

Lawyer Trust Account Guidelines

Overview

Rule 1.15 of the Mississippi Rules of Professional Conduct imposes strict fiduciary standards on every Mississippi lawyer who holds the property (“trust funds”) of clients or third parties. Mishandling trust funds, whether intentional or not, is “*the cardinal sin* for lawyers.” *Miss. Bar v. Coleman*, 849 So. 2d 867, 874 (Miss. 2002) (emphasis added).

It is in both the lawyer's and the client's best interest that the lawyer thoroughly understand and strictly follow the fiduciary duties and rules surrounding trust funds. Failure to strictly comply with Rule 1.15 puts trust funds at risk of attachment by creditors of the lawyer. Likewise, it puts the lawyer at risk of disbarment or lengthy suspension.

Every lawyer is responsible for properly depositing and maintaining trust funds – a lawyer cannot delegate this responsibility to another lawyer or to a non-lawyer.

Rule 1.15 imposes duties on every lawyer with regard to trust funds. The duties include:

- ** Keeping trust funds separate from the lawyer’s own funds.
- ** Taking reasonable steps to safeguard trust funds.
- ** Keeping trust funds in a separate trust account located in the state where the lawyer’s office is located.
- ** Maintaining records for a period of seven years after the representation has terminated.
- ** Promptly notifying the client or third party when the lawyer receives trust funds.
- ** Promptly delivering trust funds to the client or third party.
- ** Promptly rendering a full accounting of the funds when requested to do so.

Who Must Maintain a Lawyer Trust Account?

Rule 1.15(f) requires every licensed Mississippi attorney to maintain a trust account if the lawyer (1) is engaged in the private practice of law, whether fulltime or part-time, and (2) holds funds in which a client or third party has an interest.

What is an IOLTA Account?

“IOLTA” is an acronym for “Interest on Lawyer Trust Accounts.” An “IOLTA account” is a type of pooled Lawyer Trust Account in which client funds that are nominal in amount or short term in nature earn interest for the benefit of the Mississippi Bar Foundation. In turn, the Bar Foundation funds programs designed to improve equal access to justice.

Trust funds that are other than nominal in amount or short-term in nature may earn interest for the client or third party. The lawyer must determine whether the costs of a non-IOLTA account are greater than the interest to be earned. Irrespective of whether the account is an IOLTA or other lawyer trust account, the lawyer never has a right to the interest on the funds – just as he or she has no right to the funds themselves.

What Constitutes “Trust Funds?”

Rule 1.15 defines trust funds as funds in a lawyer's possession in which a client or third party has an interest. Generally, trust funds include:

1. Fees paid in advance by clients, until the fees are actually earned.
2. Expenses paid in advance until they are actually paid.
3. Funds from clients or third parties that are being held for disbursement at a later time, such as personal injury awards, support payments, real estate conveyance funds, and litigation settlements.

It is the lawyer's responsibility to exercise good judgment in determining what funds should be deposited in the trust account. Likewise, it is the lawyer's responsibility to exercise good judgment in what funds should be withdrawn from the trust account.

Ownership of trust funds held by the lawyer can change during the representation. For example, once the lawyer earns previously advanced fees, ownership of the funds in the amount earned changes from belonging to the client to the lawyer. Since the lawyer must keep his or her funds separate from the client's, the lawyer must withdraw earned fees from the lawyer trust account and place them in a general operating account. The lawyer should remove the earned fees from the lawyer trust account on a reasonably timely basis.

Where Must Trust Funds Be Placed?

Rule 1.15(a) requires that trust funds be deposited in an account separate and apart from the lawyer's, at a financial institution in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third party. The lawyer or law firm should deposit trust funds in one of, or when necessary a combination of, the following insured checking accounts which provide for:

1. a pooled interest-bearing IOLTA account for the deposit of all trust funds that are nominal in amount or expected to be held for a short period of time;
2. a separate interest-bearing account for each matter, on which the interest will be paid to the client or a third party; or
3. a pooled interest-bearing account containing the funds from several matters, with sub-accounting that will provide for computation of interest earned in each matter and payment thereof to the proper person or entity.

As a practical matter, almost every lawyer will ultimately use either the first or second type account listed above. Most transactions through a lawyer trust account are either nominal in amount or held for a short period of time. Many banks have chosen not to charge fees on lawyer trust accounts. As such, most transactions can be placed into a pooled IOLTA account.

On the other hand, when a lawyer holds a substantial amount of funds clearly identifiable to a client or third party for a long period of time, the lawyer should deposit those funds in a separate interest bearing account for the benefit of the client or third party. The definition of "substantial" depends on the circumstances of each case—the larger the amount of funds, the shorter the period of time needed to justify the establishment of separate accounts for the funds and vice versa.

The lawyer must also exercise good judgment in determining how trust funds are to be deposited or invested. As a fiduciary of funds entrusted by the client or third party, the lawyer must err on the side of safety rather than rate of return.

A court may also control where the funds should go. For example, a lawyer may be ordered to set up a guardianship account for a person under a disability. The court will direct the lawyer where the funds should be placed and disbursed. The lawyer's duties with regard to these accounts are the same as lawyer trust accounts.

Are IOLTA Accounts insured?

Most bank accounts in Mississippi are protected by insurance through the Federal Deposit Insurance Corporation (FDIC). As of June 1, 2012, FDIC insurance covers IOLTA accounts so long as the account is clearly identified as an IOLTA account and proper records are maintained so that the ownership of the funds can be readily ascertained. The regulations currently in place may change from time to time. For example, the current regulations expire automatically on December 31, 2012.

Are There Ways To Minimize Errors and Prevent Theft?

A lawyer routinely deals in funds in his or her practice that should be placed in or withdrawn from the lawyer trust account. Likewise, he or she has other funds that should be kept and paid from a general operating account. Problems exist when, through clerical error, trust funds are mistakenly placed in the general account and vice versa.

The lawyer can take steps to separate trust funds from the lawyer's own funds and to protect client funds from unauthorized access. The steps include:

1. Maintain the lawyer trust account at a financial institution other than where the lawyer's operating account is maintained.
2. Prominently include the term "TRUST ACCOUNT" in the title of lawyer trust account.
3. Prominently include the term "TRUST ACCOUNT" on the lawyer trust account checks.
4. Use checks that are a different color than those from the operating account.
5. Keep lawyer trust account checks and deposit tickets in a location separate from the general operating account, preferably under the exclusive control of the lawyer.
6. Give the lawyer exclusive authority to withdraw funds from the lawyer trust account.
7. Personally reconcile the account on a monthly basis to verify all deposits have been properly recorded and checks properly cleared.
8. Have an independent auditor examine the account on an annual basis.
9. Deposit a reasonable, small amount in the lawyer trust account to handle bank fees or charges. (See section "Handling Bank Charges")

What Records Should Be Kept?

Under Rule 1.15(a), the lawyer must keep “complete records” of trust account funds for a period of seven years after the representation has been terminated. A good accounting system can be a manual system such as the one described here or a computerized accounting package that offers similar features. Regardless of the system used, the lawyer should establish and maintain a system so the lawyer can readily document:

1. the total amount on deposit in the trust account at all times;
2. the amount on deposit in a pooled account that belongs to each client or third party; and,
3. the manner in which each transaction is processed.

Simply maintaining and balancing a checkbook with deposits and checks will not suffice. A pooled lawyer trust account is comprised of one or more subaccounts containing clients’ funds. Knowing the total balance owed to several clients is meaningless because the lawyer must know how much each individual client has of the total balance. Therefore, the lawyer will have to use a system that incorporates records for the total account (Trust Account Checkbook) and each subaccount (Trust Ledger).

The Trust Account Checkbook. A checkbook register allows a lawyer to maintain an accurate record of the total balance of the trust account and to show a chronological journal of the receipt and disbursement activity. If properly documented, the checkbook register can also act as a redundant system to the Trust Ledger. Good documentation includes the following:

Deposits/Receipts

Receipt date
Amount received
Source of funds
The name of the owner of the funds
A brief explanation

Checks/Disbursements

Disbursement date
Amount disbursed
Check Number
Payee’s name
A brief explanation

For example, when the lawyer receives funds, he or she should indicate in the check register that on January 31, 2012, \$6,000.00 was received from ABC Insurance for Joe Jones for settlement of Jones v. Smith personal injury case. Likewise, the lawyer may indicate in the check register that on February 15, 2012, he or she issued check number 1001 in the amount of \$4,000.00 to Joe Jones, noting the amount was 2/3 of

the settlement amount from ABC Insurance for settlement of Jones v. Smith personal injury case.

Trust Ledger. The Trust Ledger is critical to properly maintaining a lawyer trust account. This ledger consists of a master listing of all the funds in the lawyer trust account (master sheet) and separate, individual records that document the receipts and disbursements as well as a running balance for each individual client (subsidiary ledger sheets).

Without separate records for each client, the lawyer cannot ascertain a particular client's ownership of the pooled funds. The subsidiary ledger sheet for every client documents what funds the lawyer has received and disbursed on behalf of each particular client or third party. It will also show the balance owed to each client. It also allows the lawyer to give an accurate accounting of the trust funds belonging to a particular client or third party immediately on request (*See* Subsidiary Trust Ledger Sheet, page 10).

The master sheet allows the lawyer to quickly determine the balance of each client's funds within the pooled account and aids in reconciling bank records to the lawyer's records.

As a further measure to insure the lawyer is keeping accurate records, he or she may organize the subsidiary ledger sheets into two binders. The first binder is an "Open Account" ledger, containing separate subsidiary ledger sheets for each client or third party for whom the lawyer is holding trust funds. The second binder is a "Closed Account" ledger containing subsidiary ledger sheets for clients or third parties for whom the lawyer held, but is no longer holding, trust funds. Closed Account ledgers must be maintained for a period of 7 years after the representation is terminated pursuant to Rule 1.15(a).

Monthly Reconciliation. Trust account(s) should be reconciled on at least a monthly basis. A monthly trial balance of the entire subsidiary ledger, also showing the name of each client or third party's subaccount, should agree with the month-end checkbook register's running balance of the trust account. This figure is computed by taking the beginning balance, adding the total of funds received for the month and deducting the total of funds disbursed for the month.

Bank Reconciliation. When the bank sends a bank statement for the lawyer trust account, the lawyer should immediately perform a reconciliation to make sure the trust account bank balance, the checkbook balance, and the subsidiary ledger trial balance total all agree (*See* Trust Account Reconciliation Sheet, page 11).

This reconciliation should also include deposits which do not appear on the bank statements and all outstanding checks. All reconciliations should be saved with the bank records for future references. As an additional internal control, if the lawyer allows an assistant to maintain the trust account bookkeeping activities, he or she should have a different person, preferably the lawyer himself or herself, perform the reconciliation.

Accounting to Clients or Third Parties. The lawyer should periodically advise each person whose funds are held of the status of those funds. In this way the lawyer is satisfying, in part, his or her obligations under Rule 1.4 to keep the client adequately informed of the status of the case as well as the requirement to account for the funds being held under Rule 1.15(b).

Additionally, the lawyer should account to the client for funds received and disbursed at the completion of the case. Rule 1.15(b) requires the lawyer to prepare a full accounting upon request. The better practice is to provide the accounting on a periodic basis while the case is ongoing and to provide a full accounting at the conclusion of the case, regardless of whether the client or third party requests it. The accounting should adequately describe each receipt and disbursement and any unexpended balance.

Under Rule 1.15(c), if there is objection to any proposed disbursement, the lawyer must keep the disputed amount in the trust account pending the resolution of the dispute. However, the lawyer should promptly disburse the portion of the funds not in dispute.

What Funds Should Go Into the Trust Account?

Rule 1.15(a) requires that all funds that qualify as trust funds shall be deposited into a trust fund account. Qualifying funds include:

1. Prepaid expenses
2. Unearned fees
3. Settlement proceeds
4. Any other funds belonging to a third party or a client for which the lawyer acts as an intermediary.

The lawyer should have a clearly expressed written policy specifying what funds should be deposited into the trust account. The lawyer is ultimately responsible for determining proper placement of funds in the appropriate account.

When Should Funds Go Into the Trust Account?

The lawyer should deposit trust funds promptly to the trust account. Once funds are received, the lawyer is required to promptly notify the client or third party of receipt under Rule 1.15(b). In most cases, promptly means the same day. The lawyer should avoid keeping trust funds overnight. If trust funds must be kept overnight, the lawyer should place them in a fireproof safe under lock and key.

If the lawyer is not personally handling deposits, he or she should give written instructions that will adequately document the receipt of the funds and direct the person charged with handling the transaction to deposit the funds into trust. Written communication avoids later arguments regarding deposit instructions and provides a needed audit trail.

When Should Funds Be Paid From the Trust Account?

Rule 1.15(j) requires the lawyer to make disbursements only from *collected funds*. Collected funds are those funds that have been deposited, finally settled, and credited to the lawyer's trust account. The term "finally settled" means the funds have cleared the financial institution of the person or entity that issued a check or other form of remittance to the lawyer. In other words, the lawyer needs to make sure the check will not be returned for insufficient funds, for stop payment, or other reason.

Rule 1.15(j) lists four limited exceptions to the "collected funds" requirement when the uncollected deposit has limited risk and the attorney has sufficient personal funds available (not other client funds) to replace the uncollected funds. See Rule 1.15 (j), MRPC, for more information. Notwithstanding these limited situations, the lawyer should use caution when paying out uncollected funds. The lawyer must be prepared to replace a failed deposit with personal funds within three days of notice the deposit failed.

A lawyer cannot use one client's funds for the benefit of another. Proper maintenance of the trust account ledgers insures this will not occur. Trust fund disbursements from a particular ledger must not exceed the funds received from or on behalf of that person. As a precautionary measure, the lawyer should personally verify the balance of the subsidiary ledger sheet for the client or third party before authorizing disbursement of trust funds.

Other internal controls include:

1. Requiring a written disbursement authorization that identifies the ledger of the client or third party's account to be charged, the reason for the transaction, and the approval for issuance of a trust account check by the lawyer.
2. Determining who will sign the trust account checks. Generally, the person who prepares the checks should not have sole signatory authority. A better practice is to require two signatures on all trust account checks.
3. Preparing a written procedure for handling deposits to and withdrawals from the lawyer trust account.

Given the legal and ethical ramifications of failing to do so, a lawyer must maintain the maximum level of control of his or her trust account.

What about Bank Charges?

The lawyer or law firm can and should deposit a small amount in the trust account to cover bank charges associated with the costs of printing checks and deposit tickets; monthly service charges; or a returned deposit item or some other special charge. This practice might appear to be the commingling of personal funds with that of others. Although not specifically authorized, this practice is a recognized exception to the general rule of commingling since the funds are deposited with the purpose of being consumed rather than being disbursed and such funds will prevent the misappropriation of a client's or third party's funds. The lawyer should account for such funds in the trust account by preparing a subsidiary trust ledger sheet named "Bank Charges." Charges are then recorded as they are incurred. When the balance gets low, the lawyer can replenish the funds.

Subsidiary Trust Ledger Sheet

Name of Person with Interest in Funds

Legal Matter or Adverse Party

File or Case Number

| Date | Description of Transaction | Check No. | Funds Paid | Funds Received | Running Balance |
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