

**Fiduciary Requirements
For
Lawyers in Pennsylvania
Handling Property of Clients
and Others**

Published by:

The Pennsylvania Interest on Lawyer Trust Accounts Board

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Revised June 25, 2018.

TABLE OF CONTENTS

PREFACE	4
WHAT FUNDS ARE SUBJECT TO THESE REQUIREMENTS?	5
THE BASIC RULES	6
1. Duty to Keep Funds and Property Separate.....	6
a. Separate Trust Accounts	
b. Strict Compliance Required	
c. Withdrawal and Transfer of Funds	
d. Identification of Trust Accounts	
e. A Word on Fiduciary Funds	
2. The Duty of Notice	9
3. The Duty of Recordkeeping.....	9
Required Records:	
a. Fee Letters and Agreements	
b. Transaction Records	
c. Check Registry	
d. Multiple Clients or Third Parties	
e. Trial Balance	
Recordkeeping Procedures:	
a. Signatory	
b. Format of Records	
c. Reconciliation	
d. Maintenance of Records	
e. Production of Records	
f. Unclaimed or Unidentifiable funds	
g. Dissolved firm	
h. Interest	
i. Confidentiality	
4. Duty to Account.....	13
5. Requirement of Delivery	14
SELECTING A FINANCIAL INSTITUTION	14
Mandatory Overdraft Notification	
DEBIT AND CREDIT CARDS	15

TABLE OF CONTENTS (Cont.)

IOLTA (INTEREST ON LAWYER TRUST ACCOUNT) REQUIREMENTS 16

- a. Qualified Funds
- b. Non-Qualified Funds
- c. Master Escrow Accounts

ANNUAL REGISTRATION REQUIREMENTS 18

CONCLUSION..... 19

PREFACE

One of the most common reasons for the imposition of serious discipline against a lawyer is the lawyer's failure to handle fiduciary funds properly. Safeguarding 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 (R.P.C. 1.15) as a part of the annual licensing process with the Disciplinary Board of the Supreme Court of Pennsylvania.¹ Recent concerns about the safety of funds entrusted to attorneys by the public have prompted significant changes to the Rules of Professional Conduct and the Rules of Disciplinary Enforcement. These changes impose a heightened vigilance upon attorneys through strict rules on how attorneys maintain client funds, as well as increased accountability through additional recordkeeping and reporting requirements.

Pennsylvania has few official guidelines to help attorneys comply with the Rules of Professional Conduct. This pamphlet provides guidance for managing and safeguarding entrusted funds and other property belonging to clients and third parties.

WHAT FUNDS ARE SUBJECT TO THESE REQUIREMENTS?

Both R.P.C. 1.15 and general law impose fiduciary duties upon attorneys who hold funds on behalf of clients and other third parties. R.P.C. 1.15 applies to any property that belongs to a client or third party that comes into a lawyer's possession ("Rule 1.15 Funds"). Examples of funds normally subject to these requirements are:

- 1) Deposits and proceeds for distribution in a real estate transaction;
- 2) Estate assets in connection with administration of an estate;
- 3) Settlements and recoveries collected as damages in personal injury, property damage, contract, and other monetary claims;
- 4) Funds received as prepayment of expected costs and expenses of legal representation; and
- 5) Retainers or advance payment of fees or expenses which have not been earned.

Fees and costs paid in advance are considered trust funds in the absence of an agreement to the contrary and must be maintained in a trust account separate from the attorney's funds until they are earned or become payable and can be withdrawn with the client's consent. In *In Re Anonymous, No. 98 DB 92*, 23 Pa. D. & C. 4th 452 (1994), the Disciplinary Board set forth at length how it expects attorneys to deal with advances of fees and expenses. In addition, PBA Formal Opinion 95-100 provides that in the absence of a clear written statement or agreement to the contrary, client retainers must be deposited into a proper attorney trust account. This PBA opinion also distinguished between refundable and nonrefundable retainers and concluded that nonrefundable retainers are permissible if the arrangement is properly documented. The opinion made clear that any arrangement that includes a nonrefundable retainer must be confirmed by a clear and unambiguous written statement provided to the client, or by a written agreement between the attorney and client. Rules of construction of such agreements always favor the client, and it is the lawyer's responsibility to assure that non-refundability language is agreed to and understood by the client. In most attorney-client fee arrangements, the lawyer must refund the unearned balance of fees paid in advance once the representation has concluded.² Therefore, the lawyer who claims a retainer is non-refundable bears the burden to ensure that the client understands and agrees to such terms.

THE BASIC RULES

R.P.C. 1.15 imposes five (5) basic requirements upon any lawyer who, in the course of representing a client, comes into possession of property, including money, belonging to a client or third party:

1. The lawyer has a duty to **keep funds and property separate** from the lawyer's own property.
2. The lawyer has a duty to give **notice** of the receipt of any funds or other property.
3. The lawyer has a duty to **maintain appropriate records** of any property, particularly money, held on behalf of another.
4. The lawyer has a duty to render an **accounting** of any funds held in a fiduciary capacity on request.
5. The lawyer has a duty to **promptly deliver** funds or other property to the person who is legally entitled to them.

1. Duty to Keep Funds and Property Separate

a. Separate Trust Accounts

RPC 1.15 requires that a lawyer who holds funds or other property of a client or third party do so with the care of a professional fiduciary and keep it separate from the lawyer's own property.³ Such funds may never be commingled with money belonging to the law office or to the lawyer. While the Explanatory Comment to Rule 1.15 suggests that a client may give informed consent, confirmed in writing, to a different manner of handling funds advanced to cover fees and expenses, the text of Rule 1.15 (b) is clear: *A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property.*⁴ Since this language is unequivocal and the risks are great, it is strongly recommended that client funds never be comingled with attorney funds regardless of a client's waiver. Whenever a lawyer holds funds belonging to clients or third parties, the lawyer must maintain at least two types of separate accounts: trust accounts in which client or third party funds are held, and an operating account in which funds belonging to the lawyer or law firm are held. Trust accounts typically are of two types: one or more non-IOLTA accounts for funds expected to be retained for longer periods of time with accrued interest to be paid to the client, and an IOLTA account for client funds that are nominal in amount or are expected to be held for a

short period of time. Accrued interest on an IOLTA account is paid directly to the IOLTA Board.

Separate trust accounts may be maintained for each client or matter. Alternatively, a single account may serve as the repository of funds belonging to more than one person, provided that the attorney maintains appropriate and adequate records identifying the balance of funds attributable to each person or matter. A lawyer must not place personal funds in a trust account. The only exception is funds that are necessary to pay service charges on the account. Funds deposited for service charges must be carefully documented. If earned fees are combined with costs or advanced fees, then the attorney must immediately transfer earned fees to the operating account to avoid commingling.⁵

b. Strict Compliance Required

The language of R.P.C. 1.15 does not include any qualifiers regarding intent. It should be viewed as imposing strict liability upon attorneys.⁶ Observing this strict fiduciary duty is intrinsic to handling funds of another and should be automatic and unequivocal. Serious disciplinary consequences can result from deliberate or careless mishandling of client funds, which can include referral to the Office of Disciplinary Counsel and criminal prosecution. In an age when the social value of lawyering and the integrity of lawyers are often severely criticized, increased awareness and control over handling funds belonging to third persons can yield dividends in the form of much needed public recognition of the profession's self-policing efforts.

c. Withdrawal and Transfer of Funds

Funds may be withdrawn from a trust account only when fees are earned or when expenses are incurred. Withdrawal or transfer of earned funds or funds for expenses may only be made with the actual knowledge and authorization of the client, by way of a fee agreement or by notice and acquiescence. *A lawyer shall never make disbursements of unearned or funds for expense reimbursement from a trust account for personal or office purposes.*

All transfers of earned funds or funds for expense reimbursement from a trust account to the lawyer should be made by check, electronic transfer, or

other recorded transaction to an account that is clearly identified as belonging to the lawyer. ***A lawyer shall never under any circumstances withdraw cash from a trust account.***

A lawyer should never execute an instrument transferring trust account funds without clear journal and ledger entries identifying the client funds from which the transfer is made, the purpose of such transfer (e.g., for fees earned according to a billing or fee statement), and the identity of the transferee. Client funds must remain in a trust account for the entire time they are in the lawyer's possession and may not be "borrowed," even for a moment, or applied to interests of the lawyer or other clients.

d. Identification of Trust Accounts

R.P.C. 1.15(g) specifically requires attorneys to identify client trust accounts to the banking institution where such accounts are held. Attorneys must assure that each account is given the special distinctive title identifying it as a trust account. Checks and deposit slips must bear the trust account designation.

e. A Word on Fiduciary Funds

Questions sometimes arise as to whether a lawyer is holding client funds in a fiduciary capacity. A lawyer acts in a fiduciary capacity when serving as a personal representative, guardian, conservator, receiver, trustee, agent under a power of attorney, or other similar position. "Fiduciary funds" are defined simply as Rule 1.15 Funds which the lawyer holds as a fiduciary. If fiduciary funds are strictly subject to the IOLTA account requirements discussed below, the proper performance of fiduciary investment duties would be difficult.

Rule 1.15 and Rule 221 each provide that fiduciary funds must be placed in a trust account, or in another investment or account which is authorized by law or which is authorized by the agreement governing the fiduciary relationship. Accordingly, a lawyer may maintain fiduciary funds in vehicles other than trust accounts or IOLTA Accounts (as these terms are defined in Rule 1.15). However, if fiduciary funds are held in a trust account, the trust account must be maintained in an "eligible institution." If fiduciary

funds held in a trust account and are “qualified funds” as discussed below, such fiduciary funds must be held in an IOLTA Account.

An agreement, such as an agreement of trust, may provide the requisite authorization for the lawyer acting as a fiduciary to make non-trust account investments. Alternative investments and accounts are authorized by law in the fiduciary context by Pennsylvania’s Prudent Investor Rule, which gives the fiduciary authority to invest in every kind of property and type of investment, including, but not limited to, mutual funds and similar investments. 20 Pa. C.S.A. § 7203(b). The Prudent Investor Rule thus serves as an “umbrella” authorizing wide investment latitude in the fiduciary context. It should also be noted that Comment 6 to Rule 1.15 states that funds that are controlled by a non-lawyer professional co-fiduciary are not considered Rule 1.15 funds. This means that funds controlled by an institutional co-fiduciary, such as an institutional trustee, are not subject to Rule 1.15. Institutional co-fiduciaries are subject to industry specific laws and regulations. Notwithstanding the foregoing, a lawyer’s handling of fiduciary funds remains subject to Pennsylvania law governing fiduciary relationships.

The lawyer’s responsibilities under Rule 1.15 apply when the lawyer acts as an escrow agent, settlement agent, or representative payee. Money or property received while wearing any of these hats is Rule 1.15 Funds that must be held in an appropriate trust account.

2. The Duty of Notice

A lawyer must promptly notify the client or third party of receipt of funds in which the person has an interest. “Prompt” notification should take place in a matter of days rather than weeks or months.

3. The Duty of Recordkeeping

R.P.C. 1.15(c) requires a lawyer to maintain complete records of the receipt, maintenance, and disposition of funds and property held for clients and third parties. *A lawyer must preserve the required records described below for a period of five years after termination of the attorney-client or fiduciary relationship, or after distribution or disposition of the funds or property held in trust, whichever is later.* Retention of records for longer periods of time may be prudent for considerations

related to malpractice defense, availability for minors or other legally incapacitated persons, tax audits, and other purposes.

The following are records and recordkeeping requirements and procedures imposed by Rule 1.15(c) and Rule 221(e).

Required Records

a. Fee Letters and Agreements. A lawyer must maintain all writings communicating the basis of the lawyer's fee to the client that are required by Rule 1.5(b), and all written contingent fee agreements and distribution statements required by Rule 1.5(c);

b. Transaction Records. All transaction records provided by the financial institution maintaining the trust account, including cancelled checks, statements, records of deposit, records of electronic transactions, etc., must be maintained by the attorney or law firm;

c. Check Registry. A lawyer must maintain a check registry or separate ledger listing 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;

d. Multiple Clients or Third Parties. If a trust account holds funds of multiple clients or third parties, the lawyer must maintain an individual ledger for each client and/or third party, showing the source, amount and nature of all funds held on behalf of the client or third party, as well as the description and amounts of charges or withdrawals, the identity of who received disbursements, and the dates of all deposits, transfers, withdrawals and disbursements;

e. Trial Balance. A regular trial balance of individual client or third party trust ledgers must be maintained.

Recordkeeping Procedures

a. Signatory. Only an attorney admitted to practice in Pennsylvania or a person under the lawyer's direct supervision may be a

signatory for a trust account maintained by that attorney. A lawyer should never use a signature stamp.

b. Format of Records. Required records may be maintained in hard copy form, electronically, or other media as long as the records comply with Rule 1.15(c) and printed copies can be easily produced. All required records must be backed-up at a minimum at the end of each day on which entries have been made into the records. Paper accounting systems are notoriously susceptible to errors, omissions, and manipulation by staff which can result in serious problems. Commercial paper-based systems may still be available which reduce the risk of such errors, but software packages now largely serve as complete systems which automate and standardize many of these requirements. Whatever system is used, the attorney remains responsible for the proper management and review of the recordkeeping process.

c. Reconciliation. Reconciliations of balances of all journals, ledgers, and checkbooks, and other financial records must be prepared monthly, if not more frequently. ***The balance of the journal entries must always exactly equal the sum of all ledger balances, and must be reconciled with balances reported on bank statements. Any discrepancy in these reconciliations is an indication of potentially serious problems, and should be addressed immediately by the attorney.*** Monthly or periodic bank statements should be opened immediately and reconciled with the internal records. An attorney should carefully and critically review both internal and bank statement reconciliations. Copies of all records and computations sufficient to prove compliance with the reconciliation requirement of Rule 1.15(c)(4) must be maintained for a minimum of five years.

d. Maintenance of Records. As set forth above, according to Rule 1.15(c), a lawyer must preserve and maintain the above required records for a period of five (5) years after termination of the attorney-client relationship, the termination of the lawyer's fiduciary relationship, or after distribution or disposition of the trust property held by the lawyer, *whichever occurs later.*⁷

e. Production of records. All records must be readily accessible for production to the Pennsylvania Lawyers Fund for Client Security and the

Office of Disciplinary Enforcement. Upon request by Disciplinary Counsel of the Office of Disciplinary Enforcement, an attorney must produce the requested records within ten business days. If Disciplinary Counsel's request is made pursuant to a provision of the Disciplinary Board Rules or by subpoena, records must be produced within the timeframe established by the Rule or subpoena. Failure to produce requested records may result in the initiation of proceedings for temporary license suspension.

f. Unclaimed or Unidentifiable funds. Pursuant to the April 30, 2018 Order of the Supreme Court of Pennsylvania, the IOLTA Board became responsible for safekeeping unclaimed or unidentifiable funds previously held in Pennsylvania lawyer IOLTA trust accounts. Under Pa. R.P.C. 1.15(v), unidentifiable funds refers to funds accumulated in an IOLTA account that cannot be reasonably documented as belonging to a client, former client, third party, or the lawyer or law firm, while unclaimed funds refers to funds for which a client, former client, or third party appear to have an interest, but have not responded to the lawyer or law firm's reasonable efforts for a minimum period of two (2) years to encourage them to reclaim their funds. Reasonable efforts to identify the owner of funds includes a review of transaction records, client ledgers, case files, and any other relevant fee records. Reasonable efforts to locate the owner of funds include periodic correspondence of the type contemplated by the lawyer or law firm's relationship with the client, former client, or third party. Should such correspondence prove unsuccessful, a lawyer or law firm's reasonable efforts include efforts similar to those that would be undertaken when attempting to locate a person for service of process. A greater outlay of time and expense may be warranted when larger amounts of money are at issue. A standardized form is available on the IOLTA Board's website for use when submitting unclaimed and unidentifiable funds to the IOLTA Board. Conservators appointed pursuant to Pa. R.D.E. 321 should follow Pa. R.D.E. 324(c)(1) with respect to any unidentifiable funds in IOLTA accounts.

g. Dissolved firm. Upon the dissolution of a law firm, one of the members of that firm or a successor firm must maintain the required trust account records for five years. In the case of a deceased solo practitioner, such records should be maintained by the executor of the estate. If proper records are maintained, clients and third parties for whom funds are held can be easily identified and funds returned. If funds remain in the trust account and ownership cannot be determined, they must be handled in accordance

with Pa. R.P.C. 1.15(v). All clients and third parties for whom funds are being held must be notified of who will be holding their funds and to discuss how they will be refunded or otherwise handled moving forward. In the case of a deceased solo practitioner, it should be remembered that only a licensed attorney or a person under his or her direct supervision may be an authorized signatory of a trust account.

h. Interest. Interest payable on a trust account belongs to the client or other person whose money earned the interest. The only exception is the interest on funds that are nominal in amount or funds expected to be held for a short period of time that are deposited in an IOLTA account, as discussed below. IOLTA account interest is payable directly by the banking institution to the IOLTA Board.⁸

i. Confidentiality. If outside billing, accounting, or collection services are used, care should be taken to assure the protection of client confidentiality.⁹

4. Duty to Account

On request, appropriate accounting must be provided. A lawyer holding funds for clients and third parties is acting as a fiduciary has a duty to provide an accounting of such funds upon the request of the client or the third party owner of the property. Any request for information from a client or party whose funds are held as to the status of those funds should be considered a request for an accounting and must be answered promptly and thoroughly. An accounting should provide the following information, at a minimum:

- a.** All funds received, including date of receipt, source, and amount (i.e., funds deposited in trust account, endorsed over to client, etc.);
- b.** All disbursements made, including date, payee, amount, and purpose;
- c.** Interest, charges, and other credits or debits accrued; and
- d.** Amounts currently held, location, and purpose for which they are held, and contingencies, if any, which must be met before final disbursement.

5. Requirement of Delivery

When the client or third party is entitled to payment of funds held by an attorney, the lawyer has a duty to deliver the funds as promptly as possible. Withdrawal or disbursement of funds from a trust account may only be by wire transfer or check payable to an authorized payee. Withdrawals and disbursements must *never* be made in cash.¹⁰

Delivery to a client of funds in which a third party has a legally enforceable interest can result in both civil liability and disciplinary sanctions against the lawyer. Where there is a dispute between the lawyer or another party, including a client as to the ownership of funds (e.g., a dispute over fees the lawyer proposes to withhold), the disputed amount must be kept in trust until the dispute is resolved. The fact that neither the lawyer nor the client is entitled to the disputed funds while the resolution process is underway creates an incentive for both to make an effort to amicably resolve the dispute. Under no circumstances should a lawyer withhold delivery of the undisputed portion of the funds pending resolution of a dispute.

SELECTING A FINANCIAL INSTITUTION

All attorney trust accounts must be maintained in a financial institution approved as an “eligible institution” by the Supreme Court of Pennsylvania.¹¹ An eligible institution is defined as one that has agreed to abide by the mandatory overdraft notification requirements of Rule 221 of the Rules of Disciplinary Enforcement.¹² There are additional requirements for IOLTA accounts. The financial institution must be willing to comply with the IOLTA requirements of the Rules for Interest on Lawyer Trust Accounts, 204 Pa. Code 81.101, et. seq. It is also important to note that the attorney is responsible to assure that the banking institutions that (s)he utilizes meet these requirements. A list of current Eligible Institutions may be found at www.paiolta.org. It should be noted that if a firm has a cross state practice, separate IOLTA accounts may need to be established per 204 Pa. Code 81.103(a)(ii) as financial institutions are only able to accommodate balance and interest reporting (as well as dishonored payment reporting required by Pa. R.D.E. 221(h)) to one state authority per account.

Mandatory Overdraft Notification

The eligible institution must provide dishonored check reports to the Lawyers

Fund for Client Security Board (“LFCS”). A report must be generated whenever a check is presented against insufficient funds, even if the financial institution chooses to honor the check. The report must be sent to the LFCS within five working days. A designated representative of the LFCS will conduct a preliminary inquiry and shall, when appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation.¹³ A report filed with the LFCS according to this rule or a referral of such a report to the Office of Disciplinary Counsel should not alone be considered a disciplinary complaint.¹⁴

DEBIT AND CREDIT CARDS

An attorney should never have debit or ATM cards tied to a trust account. In the event of theft, loss, or misuse of a debit card, there is substantial risk of misappropriation of client funds. Furthermore, a lawyer should never make cash disbursements of client funds from a trust account, as discussed above. If a cash payment or electronic transfer for expenses is required, the expense should be paid from the attorney’s operating account, and then reimbursed from the client trust account.

Credit card payments for services already rendered are not problematic since they represent fees earned that are the property of the attorney, and should be deposited in the attorney’s operating account. However, the attorney must take particular care when credit card payments are accepted for funds such as retainers and expense advances that must be deposited in a trust account. In order to comply with Rule 1.15, such payments made by credit card may not be comingled with funds held in the attorney’s operating account. All fees charged by the credit card processor must be paid by the attorney and cannot be withdrawn from the attorney’s trust account or charged to Rule 1.15 funds.

Another area of concern is that an attorney’s trust account cannot be subject to automatic transfers by the credit card processor. In a typical non-lawyer merchant arrangement, the credit card processor can deduct a variety of fees from the account that is set up to receive credit card payments. In addition, if a charge is disputed by the customer, the credit card processor may institute a “chargeback,” which is a reversal of the charge pending resolution of the dispute. In the context of the attorney as merchant, a credit card processor cannot have the ability to withdraw fees and institute chargebacks from an attorney trust account. Serious issues arise if the client’s credit card advance has already been earned and transferred to the attorney, and a subsequent fee withdrawal or chargeback made

by the credit card processor is deducted from funds of other clients. Accordingly, arrangements must be made with the credit card processor that only permit chargebacks and fee withdrawals from the attorney's operating account, and not an IOLTA or other trust account.

A final concern for attorneys accepting credit card payments is found under Section 6050 of the Internal Revenue Code, which became effective in January 2013. Section 6050 requires credit card processors to report gross credit card transactions to the IRS by way of a 1099-K. No distinction is made between transactions for payment for services rendered and payments made advancing fees and expenses for IOLTA deposit. Therefore, amounts reported on a credit card processor's 1099-K may not reflect gross income actually received by the attorney.

The second aspect of Section 6050 is that imposes a 28% withholding penalty on all of an attorney's credit card transactions if the name of the attorney or law firm on the credit card company's account does not match the name associated with the Employer Identification Number on file with the IRS. Sometimes the credit card company's records contain an abbreviation of the attorney or firm's name that does not match with IRS records. Attorneys and firms should contact their credit card processor to confirm that the processor's records match those of the IRS.

IOLTA (INTEREST ON LAWYER TRUST ACCOUNT) REQUIREMENTS

The IOLTA program was initially created in 1988 by the General Assembly's enactment of the Interest on Lawyers Trust Accounts Act. 62 Pa. C.S.A. § 4021. In 1996, the Supreme Court adopted Rule 1.15(d)-(i) which established a comprehensive IOLTA program exclusively under the Court's control and superseded the legislature's Interest on Lawyers Trust Accounts Act. The IOLTA program serves to provide funds for the delivery of civil legal services to the poor and disadvantaged, to improve the administration of justice in Pennsylvania, and for educational legal clinical programs and internships administered by Pennsylvania law schools. The IOLTA program is administered by the Pennsylvania IOLTA Board and is funded by the interest earned on attorneys' IOLTA accounts.¹⁵

Participation in IOLTA is mandatory. The IOLTA Board will refer any lawyer to the Office of Disciplinary Counsel who, without being exempted,¹⁶ fails or refuses to comply with the IOLTA provisions of Rule 1.15.

a. Qualified Funds.

Every Pennsylvania attorney who receives Qualified Funds belonging to clients or a third person must deposit them in an interest bearing trust account commonly known as an IOLTA account. Qualified Funds, are defined in R.P.C. 1.15-(a)(9) as 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. A lawyer must specifically identify an IOLTA account with the words IOLTA Trust Account or IOLTA Escrow Account. The name of the lawyer or law firm that maintains the IOLTA account must also be identified. The interest rate on an IOLTA account may be no less than the interest rate generally available to non-IOLTA customers when the same minimum balance or other eligibility requirements are satisfied. A lawyer will not be liable for damages or held to have breached any fiduciary duty because monies were deposited into an IOLTA account pursuant to a lawyer's judgment in good faith that the monies were Qualified Funds.¹⁷

The interest earned on an IOLTA must be remitted directly to the Pennsylvania IOLTA Board by the eligible institution holding the IOLTA account at least every quarter.¹⁸ Moreover, the eligible institution must send a report to the IOLTA Board and to the attorney showing the interest earned as well as the other pertinent information involving the account.¹⁹

The eligible institution may impose reasonable service charges for IOLTA account administration, but such charges may not be deducted from the account principal. Service charges and maintenance fees may only be deducted from income on the account. Costs for check printing, overdraft charges, and similar bank charges may not be assessed against account principal or income, and must be paid by the lawyer maintaining the account. Fees for stopped payments, certified checks and wire transfers must be paid by the lawyer or the client who requested the service. Charges imposed by the Eligible Institution for charges required by Rule 221 must be paid by the lawyer maintaining the IOLTA account.

b. Non-Qualified Funds.

Non-qualified funds are funds of significant amount that are expected to be held by the lawyer for a period of time such that it makes economic

sense to set up a separate trust account. Funds which in a lawyer's judgment are non-qualified funds shall not be deposited in an IOLTA account. Instead, non-qualified funds must be placed in an interest bearing trust account for the benefit of the client or third person or in another investment vehicle specifically agreed upon by the lawyer and the client or third party. All interest generated by these accounts or investments is the property of the client or third party to whom the funds belong, and all duties of the lawyer arising from R.P.C. 1.15 flow to the client or third party who owns the funds.

c. Master Escrow Accounts.

As a practical alternative for managing non-qualified funds, some banks now offer master escrow attorney trust accounts. The master escrow is a non-interest-bearing disbursement checking account. Tied into this disbursement account are any number of individual interest-bearing sub-accounts for each client or matter. Each sub-account is maintained under the social security number or federal taxpayer ID number of the client, with the bank sending individual 1099 tax forms to report the interest. A zero balance may be maintained in the disbursement account until it is necessary to make a payment from one of the sub-accounts. At that point a telephone authorization is made to the bank to transfer the requisite funds from the sub-account to the disbursement account. A check is then drawn on the disbursement account for the payment. The bank supplies the attorney with monthly statements showing the activity in the disbursement account and all sub-accounts, including balanced, deposits, withdrawals and interest credited.

ANNUAL REGISTRATION REQUIREMENTS

There are specific financial disclosures that must be made part of the attorney annual registration form as required by the Disciplinary Board. Recent amendments to the Rules of Disciplinary Enforcement have expanded these disclosure requirements, and information about trust and other accounts used in the law practice are more comprehensive than in the past. The section entitled Financial Data requires specific disclosure of accounts that hold client and third-party funds. The name of the bank or brokerage firm must be provided, along with the account number, and whether the account holds client funds, both qualified and non-qualified. One of the new disclosure rules requires that, in addition to accounts held within the Commonwealth, the lawyer must provide the name of the financial

institution, location (including state), and account number for every account located *outside* Pennsylvania in which client or third-party funds subject to Pa.R.P.C. 1.15 are held. The required annual disclosures apply to all attorneys, including those who are employed by a law firm, whether or not the attorney manages the firm accounts. The IOLTA Board conducts a reconciliation of all accounts that are identified as being IOLTA accounts that also hold Pennsylvania Rule 1.15 Funds on registration financial disclosures with those reported by financial institutions to ensure that the Pennsylvania IOLTA Board's Tax ID has been assigned to the interest earned.

In addition to the foregoing, attorneys are required to disclose account information for all accounts holding client and third-party funds over which the attorney had sole or shared signature authority, or had authorization to transfer funds to or from such account, regardless of whether the funds held in such accounts are subject to Rule 1.15. This requirement is broad in scope inasmuch as it encompasses accounts that may not be actually held by the attorney or completely under the attorney's control. These accounts would include an estate account for which the attorney serves as an executor or co-executor, a trust account where the attorney may serve as trustee or co-trustee, an escrow account where the attorney serves as escrow agent, etc.

Attorneys are also required to disclose all business operating accounts maintained or utilized in the practice of law. Finally, each attorney must sign a statement certifying that the attorney is familiar and in compliance with Rule 1.15 regarding IOLTA accounts, and the Rule 221 overdraft reporting requirements.

CONCLUSION

As stated at the outset, the basic rules are simple. Attorneys must hold client and third party funds in separate accounts at qualified banking institutions. They must notify the owner of all funds received. They must keep appropriate records, including journals and ledgers. They must reconcile bank statements and correct errors. They must provide accounting for funds upon request, and they must deliver funds to the entitled owner promptly. With Rule 221 in place, the clarity of the rule is supplemented by an automatic alarm system which alerts the Lawyers Fund for Client Security Board of possible violations. Accordingly, a modest amount of attention to these simple principles should assist the practitioner in avoiding disciplinary and other liability for incorrect handling of fiduciary funds.

¹ Pennsylvania Rule of Disciplinary Enforcement (Pa. R.D.E.) 219(d)(1)(iii). On filing for renewal, the lawyer must specify the location, name and account number for each trust account held.

² Pennsylvania Rule of Professional Conduct (Pa. R.P.C.) 1.16(d)

³ Pa. R.P.C. 1.15(b)

⁴ See also, *PBA Formal Opinion 95-100*

⁵ *In Re Anonymous No. 98 DB 92*, 23 Pa. D. & C. 4th 452 (1994)

⁶ *In Re Anonymous No. 98 DB 92*, 23 Pa. D. & C. 4th 452 (1994)

⁷ Pa. R.P.C. 1.15(c)

⁸ Pa. R.P.C. 1.15(o)

⁹ Pa. R.P.C. 5.3(b)

¹⁰ See Pa. R.P.C. 1.15(c)

¹¹ Pa. R.D.E. Rule 221(b)

¹² Pa. R.D.E. Rule 221(h)

¹³ Pa. R.D.E. Rule 221(o)

¹⁴ Pa. R.D.E. Rule 221(o)

¹⁵ Pa. R.P.C. 1.15(q)&1.15(s)

¹⁶ Pa. R.P.C. 1.15(n); 204 Pa. Code 81.109(d)

¹⁷ Pa. R.P.C. 1.15(p)

¹⁸ Pa. R.P.C. 1.15(o)(1)

¹⁹ Pa. R.P.C. 1.15(o)(2)