



## *As Long as We Comply with All of the Rules*

**L**et's take a short quiz. Think back to law school and your ethics/professional responsibility class. How many of you learned that one of the most important functions a lawyer performs is preserving client funds in what is known as either an IOLTA or a trust account? I imagine nearly everyone raised their hands.

Let's move on to the second question. How many of you learned how to maintain an IOLTA account? And I'll broaden the question. How many of you have ever learned how to maintain an IOLTA account, whether in law school or after you graduated? In other words, how many of you were taught which funds go into the account, how to prepare ledgers showing all the transactions, and how to balance the IOLTA account? Oh my. I suspect almost every hand went down.

But now the most important question. How many of you are responsible for your firm's IOLTA account? In other words, how many of you are authorized to sign checks on the account, and are doing so without any training? No need to raise your hands. The answer is very few.

We all learned that you cannot steal from a trust account; that is a criminal act that could land you in prison, and certainly could lead to losing your license to practice law. But there is also a slew of other aspects to maintaining

an IOLTA account with which a lawyer must comply. And all too often, it is those violations, which do not involve stealing and are often technical in nature, that can lead to Disciplinary Counsel knocking on your door.

In my experience, representing attorneys who are recipients of that undesirable knock on the door, the majority of mistakes they make are minor, do not involve stealing, and are commonly the result of not knowing the Rules. But once Disciplinary Counsel knocks, you have to open the door, and often hire counsel.

Despite the frequency of these Rules violations, lawyers are not required to take any courses, CLE or otherwise, about how to handle their trust accounts. I believe, however, that requiring lawyers who have signing responsibility for an IOLTA to take a course or demonstrate other knowledge and competence about their accounts not only makes good sense, but also will reduce the many accounting errors that arise from ignorance, and lead to disciplinary hot water.

Consider, Pennsylvania's Rule of Professional Conduct 1.15, which outlines in detail the requirements a lawyer responsible for handling a trust account must follow. I know the following is lengthy, but it highlights SOME of the requirements with which lawyers must comply under R.P.C. 1.15:

- "Qualified funds" must be deposited

only at the "eligible institution."

- The funds must be held separately from the lawyer's own funds.
- A lawyer must maintain complete records of the receipt, maintenance, and disposition of all funds for five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later.
- A lawyer must also 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 must also maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held:
  - o 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;
  - o A check register or separately maintained ledger, which shall include the payee, date, purpose, and amount of each check, withdrawal and transfer, the payor,

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- date, and amount of each deposit, and the matter involved for each transaction; and
- o When 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.
- IOLTA records be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with Rule 1.15 and that printed copies can be produced.
- The required records must be backed up in a secure manner, and must always be available.
- When a lawyer only maintains electronic records, they must 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.
- A lawyer must maintain a regular trial balance of all individual client trust ledgers, where the total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of monies received in trust for the client, and deducting the total of all moneys disbursed.
- A lawyer must perform a monthly 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 must keep copies of all records and computations sufficient to prove compliance with the Rule for five years.
- 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.
- Except for limited circumstances, 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.
- Upon request by the client or third



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person, a lawyer shall promptly render a full accounting regarding the property.

- 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 Pennsylvania 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.
- 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.
- 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.

Whew! That's a lot of requirements. Yet the requirement that is missing is that a lawyer overseeing a trust account have any knowledge or competence about best practices and how to handle an IOLTA account.

The need for lawyers to learn how to handle their trust accounts not only makes sense, but it also is consistent with various Rules. First, Rule of Professional Conduct 1.1. requires lawyers to be competent. If lawyers do not know the applicable ethics rules, then how can they be competent to handle them?

Second, Pa.R.C.L.E. 102 explains that the "rules [were] adopted to assure that lawyers admitted to practice in the Commonwealth of

Pennsylvania continue their education to have and maintain the requisite knowledge and skill necessary to fulfill their professional responsibilities." What greater professional responsibility is there for maintaining the trust and integrity of the legal profession than properly handling qualified funds in an IOLTA account?

And finally, best practices mandate that those handling IOLTA funds receive training and understand how they must account for all such funds. Considering the lack of training provided in law schools and in most CLE courses, mandating a minimum level of competence is necessary, and it should prevent lawyers from pleading ignorance when they discover that the Disciplinary Board is investigating them.

North Carolina and New Mexico have

adopted this CLE requirement. In 2016, North Carolina amended its Rule 1.15-2 to add a requirement that attorneys attend a one-hour CLE program on trust account management at least once for every law firm at which the lawyer is given signature or transfer authority. Similarly, effective December 31, 2016, New Mexico amended its Rule 17-204 to require attorneys to take a trust accounting CLE class once every three years, or within the first year of being licensed in New Mexico.

It is time for Pennsylvania to adopt a Rule requiring, at a minimum, every attorney with signatory or supervisory responsibility on a trust or IOLTA to complete one hour of CLE to assure that they understand their obligations to their clients and to anyone else whose funds they are maintaining. ■

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