Managing the Money: Legal Ethics Related to Trust Accounts?

Presented by
Margaret Funk, Esq.

FM30
4/5/2017
8:30 AM - 9:30 AM
ABA Trust Account Overview

- Who needs a trust account?
- What exactly is a trust account?
- When do you put money in the trust account and when can you take it out?
- How do you manage the trust account?
Who Needs a Trust Account?

- Any lawyer who takes *advanced fees* or *advanced expenses*, or who accepts any funds *in connection with a representation* that do not belong to the lawyer – ABA Model Rule 1.15(a); Colo. RPC 1.15B(a)(1)

- In many states, this includes lawyers who accept retainers and who work on a flat fee basis

- Most practitioners will have three accounts:
  - Trust Account
  - Office/Operating/Business Account
  - Personal Account

What is a IOLTA Account?

- Interest on Lawyers Trust Accounts (IOLTA) accounts are one type of trust account

- IOLTA is a unique and innovative way to increase access to justice for individuals and families living in poverty and to improve our justice system. [http://www.iolta.org/what-is-iolta](http://www.iolta.org/what-is-iolta)

- Without taxing the public, and at no cost to lawyers or their clients, interest from lawyer trust accounts is pooled to provide civil legal aid to the poor and support improvements to the justice system. [http://www.iolta.org/what-is-iolta](http://www.iolta.org/what-is-iolta)
What is a IOLTA Account?

- A lawyer who receives funds that belong to a client must place those funds in a trust account separate from the lawyer’s own money. ABA Model Rule 1.15(a).

- The client - and not the IOLTA program - receives the interest if the funds are large enough or will be held for a long enough period of time to generate net interest that is sufficient to allocate directly to the client. [http://www.iolta.org/what-is-iolta](http://www.iolta.org/what-is-iolta)

- In 2009, the U.S. IOLTA programs generated more than $124.7 million nationwide. These funds, together with state and federal appropriations as well as private grants and donations, enable nonprofit legal aid providers to help low-income people with civil legal matters such as landlord/tenant issues, child custody disputes and advocacy for those with disabilities. [http://www.iolta.org/what-is-iolta](http://www.iolta.org/what-is-iolta)

What is a IOLTA Account?

- Every state, along with the District of Columbia and the Virgin Islands, operates an IOLTA program.

- COLTAF: Colorado Lawyers Trust Account Foundation (www.coltaf.org)
  - Interest on trust account goes to COLTAF.
  - COLTAF uses the interest to 1) Assist in providing legal services to the disadvantaged; 2) Improve the delivery of legal services; 3) Promote knowledge and awareness of law in the community; and 4) Improve the administration of justice.
The Beauty of a COLTAF or IOLTA Account

- Interest or dividend paid on money held in trust belongs to client.
- However, interest or dividend in IOLTA/COLTAF account by rule goes to the IOLTA/COLTAF board of directors.
- No need to allocate interest or dividend on IOLTA/COLTAF account to each client.
- No more than nominal amounts expected to be held for short time can go in to IOLTA/COLTAF fund.

When do you put money in your trust account?

- Whenever you accept funds in connection with a representation that do not belong to you
- ABA Model Rule 1.15(a) and (c) – lawyer must segregate client or 3rd party funds from own funds and those unearned fees must be placed in a trust account.
- Retainers, settlement funds, and in some states, flat fees - ALL must go into the trust account
When do you NOT put money in your IOLTA/COLTAF account?

- For many states, including Colorado, whenever you accept funds that are yours, and no one else has a claim to any of them, they cannot go into the trust account.
- However, you may deposit lawyer funds in the trust account to cover service charges. ABA Model Rule 1.15(b).
- Example of bank fees that might be taken from the account:
  - Service charge
  - NSF charges
  - New check charges
  - Wire transfer fees

How do you manage the trust account?

- **Handling a flat fee:**
  
  You accept a flat fee in the amount of $5,000.00 for a criminal case. On the day the client pays you the money, you deposit ALL of it into the trust account. Your fee agreement says you earn 25% after you request discovery and review file, 25% after the motions hearing, and 50% at the time of resolution or after trial (i.e., you earn money when you confer benefits or perform legal services – Colo. RPC 1.5(f))
How do you manage the trust account?

- On the day client pays the money, you deposit ALL of it into your trust account.
- In accordance with the fee agreement, you transfer 25% of the total fee (or $1250) after you receive discovery and review file. Your ledger reflects this transfer.
- **Best practice:** you send client a letter or invoice informing client of your funds transfer. Some states may require that you send the bill first before you move the funds. ABA Model Rule 1.15(c)

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How do you manage the trust account?

- **Handling settlement proceeds:**

  Lawyer represents plaintiff and settles a PI case with the insurance company. Lawyer gets a check for $100,000 of which she is owed $33,000 as her contingent fee. She also advanced $3,000 in costs. The insurance company check is made out to her and to her client. If the $33,000 plus costs is earned then is it appropriate to deposit all in trust acct?
How do you manage the trust account?

- Yes, the lawyer and the client endorse the check and it is deposited intact to the trust account.

- Colo. RPC 1.15C(a) – All trust account receipts shall be deposited intact and the duplicate deposit slip should be sufficiently detailed to identify each item. There is no corresponding ABA Model Rule – varies from state to state

- When the lawyer knows the funds cannot be subtracted out then she disburses to herself.

How do you manage the trust account?

- **Handling third party interests in funds held by lawyer:**

  Lawyer represents client in workers’ compensation case. During the case the lawyer receives a letter from chiropractor saying he expects to get paid out of client’s settlement. Case settles with check to client and lawyer for $50,000. Client tells lawyer not to pay doctor. Must lawyer pay chiropractor?
How do you manage the trust account?

- Worst possible action – disburse all money to client.

- Must attempt to resolve the dispute between doctor and client, including the possibility of interpleading the funds and letting a court decide

- See ABA Model Rule 1.15(e).

How do you manage the trust account?

Handling disputes with clients:

Lawyer has finished representing client in divorce case. Lawyer has $1,300 left in trust account that was paid by client in advance for fees. Client calls up and says lawyer earned only $300 of what is left in trust account. Client wants a $1,000 refund. What should lawyer do?
How do you manage the trust account?

- Keep disputed portion - $1,000 in trust.
- Disburse $300.
- Suggest means for prompt resolution of the dispute, such as fee arbitration.
- See ABA Model Rule 1.15(d) and (e).

How do you manage the trust account?

- Accounting to clients: upon request by the client or third person a lawyer shall promptly render a full accounting regarding property held by the lawyer belonging to a client or third party. ABA Model Rule 1.15(d).
Required Recordkeeping

Some states have specific rules governing what trust account records must be maintained during and after each representation. *The ABA Model Rule does address this issue.*

Example: under Colo. RPC 1.15D, you must have the following:

- A record keeping system that identifies each trust client.
- Records showing the source of all funds for deposits for that client.
- Records showing the amount and description of all withdrawals.
- Records showing the names of those to whom money was disbursed.
- You must do a reconciliation no less than QUARTERLY of each client ledger.

Trust Account Checks

- Consider making your Trust Account checks a different color from Office Account.
- Consider different numbering sequence for Trust Account checks vs. Office Account checks
- Actual cancelled checks are no longer returned
- You must ask your Trust Account Bank to give you copies
Trust Account Check Register

- Tracks all checks written from account
- Tracks all deposits into account
- Keeps a running balance
- Maintain it up to date
- Sloppiness is RED FLAG

General Ledger

- Lists all transactions in trust account in separate client and administrative ledgers.
- Deposits and withdrawals are recorded in general ledger.
- Deposits and withdrawals for each client are recorded on each client ledger sheet.
- Every transaction must be recorded.
## General Ledger or Register

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<th>Date</th>
<th>Client</th>
<th>Transaction</th>
<th>Check No.</th>
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## Client Ledger for Each Client

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### Client Ledger for Bell

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### Reconciliation of Trust Account

- Record paperless transactions in Check Register or General Ledger
  - COLTAF interest receipts and payments
  - Service charges
  - Wire transfer fees
  - Check printing charges
  - Stop payment fees
  - Returned check fees
Reconciliation of Trust Account cont.

- Balance on Bank Statement is same as that in General Ledger or Check Register with adjustments
- In the example Bank Statement shows $2,000.00 and so does the General Ledger
- Each Client Ledger balance adds to the same balance as in the Bank Statement
  - Bell - $700.00
  - Focker - $1,300.00
  - Total - $2,000.00

What documents will you keep?

- Fee agreements
- Copies of bills or statements sent to clients
- Bank statements
- Copies of checks
  - Ask for copies to be returned by bank
- Copies of deposit slips
- Deposit receipts
- Service charge notices
- Wire transfer fee notices
Bank Statements for Trust Account

- Lawyer in firm should open statement first before non-lawyer

- Lawyer should review the statement, then give to person who has duty to balance

- Make sure you get copies of checks back from bank

Deposit Slips

- Always keep a copy of the slip

- Multiple deposits on one slip
  - Indicate clearly on back of slip to which client each deposit belongs
    - Bell - $2,500
    - Focker - 2,500
  - Put a copy of slip in each client file
Problems

- Disbursements for each client cannot be more than what is in that ledger.
- Otherwise lawyer is taking from another client’s funds.

Cash Receipts Journal

- Lawyers who deal with cash need a cash receipts journal.
- Check register for trust account or for office account could serve as this journal.
- Give receipt to client or whomever pays in cash.
- Remember all cash payments for earned fees must be deposited in office account. ABA Model Rule 1.15(a) and (c).
In Sum: What We Tell Lawyers Not To Do

- Do not write trust account checks to cash.
- Do not get cash back on a deposit to trust account.
- No ATM transactions on trust account.
- Do not use checks with fill-in-the-blank numbers.
- Do not sign anything you haven’t read.
- Do not sign blank trust account checks.
- Do not let anyone else open your bank statements.

ABA Formal Ethics Opinions

- Formal Opinion 476: [Confidentiality Issues when Moving to Withdraw for Nonpayment of Fees in Civil Litigation](#) (December 19, 2016)
- Formal Opinion 475: [Safeguarding Fees That Are Subject to Division With Other Counsel](#) (December 7, 2016)
- Formal Opinion 474: [Referral Fees and Conflict of Interest](#) (April 21, 2016)
- Formal Opinion 473: [Obligations Upon Receiving a Subpoena or Other Compulsory Process for Client Documents or Information](#) (February 17, 2016)
Rule 1.15: Safekeeping Property

Client-Lawyer Relationship
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.
State Adoption of the ABA Model Rules of Professional Conduct
(previously the Model Code of Professional Responsibility)

**Dates of initial adoption**

*Alphabetical Order*

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Your opinion matters!

Please take a moment now to evaluate this session.

Thank You!