

# Trusted Records

## *Amended Rule Requires Lawyers to Keep More Detailed Trust Account Records*

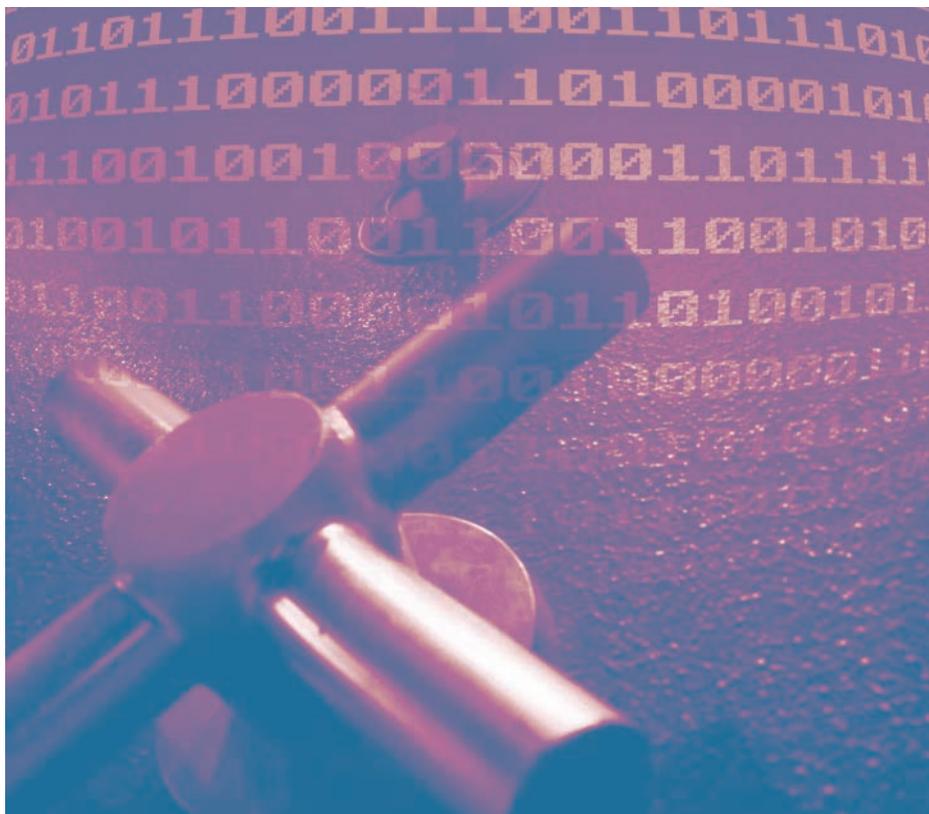
**T**he safeguarding of money held for clients and others is of such importance

that all lawyers are required to certify compliance with the provisions of Rule 1.15 of the Rules of Professional Conduct (RPC 1.15) as a part of the annual licensing process with the Disciplinary Board of the Supreme Court of Pennsylvania.<sup>1</sup> While the need to maintain detailed and accurate IOLTA/trust/escrow account records seems obvious, to many lawyers it has not been so clear. In fact, “[o]ne of the most common reasons for the imposition of serious discipline against a lawyer is the lawyer’s failure to handle fiduciary funds properly,”<sup>2</sup> a situation I have seen with my attorney clients.

Clearly, the need to maintain such records has created disciplinary issues for attorneys. In my practice, many of the lawyers who consult with me for professional responsibility matters do so because of concerns or Disciplinary Board inquiries about the manner in which they have handled their trust accounts. And almost always, the issues that have arisen are because of their ignorance about how to handle their accounts, and not because of malfeasance.

In apparent response to the number of attorneys who improperly handle their escrow accounts, the Pennsylvania Supreme Court has amended Rule 1.15, effective March 1, 2015. Under Rule 1.15(c), lawyers have always been required to maintain complete trust account records and to preserve them for five years after the termination of the lawyer-client or fiduciary relationship or after the disposition of the property, whichever is later. The revised Rule adds additional requirements.

First, in addition to the trust account records lawyers have always been required to keep, revised Rule 1.15(c) mandates that attorneys maintain



copies of fee agreements, engagement letters and other documents that outline the basis or rate of the fee charged. It also requires lawyers to maintain the distribution statements in contingent fee matters. And for those attorneys who did not prepare distribution statements, this revision should be a wakeup call.

The revised Rule also clarifies and enhances the recordkeeping requirements for trust accounts, requiring lawyers to include the purpose of each transaction in the ledger entry. In addition, there are additional requirements that will apply to the majority of lawyers who use one trust account to safeguard multiple client or fiduciary funds. For those accounts, lawyers “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.” These records may be maintained electronically or in hard copy, provided that the lawyer can produce printed copies, and further provided that lawyers “have a backup so that the records are secure and always available.” The Rule further notes that “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.*” (emphasis added) In other words, the best practice for maintaining

records – maintaining daily or more frequent on- and off-site backups – is now the standard for all trust account records.

New Rule 1.15(c)(4) requires lawyers to maintain a “regular trial balance of the individual client trust ledgers,” and to preserve the records for five years. To prevent confusion, the Rule specifies how lawyers must reconcile their accounts. While it seems obvious, the Rule states that “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.” It also requires lawyers to reconcile fiduciary/trust accounts on a “monthly basis.” Finally, the Rule emphasizes that a “reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing.”

While the rules have always required the lawyer in whose name the account is held to have responsibility for the Trust Account, revised rule 1.15(g) now specifies that “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).”

The Comments to revised Rule 1.15 are also helpful. First, they emphasize that “unless the client gives informed consent, confirmed in writing, to a different manner of handling funds advanced by the client to cover fees and expenses, [a] lawyer must deposit those funds into a Trust Account.” The Comment also explains that, “As fees become earned, [a] lawyer must promptly transfer those funds to the operating account.”

Finally, the Comment notes that “if a lawyer fails to maintain the records identified in paragraph (c) or to perform the required monthly reconciliations, later claims by the lawyer that a shortfall (i.e., misappropriation) resulted from negligence, even if credible, will necessarily be balanced against the lawyer’s abdication of responsibility to comply with essential requirements associated with acting as a fiduciary and serving in a position of trust. The failure to maintain or timely produce the records required by paragraph (c) hampers rule-mandated or agency-promulgated

investigative inquiries by the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel and may serve as a basis for emergency temporary suspension of the lawyer’s license to practice law.”

Safeguarding property is an essential element of an attorney’s obligation to every client. Revised Rule 1.15 should remind lawyers about the importance of creating and preserving trust/IOLTA/fiduciary records. ■

<sup>1</sup> <https://www.paiolta.org/attorney-compliance/handling-funds-of-others/#preface>

<sup>2</sup> *Id.*

Daniel J. Siegel, ([dan@danieljsiegel.com](mailto:dan@danieljsiegel.com)), principal of the Law Offices of Daniel J. Siegel, is a member of the Editorial Board of *The Philadelphia Lawyer*.

## ATTORNEY DISCIPLINARY / ETHICS MATTERS

STATEWIDE PENNSYLVANIA MATTERS  
NO CHARGE FOR INITIAL CONSULTATION

Representation, consultation and expert testimony in disciplinary matters and matters involving ethical issues, bar admissions and the Rules of Professional Conduct

### James C. Schwartzman, Esq.

- Member of the Supreme Court of Pennsylvania Judicial Conduct Board
- Former Chairman, Disciplinary Board of the Supreme Court of PA
- Former Chairman, Continuing Legal Education Board of the Supreme Court of PA
- Former Chairman, Supreme Court of PA Interest on Lawyers Trust Account Board
- Former Federal Prosecutor
- Selected by his peers as one of the top 100 Super Lawyers in PA and the top 100 Super Lawyers in Philadelphia
- Named by his peers as *Best Lawyers in America* 2015 Philadelphia Ethics and Professional Responsibility Law “Lawyer of the Year,” and in Plaintiffs and Defendants Legal Malpractice Law

1818 Market Street, 29th Floor, Philadelphia, PA 19103 • (215) 751-2863

## Get Published in THE PHILADELPHIA LAWYER

The Editorial Board of this magazine welcomes submissions from attorneys and other professionals who wish to share their expertise on law-related topics.

Articles must be original and previously unpublished.

Manuscripts should adhere to the following word counts:

- \* Major Law-Related Articles: 2,000 words
- \* Other Law-Related Features: 1,500 words
- \* General Interest: 1,500 words
- \* Fiction: 1,000 words
- \* Practice Areas: 750 words
- \* Essays or Humor: 750 words
- \* Book Reviews: 750 words

For more information,  
e-mail: [tplmag@philabar.org](mailto:tplmag@philabar.org).