution at which the lawyer or law firm's IOLTA account is located to do all of the following, on at least a quarterly basis: a. Remit to WisTAF the interest or dividends, less allowable reasonable fees as allowed under par. (5), if any, on the average monthly balance in the account or as otherwise computed in accordance with the IOLTA participating institution's standard accounting practice. b. Provide to WisTAF a remittance report showing for each IOLTA account the name of the lawyer or law firm for whose IOLTA account the remittance is sent, the rate and type of interest or dividend applied, the amount of allowable reasonable fees deducted, if any, the average account balance for the period for which the report is made, and the amount of remittance attributable to each IOLTA account. c. Provide to the depositing lawyer or law firm a remittance report in accordance with the participating institution's normal procedures for reporting account activity to depositors. d. Respond to reasonable requests from WisTAF for information needed for purposes of confirming the accuracy of an IOLTA participating institution's certification. (e) Prompt notice and delivery of property. (1) Notice and delivery. Upon receiving funds or other property in which a client has an interest, or in which a lawyer has received notice that a 3rd party has an interest identified by a lien, court order, judgment, or contract, the lawyer shall promptly notify the client or 3rd party in writing. Except as stated in this rule or otherwise permitted by law or by agreement with the client, the lawyer shall promptly deliver to the client or 3rd party any funds or other property that the client or 3rd party is entitled to receive. (2) Accounting. Upon final distribution of any trust property or upon request by the client or a 3rd party having an ownership interest in the property, a lawyer shall promptly render a full written accounting regarding the property. (3) Disputes regarding trust property. When a lawyer and another person or a client and another person claim an ownership interest in trust property identified by a lien, court order, judgment, or contract, the lawyer shall hold that property in trust until there is an accounting and severance of the interests. If a dispute arises regarding the division of the property, the lawyer shall hold the disputed portion in trust until the dispute is resolved. Disputes between the lawyer and a client are subject to the provisions of SCR 20:1.5(h). (4) Standard of proof. A lawyer's failure to promptly deliver trust property to a client or 3rd party entitled to the trust property, promptly submit trust account records to the office of lawyer regulation or promptly provide an accounting of trust property to the office of lawyer regulation shall result
in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence. (f) Security requirements and restricted transactions. (1) Security of transactions. A lawyer is responsible for the security of each transaction in the lawyer's trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account. (2) Prohibited transactions. a. Cash. No withdrawal of cash shall be made from a trust account or from a deposit to a trust account. No check shall be made payable to "Cash." No withdrawal shall be made from a trust account by automated teller or cash dispensing machine. b. Telephone transfers. 1. Except as provided in SCR 20:1.15(f)(2)b.2., no deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds. 2. Wire transfers may be initiated by telephone, and telephone transfers may be made between non-pooled trust accounts that a lawyer maintains for a particular client. c. Electronic transfers by 3rd parties. A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer's trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds without the permission of the lawyer. (3) Electronic transactions. A lawyer shall not make deposits to or disbursements from a trust account by way of an electronic transaction, except as provided in SCR 20:1.15(f)(3)a. through c. a. Remote Deposit. A lawyer may make remote deposits to a trust account, provided that the lawyer keeps a record of the client or matter to which each remote deposit relates, and that the lawyer's financial institution maintains an image of the front and reverse of each remote deposit for a period of at least six years. b. E-Banking Trust Account. A lawyer may accept funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits, and may disburse funds by electronic transactions that are not prohibited by sub. (f)(2)c., provided that the lawyer does all of the following: 1. Maintains an IOLTA account, which shall be the primary IOLTA account, in which no electronic transactions shall be conducted other than those transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement, or those transactions authorized by SCR 20:1.15(f)(3)a., (3)b.4.a., and (3)b.4.d. 2. Maintains a separate IOLTA account with commercially reasonable account security for electronic transactions,
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which shall be entitled: "E-Banking Trust Account." 3. Holds lawyer or law firm funds in the E-Banking Trust Account reasonably sufficient to cover monthly account fees and fees deducted from deposits and maintains a ledger for those account fees. 4. Transfers the gross amount of each deposit within 3 business days after the deposit is available for disbursement, and if necessary, adds funds belonging to the lawyer or law firm to cover any deduction of fees and surcharges relating to the deposit, in accordance with all of the following: a. All advanced costs and advanced fees held in trust under SCR 20:1.5(f) shall be transferred to the primary IOLTA account by check or electronic transaction. b. Earned fees, cost reimbursements, and advanced fees that are subject to the requirements of SCR 20:1.5(g) shall be transferred to the business account by check or by electronic transaction. c. Any funds that the client has directed be disbursed by electronic transfer shall be promptly disbursed from the E-Banking Trust Account by electronic transaction. d. All funds received in trust other than funds identified in SCR 20:1.15(f)(3)a., b., and c. shall be transferred to the primary IOLTA account by check or by an electronic transaction. e. Except for funds identified in SCR 20:1.15(f)(3)a. and b., a lawyer or law firm shall not be prohibited from deducting electronic transfer fees or surcharges from the client's funds, provided the client has agreed in writing to accept the electronic payment after being advised of the anticipated fees and surcharges. 5. Identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system. 6. Replaces any and all funds that have been withdrawn from the E-Banking Trust Account by the financial institution or card issuer, and reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the E-Banking Trust Account; and reimburses the E-Banking Trust Account for any chargeback, surcharge, or ACH reversal prior to accepting a new electronic deposit or transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement. c. Alternative to E-Banking Trust Account. A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f)(2)c., without establishing a separate E-Banking Trust Account, provided that all of the following conditions are met: 1. The lawyer or
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1. A lawyer or law firm maintains commercially reasonable account security for electronic transactions. 2. The lawyer or law firm maintains a bond or crime policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year. 3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer's or law firm's business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within 3 business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account. (4) Availability of funds for disbursement. a. Standard for trust account transactions. A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement. b. Exception: Real estate transactions. In closing a real estate transaction, a lawyer's disbursement of closing proceeds from funds that are received on the date of the closing, but that have not yet cleared, shall not violate sub. (f)(4)a. provided that the lawyer complies with sub. (f)(4)c., and that the closing proceeds are deposited no later than the first business day following the closing and are comprised of any of the following types of funds: 1. A cashier's check, teller's check, money order, official check or electronic transfer of funds, issued or transferred by a financial institution insured by the FDIC or a comparable agency of the federal or state government. 2. A check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state. 3. A check issued by the state of Wisconsin, the United States, or a political subdivision of the state of Wisconsin or the United States. 4. A check drawn on the account of or issued by a lender approved by the Federal Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2. 5. A check from a title insurance company licensed in Wisconsin, or from a title insurance agent of the title insurance company, if the title insurance company has guaranteed the funds of that title insurance agent. 6. A non-profit organization check in an amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account. 7. A personal check or checks in an aggregate amount not exceeding $5000 per closing if the lawyer has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the trust account. c. Uncollected funds. Without limiting the rights of the lawyer against any person, it is the responsibility of the disbursing lawyer to reimburse the trust account for any funds described in sub. (f)(4)b. that are not collected and for any fees, charges,
and interest assessed by the financial institution on account of the funds being disbursed before the related deposit has cleared and the funds are available for disbursement. The lawyer shall maintain a subsidiary ledger for funds of the lawyer that are deposited in the trust account to reimburse the account for uncollected funds and to accommodate any fees, charges, and interest. d. Exception: Collection trust accounts. When handling collection work for a client and maintaining a separate trust account to hold funds collected on behalf of that client, a lawyer's disbursement to the client of collection proceeds that have not yet cleared does not violate sub. (f)(4)a. so long as those collection proceeds have been deposited prior to the disbursement. (g) Record-keeping requirements for all trust accounts. (1) Record retention. A lawyer shall maintain and preserve complete records of trust account funds, all deposits and disbursements, and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation. Electronic records shall be backed up by an appropriate storage device. The office of lawyer regulation shall publish guidelines for trust account record-keeping. (2) Record production. All trust account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material. (3) Standard of proof. A lawyer's failure to promptly deliver trust property to a client or 3rd party entitled to that trust property, promptly submit trust account records to the office of lawyer regulation, or promptly provide an accounting of trust property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold trust property in trust, contrary to SCR 20:1.15(b)(1). This presumption may be rebutted by the lawyer's production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence. (h) Dishonored payment notification (Overdraft notices). All draft trust accounts, and any draft fiduciary account that is subject to an alternative protection under sub. (k)(10), are subject to the following provisions on dishonored payment notification: (1) Overdraft reporting agreement. A lawyer shall maintain draft trust and fiduciary accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under par. (2). A lawyer or law firm shall notify the financial institution at the time a trust account or fiduciary account is established that the account is subject to this subsection. (2) Overdraft report. In the event any properly payable instrument or electronic transaction is presented against or made from a lawyer trust or fiduciary account containing insufficient funds, whether or not the instrument or electronic transaction is honored, the financial institution shall report the overdraft to the office of lawyer regulation. (3)
Content of report. All reports made by a financial institution under this subsection shall be substantially in the following form: a. In the case of a dishonored instrument or electronic transaction, the report shall be identical to an overdraft notice customarily forwarded to the depositor or investor, accompanied by the dishonored instrument or electronic transaction, if a copy is normally provided to the depositor or investor. b. In the case of instruments or electronic transactions that are presented against insufficient funds and are honored, the report shall identify the financial institution involved, the lawyer or law firm, the account, the date on which the instrument or electronic transaction is paid, and the amount of overdraft created by the payment. (4) Timing of report. A report made under this subsection shall be made simultaneously with the overdraft notice given to the depositor or investor. (5) Confidentiality of report. A report made by a financial institution under this subsection shall be subject to SCR 22.40, Confidentiality. (6) Withdrawal of report by financial institution. The office of lawyer regulation shall hold each overdraft report for 10 business days to enable the financial institution to withdraw a report provided by inadvertence or mistake. The deposit of additional funds by the lawyer or law firm shall not constitute reason for withdrawing an overdraft report. (7) Lawyer compliance. Every lawyer shall comply with the reporting and production requirements of this subsection, including filing of an overdraft notification agreement for each IOLTA account, each draft-type trust account and each draft-type fiduciary account that is not subject to an alternative protection under sub. (k)(10). (8) Service charges. A financial institution may charge a lawyer or law firm for the reasonable costs of producing the reports and records required by this rule. (9) Immunity of financial institution. This subsection does not create a claim against a financial institution or its officers, directors, employees, or agents for failure to provide a trust account overdraft report or for compliance with this subsection. (i) Trust account certificate and acknowledgements. (1) Annual requirement. A member of the state bar of Wisconsin shall file with the state bar of Wisconsin annually, with payment of the member's state bar dues or upon any other date approved by the supreme court, a statement as to whether the member is engaged in the practice of law in Wisconsin. If the member is practicing law, the member shall state the name, address, and telephone number of each financial institution in which the member maintains a trust account, a fiduciary account, or a safe deposit box. The state bar shall supply to each member, with the annual dues statement, or another form approved by the supreme court, a form on which this statement shall be made. (2) Certification by law firm. A law firm shall file one certificate of accounts on behalf of the lawyers in the firm who are required to file a certificate under par. (1). (3) Compliance with SCR 20:1.15. Each state bar member shall acknowledge on the annual dues statement, or another form approved by the supreme court, that the member is aware of all of the following requirements of this rule: a. That
SCR 20:1.15 establishes fiduciary obligations for trust and fiduciary property that comes into the member's possession, including the duty to hold that property in trust separate from the member's own property, to safeguard that property, to maintain complete records of that property, to account fully for that property, and to promptly deliver that property to the owner. b. That SCR 20:1.15 requires a member to maintain each IOLTA account in an IOLTA participating institution, to file an overdraft agreement with the office of lawyer regulation for each account that is subject to SCR 20:1.15(h) and (k)(10), and to annually report all trust and fiduciary accounts to the state bar of Wisconsin that are not subject to an exception under SCR 20:1.15(m). (4) Suspension for non-compliance. A state bar member who fails to file the acknowledgements required by sub. (i)(3) or a trust account certificate, unless a certificate of accounts is filed by the law firm, is subject to the automatic suspension of the member's membership in the state bar in the same manner provided in SCR 10.03(6) for nonpayment of dues. (j) Multi-jurisdictional practice. If a lawyer also licensed in another state is entrusted with funds or property in connection with a representation in the other state, the provisions of this rule shall not supersede the applicable rules of the other state. (k) Fiduciary property. (1) Segregation of fiduciary property. A lawyer shall hold in trust, separate from the lawyer's own funds or property, those funds or that property of clients or 3rd parties that are in the lawyer's possession when acting in a fiduciary capacity. (2) Accounting. Upon final distribution of any fiduciary property or upon request by a client or a 3rd party having an ownership interest in the property, a lawyer shall promptly render a full written accounting regarding the property. (3) Fiduciary accounts. A lawyer shall deposit all fiduciary funds specified in par. (1) in any of the following: a. A pooled interest-bearing or dividend-paying fiduciary account with sub-accounting by the financial institution, the lawyer, or the law firm that will provide for computation of interest or dividends earned by each fiduciary entity's funds and the proportionate allocation of the interest or dividends to each of the fiduciary entities, less any transaction costs. b. An income-generating investment vehicle, on which income shall be paid to the fiduciary entity or its beneficiary or beneficiaries, less any transaction costs. c. An income-generating investment vehicle selected by the lawyer and approved by a court for guardianship funds if the lawyer serves as guardian for a ward under Ch. 54 and subject to Ch. 881, Wis. Stats. d. An income-generating investment vehicle selected by the lawyer to protect and maximize the return on funds in a bankruptcy estate, which investment vehicle is approved by the bankruptcy trustee, by a bankruptcy court order, or otherwise consistent with 11 U.S.C. § 345. e. A draft account or other account that does not bear interest or pay dividends when, in the lawyer's professional judgment, placement in the account is consistent with the needs and purposes of the fiduciary entity or its beneficiary or beneficiaries. (4) Location. Each fiduciary account shall be maintained in

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a financial institution as provided by the written authorization of the client, the governing trust instrument, organizational by-laws, an order of a court, or, absent such direction, in a financial institution that, in the lawyer's professional judgment, will best serve the needs and purposes of the client or 3rd party for whom the lawyer serves as fiduciary. If a lawyer acts in good faith in making this determination, the lawyer is not subject to any charge of ethical impropriety or other breach of the Rules of Professional Conduct. When the fiduciary property is held in a draft account and the account is at a financial institution that is not located in Wisconsin or authorized by state or federal law to do business in Wisconsin, the lawyer shall comply with the requirements of sub. (k)(10)b., c., d., e., or f. (5) Prohibited transactions. a. Cash. No withdrawal of cash shall be made from a fiduciary account or from a deposit to a fiduciary account. No check shall be made payable to "Cash." No withdrawal shall be made from a fiduciary account by automated teller or cash dispensing machine. b. Card transactions. A lawyer shall not authorize transactions by way of credit, debit, prepaid or other types of payment cards to or from a fiduciary account. (6) Availability of funds for disbursement. A lawyer shall not disburse funds from a fiduciary account unless the deposit from which those funds will be disbursed has cleared and the funds are available for disbursement. The exception for real estate transactions in sub. (f)(4)b. shall apply to fiduciary accounts. (7) Record retention. A lawyer shall maintain and preserve complete records of fiduciary account funds, all deposits and disbursements, and other fiduciary property and shall preserve those records for the 6 most recent years during which the lawyer served as a fiduciary and shall preserve at a minimum, a summary accounting of all fiduciary funds and property for prior years during which the lawyer served as a fiduciary. After the termination of the fiduciary relationship, the lawyer shall preserve the records required by this paragraph for at least 6 years. The office of lawyer regulation shall publish guidelines for fiduciary account record-keeping. (8) Record production. All fiduciary account records have public aspects related to a lawyer's fitness to practice. Upon request of the office of lawyer regulation, or upon direction of the supreme court, the records shall be submitted to the office of lawyer regulation for its inspection, audit, use, and evidence under any conditions to protect the privilege of clients that the court may provide. The records, or an audit of the records, shall be produced at any disciplinary proceeding involving the lawyer, whenever material. (9) Standard of proof. A lawyer's failure to promptly submit fiduciary account records to the office of lawyer regulation or promptly provide an accounting of fiduciary property to the office of lawyer regulation shall result in a presumption that the lawyer has failed to hold fiduciary property in trust, contrary to SCR 20:1.15(k)(1). This presumption may be rebutted by the lawyer's production of records or an accounting that overcomes this presumption by clear, satisfactory, and convincing evidence. (10) Dishonored payment
notification or alternative protection. A lawyer who holds fiduciary property in a draft account from which funds are disbursed through a properly payable instrument or electronic transaction shall take any of the following actions: a. Comply with the requirements of sub. (h) relating to dishonored payment notification (overdraft notices). b. Have the account independently audited by a certified public accountant on at least an annual basis. c. Hold the funds in a draft account, which requires the approval of a co-trustee, co-agent, co-guardian, or co-personal representative before funds may be disbursed from the account. d. Require and document the approval of two people from a group consisting of a lawyer or a member or employee of the lawyer's law firm before funds may be disbursed from the account. e. In the case of an estate or trust, provide an accounting of the administration at least annually to all beneficiaries currently eligible to receive income distributions. f. In the case of a guardianship proceeding in which annual financial accountings must be reviewed by a court, timely file those annual financial accountings with the court. (11) Fiduciary account certificate and acknowledgements. Funds held by a lawyer in a fiduciary account are subject to the requirements of sub. (i). (m) Exceptions to this section. This rule does not apply in any of the following instances in which a lawyer is acting in a fiduciary capacity: (1) The lawyer is serving as a bankruptcy trustee, subject to the oversight and accounting requirements of the bankruptcy court or the office of U.S. Trustee. (2) The lawyer is serving as an assignee or receiver under the provisions of Ch. 128, Wis. Stats. (3) The property held by the lawyer when acting in a fiduciary capacity is property held for the benefit of an immediate family member of the lawyer. (4) The lawyer is serving in a fiduciary capacity for a civic, fraternal, or non-profit organization that is not a client and has other officers or directors participating in the governance of the organization. (5) The lawyer is acting in the course of the lawyer's employment by an employer not itself engaged in the practice of law, provided that the lawyer's employment is not ancillary to the lawyer's practice of law.

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<td>A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation separate from the lawyer’s own property. All client or third person funds shall be deposited in an IOLTA Account or Non–IOLTA Account (or accounts). Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.</td>
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(1) "IOLTA Account" refers to a trust account at an "IOLTA-Eligible Institution" from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA Account is a pooled interest bearing account that shall include only client or third-person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third
person funds shall be deposited into a non-IOLTA Account.

(i) In determining whether client or third person funds should be deposited in an IOLTA account or a Non-IOLTA Account, a lawyer shall consider the following factors:

(A) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited.

(B) the cost of establishing and administering Non-IOLTA Accounts for the client or third person’s benefit, including service charges or fees, the lawyer’s services, preparation of tax reports, or other associated costs;

(C) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and

(D) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.

(ii) Lawyers may only place their IOLTA Accounts in IOLTA Eligible Institutions. IOLTA Eligible Institutions are depository institutions which voluntarily offer IOLTA Accounts and meet the requirements of this Rule. The Equal Justice Wyoming Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Accounts, and shall provide the list upon request.

(iii) An IOLTA Eligible Institution shall:

(A) ensure that each IOLTA Account receives the highest interest rate that the depository institution pays other customers when the IOLTA Account meets the same minimum balance or other requirements. IOLTA Eligible Institutions may elect to pay higher rates than required;

(B) deduct only reasonable fees from IOLTA interest, defined as per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, swap fees, and a reasonable OPLTA Account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA Accounts or from the principal of the account. IOLTA Eligible Institutions may elect to waive any or all fees on IOLTA Accounts;
(C) remit, each month, interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution’s standard accounting practice for other depositors, to the Equal Justice Wyoming Foundation, a tax exempt entity:

(D) transmit with each remittance to the Equal Justice Wyoming Foundation, in an electronic format to be specified by the Equal Justice Wyoming Foundation, a statement which shall include the following: (1) the name of the member or the member’s law firm for whom the remittance is sent, (2) the account number of each account, (3) the rate of interest applied, (4) the amount of interest or dividends remitted, (5) the amount and type of charges or fees deducted, if any, and (6) the average account balance for the period in which the report is made; and

(E) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.

(iv) All interest transmitted to the Equal Justice Wyoming Foundation shall be distributed by the Equal Justice Wyoming Foundation for the purposes of providing legal services to the indigent of Wyoming, who would otherwise be unable to obtain legal assistance; providing public education projects which promote a knowledge and awareness of the law; providing projects which improve the administration of justice; or providing for the reasonable costs of administration of interest earned on accounts under this Rule. Subject to the fulfillment of fund purposes, the Equal Justice Wyoming Federation shall have the sole discretion of allocation, division and distribution of funds.

(v) The Equal Justice Wyoming Foundation shall have authority to promulgate administrative policies and rules consistent with this Rule, subject to the approval of the Supreme Court.

(2) “Non–IOLTA Account” refers to a trust account, from which funds may be withdrawn upon request as soon as permitted by law. Any interest earned on such an account shall be paid to the client or third person. Such an account shall be established as:

(i) A separate client trust account for the particular client or matter; or

(ii) A pooled client trust account with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person’s funds and the payment thereof to the client or third person.

(3) A lawyer’s good-faith decision regarding the deposit or holding of all client or third person funds in an IOLTA Account versus a Non–IOLTA Account is not reviewable by a disciplinary body. A lawyer shall review
the IOLTA Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non–IOLTA Account.

(b) Any trust account shall comply with the following provisions:

(1) The account shall be with a regulated financial institution that is located or has a branch located in Wyoming, the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

   (i) To apply for approval, financial institutions shall file with the Wyoming State Bar an overdraft notification agreement, in a form provided by the Wyoming State Bar, to report to the Office of Bar Counsel, Wyoming State Bar, in the event any properly payable trust account instrument is presented against insufficient funds or when any other debit to such account would create a negative balance in the lawyer trust account, whether or not the instrument or other debit is honored or irrespective of any overdraft protection or other similar privileges that may attach to such account. Such agreement shall apply to all branches of the financial institution and shall not be canceled except on 120 days’ notice in writing to the Wyoming State Bar. Upon notice of cancellation or termination of the agreement, a financial institution must notify all holders of trust accounts subject to the provisions of this rule at least 90 days before termination of approved status that the financial institution will no longer be approved to hold such trust account.

   (ii) The Wyoming State Bar, in consultation with the Office of Bar Counsel, shall establish guidelines regarding the process of approving and terminating “approved status” for financial institutions, and for other operational procedures to effectuate this rule. The Wyoming State Bar shall periodically publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that has not been so approved. Approved status under this section does not substitute for “IOLTA-Eligible Institution” status under Rule 1.15(a)(1).

   (iii) The overdraft notification agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of an instrument that is presented against insufficient funds but which
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| (iv) | The overdraft notification agreement must provide that a financial institution is not prohibited from charging the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest earned on trust accounts, including earnings on IOLTA Accounts payable to the Equal Justice Wyoming Foundation. Such costs, if charged, shall not be borne by clients. |
| (v) | Each financial institution must cooperate with the Office of Bar Counsel and produce any trust account records on receipt of a subpoena in accordance with any proceeding pursuant to the Rules of Disciplinary Procedure. |
| (vi) | Every lawyer or law firm maintain a trust account in accordance with this Rule shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by this Rule, and shall be deemed to have consented under applicable privacy laws to the reporting of information required by this Rule. |
| (vii) | A financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule. |
| (viii) | The agreement required by this Rule shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing trust accounts. |

(2) The account shall include all client or third party funds except those funds deposited pursuant to the written instructions of the client or third party in a special interest bearing account with the interest being paid pursuant to the written instructions of the client or third party.

(3) No interest from the account shall be made available to a lawyer or law firm.

(4) Trust accounts shall be managed as follows:
(i) Debit cards or automated teller machines cards shall not be used to withdraw funds from a trust account.

(ii) Client or third party funds received shall be deposited intact and records of deposit should be sufficiently detailed to identify each item.

(iii) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in Wyoming or by a person supervised by such lawyer and may be made only by authorized bank or wire transfer or by check payable to a named payee.

(iv) Cash withdrawals and checks made payable to “Cash” are prohibited.

(v) A lawyer shall request that the lawyer’s trust account bank return to the lawyer, photo static or electronic images of canceled checks written on the trust account. If the bank provides electronic images, the lawyer shall either maintain paper copies of the electronic images or maintain the electronic images in readily obtainable format.

(vi) Only a lawyer admitted to practice law in Wyoming or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(5) The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a “trust account.” The lawyer must be able to write checks or make disbursements directly from the account.

(e) A lawyer may deposit the lawyer’s own funds in a trust account solely to satisfy the bank’s minimum deposit requirement or for the purpose of paying bank service charges on that account, but only in an amount necessary for such purposes.

(d) A lawyer shall deposit into a client trust account legal fees that have been paid but not yet earned and expenses that are anticipated but have not yet been incurred. The lawyer may withdraw such advance payments only as fees are earned or expenses incurred.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property. Complete records of such accounting shall be kept by the lawyer and shall be preserved for a period of five years after termination of the
representation.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property in dispute shall be kept in trust by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property to which the interests are not in dispute.

(g) A lawyer shall maintain current trust account records and shall retain the following records for a period of five years after termination of the representation.

(1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(2) Ledger records for all trust accounts showing, for each separate client, the payor of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed.

(3) At least quarterly a written reconciliation of trust account journals, ledgers, and bank statements;

(4) The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, and canceled or voided checks;

(5) Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and time the transfer was completed; and

(6) Copies of those portions of client files that are reasonably related to trust account transactions. Records required by this Rule may be maintained in electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(h) A trust account complying with this Rule is required for funds of clients or third persons coming into a lawyer’s possession in the course of legal representation for which membership in the Wyoming State Bar is required. Members of the Wyoming State Bar who, because of the nature of their practice, do not, in the course of providing legal representation
requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this Rule.

(i) Each active member of the Wyoming State Bar who practices within the state shall certify each year upon making payment of annual license fees that the member has and intends to keep in force in the State of Wyoming a separate bank account or accounts for the purpose of keeping money in trust for clients or third persons, which account conforms to the requirements of this Rule, or that because of the nature of the member’s practice no client or third person funds are received. Certification shall be upon a form to be provided by the Wyoming State Bar and shall include the following: (1) the name and address of the lawyer or law firm filing the certification; (2) the name and address of each financial institution in which the account or accounts are maintained; (3) the account number of each account maintained pursuant to this Rule; (4) the dates covered by the certification (5) the lawyer’s express consent to the overdraft notification required by subsection (b)(1) of this Rule; and the (6) the signature, under penalty of perjury, of the lawyer making the certification.

(j) If the owner of property being held in trust by a member of the Wyoming State Bar cannot be located after reasonable efforts, such property shall be remitted to the Wyoming State Treasurer pursuant to the Wyoming Uniform Unclaimed Property Act, W.S. § 34–24–101 et seq.

(k) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

(l) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

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