



Managing Your IOLTA: What You Don't Know and What to Do About It

**February 26, 2019
12:00 p.m. – 2:00 p.m.**

**CBA Law Center
New Britain, CT**

CT Bar Institute Inc.

CT: 2.0 CLE Credits (Ethics)
NY: 2.0 CLE Credits (Ethics)

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Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Managing Your IOLTA: What You Don't Know and What to Do About It (EDU190226)

February 26, 2019

Introduction (10 mins.)

Section 1: Trust Account Basics (45 mins.)

- Banking Records
- Law Firm Records
- The General Ledger
- The Client Ledger
- Three Point Reconciliation
- Archiving

Section 2: Common Errors and Omissions (25 Mins.)

- 22 Common Errors
- 5 Steps to Avoid Financial Fraud
- Cyber Criminals Target Real Estate Transactions
- Whose property?

Section 3: How to Deal with Audits, Random or Otherwise (25 mins.)

Questions (15 mins.)

Faculty Biographies

Brendon P. Levesque is the managing partner at Horton Dowd Bartschi & Levesque PC in Hartford, Connecticut. He is admitted to practice in Connecticut state courts as well as in the United States District Court for the District of Connecticut, the United States Courts of Appeals for the Second, Third, and Federal Circuits. In addition, he is admitted to practice before the United States Patent & Trade Office. Attorney Levesque joined Horton Dowd Bartschi & Levesque in August 2004 after serving as a law clerk for now Chief Judge DiPentima of the Connecticut Appellate Court. Attorney Levesque was made a principal of the firm on January 1, 2009.

Attorney Levesque represents clients in civil, family, and criminal appeals before the Connecticut appellate courts and the Second Circuit Court of Appeals. He also represents attorneys before grievance panels, in public hearings before the Statewide Grievance Committee and in presentments and appeals and candidates for bar admission before the Bar Examining Committee. Attorney Levesque presents seminars on risk management and ethics to law firms. Attorney Levesque is a member of the Association of Professional Responsibility Lawyers. Attorney Levesque is co-author of *The Wheeler Court* with Attorney Wesley Horton for the Quinnipiac University Law Review, an article focusing on the Connecticut Supreme Court from 1910 through 1930. With Attorney Horton, he co-authored *The Maltbie Court* for the University of Connecticut Law Review (Vol. 39, No. 5, July, 2007). Attorney Levesque authored *Preparing for your first Appellate Argument* which was published in the Connecticut Lawyer, Vol. 18, No. 12 and co-authored two chapters of Attorney Horton's book, *The History of the Connecticut Supreme Court*, Thomson/West, 2008.

Attorney Levesque co-authors the Connecticut Practice Book Annotated providing authors comments to the chapters on the Code of Judicial Conduct, the Rules of Professional Conduct, motions, and pleadings. He co-authors Connecticut Juvenile Law published by Thomson/West with Attorney Dana Hrelac. He also co-authored *Connecticut Insurance Law*, a publication of the Connecticut Law Tribune with Attorney Karen Dowd and Attorney Michael Taylor. Since 2009, he has co-authored the annual *Professional Responsibility Review* in the Bar Journal with the Honorable Kimberly A. Knox.

Michael S. Taylor is of counsel at Horton Dowd Bartschi & Levesque PC in Hartford, Connecticut. He is admitted to practice in Connecticut state court as well as in the United States District Court for the District of Connecticut, the United States Court of Appeals for the Second Circuit and Supreme Court of the United States.

Attorney Taylor represents clients at trial, on appeal and in professional responsibility matters. His appellate litigation has encompassed a wide range of issues including constitutional law, contract law, land use, and eminent domain, insurance coverage, criminal law, products liability and torts, dissolution of marriage, child custody and parental rights. Attorney Taylor also counsels clients and attorneys in attorney ethics matters and at the trial stage regarding the identification and preservation of issues for appeal.

Attorney Taylor co-authors Connecticut Insurance Law with Attorneys Karen Dowd and Brendon Levesque. He also co-authors The Encyclopedia of Connecticut Causes of Action. Attorney Taylor writes and lectures on appellate, insurance coverage and professional responsibility topics and was an adjunct professor at The University of Connecticut School of Law, teaching moot court.

CBA CLE

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February 26, 2019

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Overview

Section I: Trust Account Basics

Section II: Common Error and Omissions

**Section III: How to Deal with Audits,
Random or Otherwise**

I. Trust Account Basics

The Business Acumen that Law
School Fails to Teach



FAIL

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Trust Account Basics

- Rule 1.15
 - the rule
 - the commentary
- Management of the clients' funds account is a non-delegable duty.



Trust Account Basics

- IOLTA must be with an *eligible* financial institution.
- Although an attorney is prohibited from commingling attorney funds with clients' funds, there is an exception.
- The best practice is to limit the signatories to lawyers with an ownership interest in the law practice.

1. Banking Records

- Trust account must have a checkbook with a register and pre-numbered checks clearly identified as a Clients Fund Trust.
- Clients' fund checks payable to cash are prohibited.
- Checks must be made payable to a named payee or by "authorized electronic transfer."



1. Banking Records

- All receipts must be deposited intact – split deposits are not allowed.
- A batch deposit must clearly identify the details for each client deposit.
- Recommend that a copy of the deposited checks are kept.



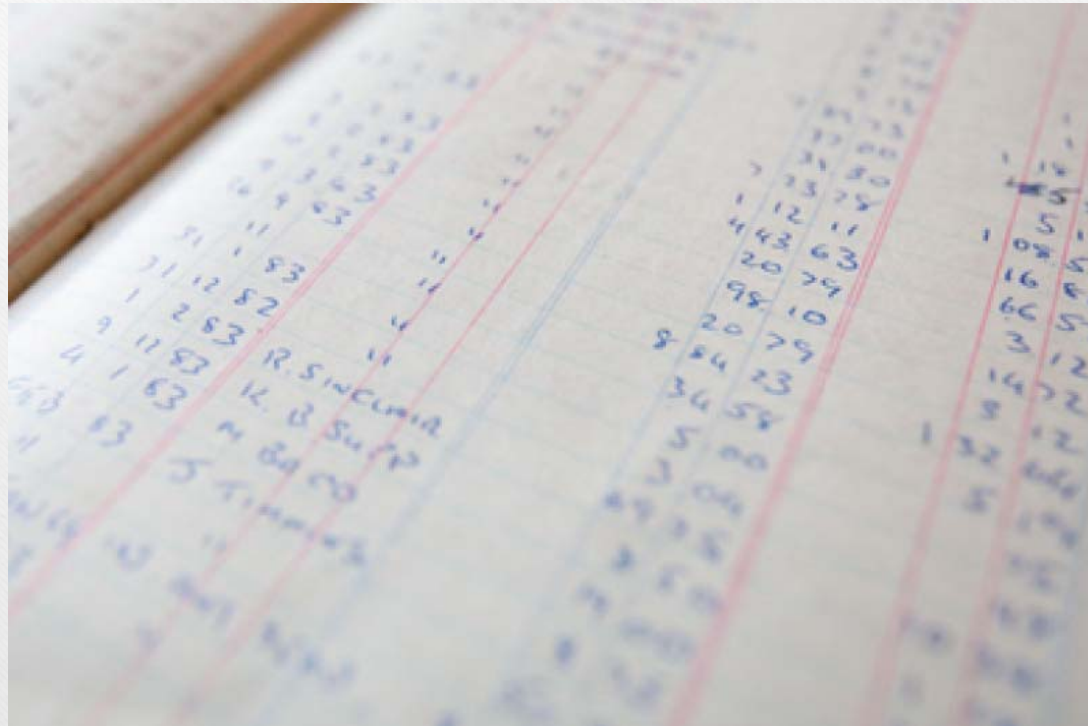
2. Law Firm Records

- General Ledger
- Client Ledgers
- Bank Statements and Cancelled Checks
- 3-Point Reconciliation

Conn. Rules of Prof'l Conduct r. 1.15(j)



3. The General Ledger



General Ledger Transactions

As of November 12, 2015

Date	Type	Check #	Client	Payee	Amount	Balance
						\$ 8,926.56
	Rec		Client A	Settlement Deposit	\$ 2,584.83	\$ 11,511.39
	Dis	3288	Client A	Firm's Legal Fees	\$ 941.99	\$ 10,569.40
	Dis	3292	Client A	Client A	\$ 1,355.95	\$ 9,213.45
	Rec		Client B	Settlement Deposit	\$ 5,423.80	\$ 14,637.25
	Dis	3286	Client B	Firm's Legal Fees	\$ 1,672.00	\$ 11,163.18
	Dis	3289	Client B	Smith, M.D.	\$ 1,510.50	\$ 9,652.68
	Rec		Client C	Settlement Deposit	\$ 8,000.00	\$ 17,652.68
	Dis	3290	Client C	Firm's Legal Fees	\$ 2,584.83	\$ 15,067.85
	Dis	3291	Client C	Client C	\$ 4,067.85	\$ 11,000.00

3. The General Ledger

Client Ledger Totals As of November 12, 2015:

Client A	\$ 286.89	
Client B	\$ 9,365.79	
Client C	\$ 1,347.32	
Total	\$ 11,000.00	

4. The Client Ledger

Client A					
Transactions as of November 12, 2015					
Date	Type	Check #	Payee	Amount	Balance
	Rec		Settlement Deposit	\$ 2,584.83	\$ 2,584.83
	Dis	3288	Firm's Legal Fees	\$ 941.99	\$ 1,642.84
	Dis	3292	Client A	\$ 1,355.95	\$ 286.89

4. The Client Ledger

- Records “reasonably related” to individual client’s funds account must be maintained, including:
 - Copies of billing statements
 - Copies of accounting or settlement statements showing the disbursement of funds
 - Copy of retainer and compensation agreement
 - Settlement statements for subrogated claims
 - Agreements for division of fees between lawyers

5. Reconciliation

Rule 1.15(j)(9) and the 3-point reconciliation:

- Trial Balance = add together all the client ledger card balances on a given date
- General Ledger Balance (“Control Balance”) = is the final balance on the same date
- Bank Statement Balance = use the statement balance, subtract the outstanding checks, and add the deposits not credited on the same date

5. Reconciliation

- The sums of each should be the same amount.
- Do not spend hours tracking small discrepancies.
- If there is a legitimate reason for the discrepancy, make a record of the reason.
- There should be a record that the 3-point reconciliation was performed.



6. Archiving

- Records discussed above must be maintained for a period of seven years from termination of representation.
- Do not rely upon the bank to make either the statements or the check images available many years later.



6. Archiving

- Electronic transfers of funds and various electronic check conversions create additional steps with regard to recordkeeping.
- Both are discussed in great detail in the Commentary to Rule 1.15.



6. Archiving

- Electronic Transfers
- Commentary allows 4 types:
 - Payments to or on behalf of client;
 - Expenses properly incurred on behalf of client;
 - Attorney fees which have been earned and are undisputed; and
 - Transfer of client funds from one IOLTA to another.



6. Archiving

- Check Conversions
- Commentary allows 5 types:
 - Point-of-Purchase;
 - Back-office;
 - Account-receivable conversions;
 - Telephone-initiated; and
 - Web-initiated.



II. Common Errors and Omissions



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**A very special thanks to Attorney
Frances Mickelson-Dera of the
Statewide Grievance Committee for
providing the following Common
Errors and Omissions her office sees.**

Thank You

1. No disbursement/receipt ledger

Maintain a general receipt and disbursement journal that indicates each receipt and disbursement containing a record of deposits to and withdrawals from client trust account, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement. The audit team will verify the existence and accuracy of the general receipt and disbursement ledger.

RPC Rule 1.15 (j)(1)

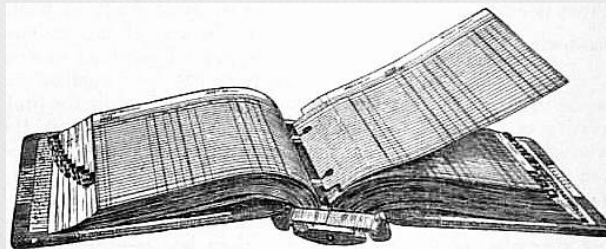
2. No individual client ledger card

Maintain an individual client ledger for each client showing the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed. The ledger must show a running balance held in the clients' funds account on behalf of that individual client. The audit team will verify the existence and accuracy of the individual client ledgers.

RPC Rule 1.15 (j)(2)

3. Client Ledger updates not performed on regular basis

The lawyer should make periodic entries for each receipt into and disbursement from the general ledger and the individual client ledgers so that the ledgers accurately reflect the amounts held in the clients' funds account on any given day for any individual client and for all the clients collectively.



PB § 2-27(a)

4. No quarterly reconciliation

The attorney must perform quarterly reconciliations of their clients' funds account. This process requires the attorney to reconcile the bank statements, checks, client ledgers and the general ledger to each.



RPC Rule 1.15(j)(9)

5. Quarterly reconciliation is not accurate

Of course the reconciliations performed as stated above must be done accurately and each financial document must show the same balance.



RPC Rule 1.15(j)(9) and PB § 2-27(a)

6. More than \$500 in attorney's personal funds held in IOLTA

In order to avoid the impermissible co-mingling of clients' funds with the funds of the attorney, the Statewide Grievance Committee has determined that attorneys should maintain only a *de minimis* amount of personal funds, sufficient to cover administrative costs, in clients' funds account. Generally the amount should not exceed \$500. Retainers taken and not yet earned remain the property of the client or third person on whose behalf the attorney is holding the funds and it is appropriate to hold these funds in the IOLTA. The fees must be disbursed as they are earned.

RPC Rule 1.15 (b) and (c)

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7. The Attorney is using IOLTA account for personal transactions

For obvious reasons, this practice is prohibited. If the audit team detects checks or other types of disbursements that are paid to questionable recipients (i.e. credit card companies, non law-related retail businesses, utility companies, etc.) the audit team will ask for supporting documentation showing the disbursements were made for a legitimate purpose and made on behalf of a client. Refer to Practice Book § 2-47A that mandates disbarment in the event the court finds knowing misappropriation of clients' funds.

RPC Rule 1.15 (b) and (c)

8. Memo description on checks is not sufficient

Failure to implement this practice is not a violation of any rule. However, placing a client name or other identifier on each check in the memo section will make an attorney's reconciliation much easier to complete. By providing a client identifier for each check, the attorney can easily trace the check to the client ledger and to the general ledger and, in so doing; the attorney completes the reconciliation faster.

John and Mary Doe
2001 W. Main St.
Springboro, IL 60102

Date: Mar 29, 2002

Pay to the order of: Parking Ticket People \$ 5.00

Five and 00/100 Dollars

Memo: F#@K YOU!!!!

Signature

⑆235468249⑆ 1256435852⑆ 0101

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9. Memo description on deposit slips is not sufficient

Failure to implement this practice is not a violation of any rule. However, placing a client name or other identifier on each deposit slip will make an attorney's reconciliation much easier to complete. This is true particularly when the attorney deposits numerous checks using one deposit slip. By providing a client identifier for each deposited item, the attorney can easily trace the deposit to the client ledger and to the general ledger and, in so doing, the attorney completes the reconciliation process faster.

10. Fee retainers not properly accounted for

Fees taken by an attorney are one of the most carefully scrutinized transactions during the random audit process. All checks or other disbursements made to the attorney will be thoroughly investigated. As such, the audit team will require that each disbursement made to the attorney have complete documentary support. The audit team will ask for client ledgers, billing statements and HUD-1s depending on the type of transaction involved.

RPC Rule 1.15(d)

11. Cash payments, cash withdrawals, debits & online payments

Payments made to cash and cash withdrawals are prohibited by Rule 1.15(k)(3). Further, debits and on-line payments are also carefully scrutinized transactions during the random audit process. All payments disbursement made by debits and on-line payments will be thoroughly investigated. As such, the audit team will require that each disbursement made have complete documentary support. The audit team will ask for client ledgers, billing statements, and HUD-1s depending on the type of transaction involved.

RPC Rule 1.15(k)(3)
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12. Checks outstanding for over 6 months

Funds that belong to a client or third person must be delivered to that client or third person in a timely manner. The attorney must keep a list of all the checks that are outstanding from month to month. If a check is not cashed within six months of its disbursement, it is the obligation of the attorney to take all reasonable steps to determine who holds an interest in the to-date uncashed check and to remit the funds to the appropriate individuals or entities. (cont.)

12. Checks outstanding for over 6 months

If, after due diligence, the attorney is unable to locate the interest-holder, the funds should be earmarked to escheat to the state after the completion of the statutory waiting period. *See* Connecticut General Statute § 3-61a.

RPC Rule 1.15(e)



13. Checks outstanding over 6 months and not investigated by the attorneys

The attorney has the obligation to make sure that funds he or she is holding that rightfully belong to a client or third person get to that client or third person in a timely manner. Notwithstanding that the attorney is supposed to keep a list of all the checks that are outstanding from month to month, in some instances there may be a check that was not cashed within six months of its disbursement but the attorney is not aware of its existence. It is the obligation of the attorney to take all reasonable steps to determine who holds an interest in the to-date uncashed checks. (cont.)

13. Checks outstanding over 6 months and not investigated by the attorneys

The attorney shall remit the funds to the appropriate individuals or entities. For the funds that can not reasonably be found to belong to specific individuals or entities, or the individuals or entities can not be located, those funds are to be removed from the IOLTA and placed in a separate account for safe keeping. If, after due diligence, the attorney is unable to ascertain the interest-holder, the funds should be earmarked to escheat to the state after the completion of the statutory waiting period.

RPC Rule 1.15 (b) and (e) and PB § 2-27

14. Unreimbursed fees/service charges on the account

The funds held in the clients' trust account presumptively belong to clients. Therefore, fees assessed against the clients' funds account should not be paid by a client. The lawyer may deposit the lawyer's own funds in a client trust account for the sole purposes of paying bank service charges on that account but only in an amount necessary for those purposes. Allowable reasonable fees for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit (cont.)

14. Unreimbursed fees/service charges on the account

insurance fees, sweep fees, and a reasonable administrative or maintenance fee. NOTE that fees may be deducted from interest or dividends earned on an IOLTA account, however, no fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends on an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account.

RPC Rule 1.15 (b) and (c)
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15. Attorney has failed to update the registration information

As part of the Random Audit process, the audit team verifies that each attorney who has reported the selected clients' funds account has registered on a yearly basis with the Statewide Grievance Committee and is still employed by the firm who uses the selected clients' funds account and has registered the correct firm and bank name. Letters are sent to the attorneys who are not in compliance and the letter is copied to the firm.

PB § 2-27(d) and § 2-28(c)

16. Account is not properly designated as an IOLTA account

The rules require that the checks, deposit slips and bank statements are clearly labeled as "trust," "client funds" or "escrow" accounts.

RPC Rule 1.15(b) and PB § 2-28(b)

17. Settlement Disclosure

Statement contained inaccuracies, errors or omissions

Federal law requires that HUD-1 forms accurately reflect **all** the charges and adjustments to be made to the borrower at the closing. By signing the HUD-1 form the attorney is attesting to its accuracy. Accordingly, the audit team will verify that the HUD-1s are accurate by comparing the HUD-1 form to the settlement disbursement statement and to the bank statements and checks.

PB § 2-27(a) and (b)

18. Interest not remitted to Connecticut Bar Foundation

The rules require that interest earned on the clients' funds account be remitted to the Connecticut Bar Foundation. It is the responsibility of the attorney to make sure that the account is established properly and that interest continues to remit to the Connecticut Bar Foundation. The audit team will verify that interest continues to remit to the Connecticut Bar Foundation.

RPC Rule 1.15(h)

19. Overdrafts on the account were not reported to SGC

The audit team will investigate any overdraft situation that occurred during the audit period. All overdrafts to the clients' funds account will be completely investigated. As such, the audit team will require that each overdraft that occurred during the audit period have complete documentary support. The audit team will ask for client ledgers, billing statements, and other pertinent documents.

PB § 2-28

20. Unacceptable storage location for financial data

The attorney must safely store all financial documents held on behalf of his or her clients in a secure place.



RPC Rule 1.15 (b)

21. Attorney is not maintaining financial data for at least 7 years

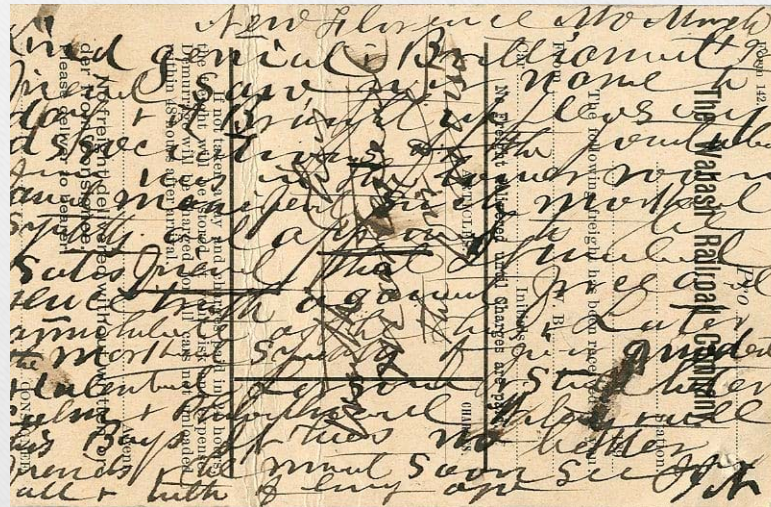
Clients' financial documents must be maintained from the time of receipt until the seven years after the final disbursement.



RPC Rule 1.15 (b) and (j) and PB § 2-27 (b)

22. Financial documents prepared by attorney are illegible

In order for the Statewide Bar Counsel to complete the audit process, they must be able to read all the financial documents.



PB § 2-27(e)

Cute puppy

(because who doesn't like cute puppies?)



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5 Steps to Avoid Financial Fraud

1. The person who opens the mail that contains client checks in payment for invoices should ***not*** have any responsibility for handling the firm's financial records.
2. The person who is given incoming funds when they are received should not be the same person who deposits those funds.



5 Steps to Avoid Financial Fraud

3. A third person not responsible for handling either the profit-and-loss financial records or the deposit of funds should reconcile the firm's bank accounts at least monthly, and ideally much more frequently if the firm uses online banking.
4. Yet another person, preferably an accountant from an outside CPA firm, should review and "audit" all financial records quarterly.

5 Steps to Avoid Financial Fraud

5. Create a “safety valve” by having more than one person trained and capable of doing each of the first four steps, and switching off occasionally between those people so that different sets of hands and eyes come to bear on the financial process.



5 Steps to Avoid Financial Fraud

The one iron-clad rule for every person involved in this entire process is to make sure every single person takes a vacation at least once a year. That is the ideal time for a different person trained at the same function to look at what has been done. Often the “diligent workers” who never take vacations are the ones who are afraid to do so for fear that their misconduct will come to light if they are not there to deflect scrutiny

Edward Poll, *Financial Fraud: Trouble from Honest Mistakes and Dishonest Conduct*, ABA (Apr. 2012),
https://www.americanbar.org/content/dam/aba/publications/law_practice_today/financial-fraud-trouble-from-honest-mistakes-and-dishonest-conduct.pdf

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Cyber Criminals Target Real Estate Transactions



Cyber Criminals Target Real Estate Transactions



John Dillinger, Jesse James, Bonnie and Clyde – These were some of the most notorious thieves in U.S. history. But for as much as these gangsters stole, they don't hold a candle to the amount of money that can be lost due to acts of faceless online criminals.

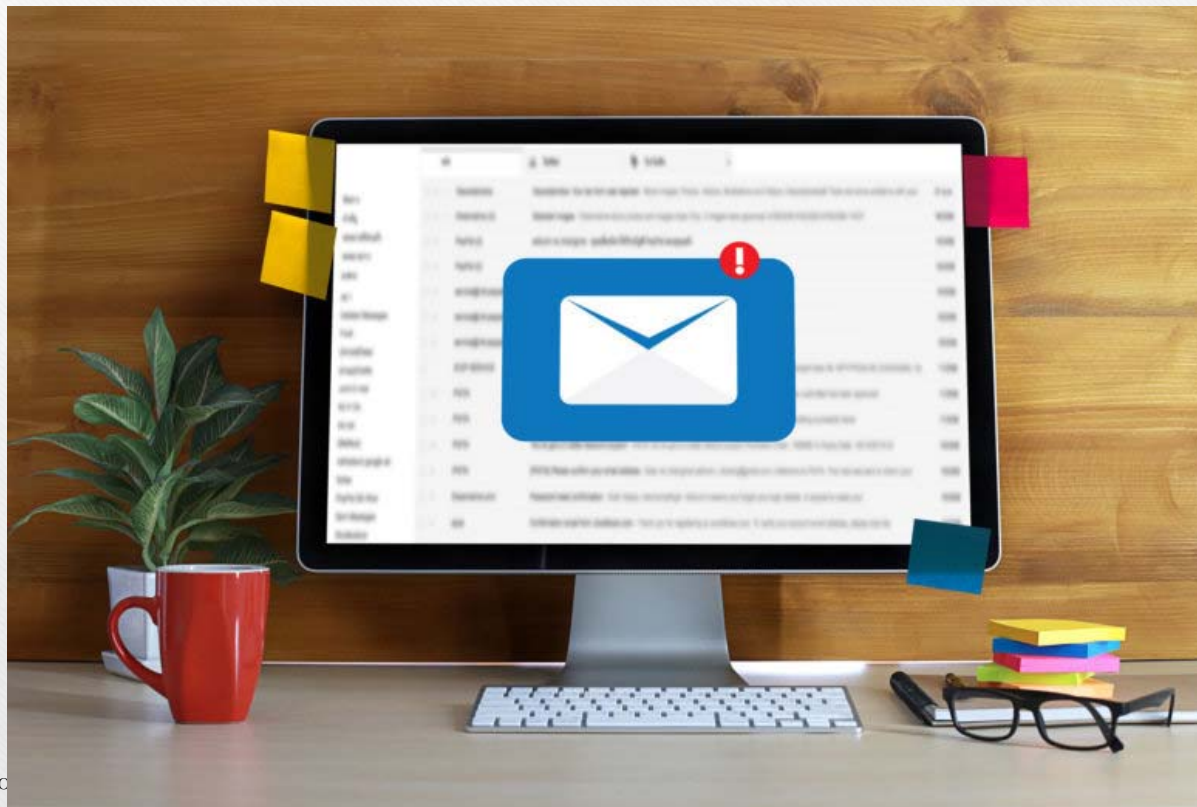
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Cyber Criminals Target Real Estate Transactions

The FBI reportedly received 301,580 complaints in 2017 and losses exceeded \$1.4 billion, and in the real estate/rental sector alone, more than 9,600 victims lost over \$56 million in the same year.

The type of fraud with the highest reported loss in [2017] was Business Email Compromise (BEC)/Email Account Compromise (EAC), with losses totaling more than \$675 million. (cont.)

Cyber Criminals Target Real Estate Transactions



©Hort

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Cyber Criminals Target Real Estate Transactions

In real estate transactions, fraudsters assume the identity of the title or real estate agent handling the sale. The criminals forge the person's email and other details that appear specific and authentic. Next, posing as the real estate or title agent, the scammers send an email to the buyer, providing wire instructions to the criminal's bank account, not the title agency's legitimate account. (cont.)

Cyber Criminals Target Real Estate Transactions

On June 11, 2018, federal authorities announced a major coordinated law enforcement effort to disrupt BEC schemes designed to intercept and hijack wire transfers. Called Operation WireWire, the six-month sweep culminated in 74 arrests (42 in the United States). The operation resulted in the disruption and recovery of approximately \$14 mill in fraudulent wire transfers.

Amy Niesen, *While Cyber Criminals Continue to Target Real Estate Transactions, Take These Protective Measures*, FORBES (Jul. 11, 2018), <https://www.forbes.com/sites/forbesrealestatecouncil/2018/07/11/while-cyber-criminals-continue-to-target-real-estate-transactions-take-these-protective-measures/#210fbac363e1>

Cyber Criminals Target Real Estate Transactions

**Verify, verify,
verify.**

Whose Property?

- Disputes – RPC 1.15(f)
- Retaining Liens – RPC 1.8(i)
 - A possessory lien on client's papers and files.
- Charging Liens – RPC 1.15(f)
 - Lien placed upon a money recovery or funds due to a client at the end of a suit.
 - No equitable charging liens on marital assets for fees and expenses in marital dissolutions. *Olszewski v. Jordan*, 315 Conn. 618 (2015).

III. How to Deal with Audits, Random or Otherwise



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Audits

- The Statewide Grievance Committee may audit Trust Accounts:
 - By order (P.B. § 2.27)
 - Random Selection (P.B. § 2.27)
 - Or following an overdraft notification (P.B. § 2.28)





STATE OF CONNECTICUT
JUDICIAL BRANCH

STATEWIDE GRIEVANCE COMMITTEE

Frances Mickelson-Dera, *First Assistant Bar Counsel*
Juliana Bidoae, *Accountant*
Chris Winship, *Accountant*

287 Main Street
Second Floor – Suite Two
East Hartford, CT 06118-1885
(860) 568-5157 Fax (860) 568-4953
Judicial Branch Website: www.jud.ct.gov

RANDOM AUDIT DOCUMENTATION

The attorney is required to compile the documentation listed below before the scheduled random audit and make it available to the Accountant at the time of the audit (Practice Book §2-27). The documentation to be produced is for the **preceding six months** from the date of the enclosed notice, unless the Accountant specifies otherwise.

1. A list of all bank account numbers and bank names that hold funds held in any fiduciary capacity.
2. For the randomly selected account, please provide the appropriate receipts and disbursements journal containing a record of all deposits, withdrawals, and a running balance.
3. For the randomly selected account, please provide a separate ledger/accounting page for each client on whose behalf funds during the audit period were held showing all deposits, withdrawals and a running balance.
4. Bank statements for the randomly selected account.
5. For the randomly selected account, please provide the quarterly reconciliations of the receipts/disbursements journal, client's individual ledgers for the previous six months, checks, deposit slips and bank statements. Any discrepancies need to be fully explained and fully supported by the records at the time of the audit.
6. All canceled and voided checks, and a list of all outstanding checks pertaining to the randomly selected account.
7. A list of all personnel authorized to sign checks on the randomly selected account.
8. All deposit slips and wire transfer orders pertaining to the randomly selected account.
9. For closings that occurred during the audit period, provide the HUD-1 and settlement statement.
10. A list of balances held for each client as of the last day of the audit period.

During the audit be prepared to provide explanations and supporting documentation on checks made payable to cash and ATM withdrawals. In addition, identify the bank accounts to which wire transfer of funds occurred.

Rev. 10/22/2008MP

Random Audit No.
RANDOM AUDIT REPORT CARD

Attorney or Firm Name: _____ Juris # FIRM _____
Bank Name: _____ Audit Date: _____
Account No. : _____ Auditor: _____

REQUIRED

- ☐ The account is not properly designated as a clients' funds account.¹
- ☐ The clients' funds account checks and/or deposit slips are not appropriately labeled.
- ☐ The attorney does not maintain a receipt ledger.
- ☐ The attorney does not maintain a running balance on the receipt ledger.
- ☐ The attorney does not maintain a disbursement ledger.
- ☐ The attorney does not maintain a running balance on the disbursement ledger.
- ☐ The attorney does not maintain a client ledger card² for EACH client referenced in the financial documents.
- ☐ The client ledgers and/or general ledgers contained inaccuracies.
- ☐ The client ledgers and/or general ledgers contained negative balances.
- ☐ The clients' funds account held a negative balance after reconciliation process.
- ☐ The attorney has not performed, at a minimum, complete three way quarterly reconciliations.
- ☐ The attorney has not maintained accurate reconciliations.
- ☐ Checks were outstanding in excess of three months.
- ☐ Checks that were outstanding in excess of three months were not detected or investigated by the attorney.

¹ The account must clearly be identified as "trust", "client funds", "escrow" or "IOLTA".

² A separate accounting page or column for each client or third persons for whom funds are held showing a running balance and all receipts and disbursements.

Random Audit No.
RANDOM AUDIT REPORT CARD

Attorney or Firm Name: _____ Juris # **FIRM** _____
Bank Name: _____ Audit Date: _____
Account No. : _____ Auditor: _____

- ☐ The attorney has failed to (timely) reimburse the clients' funds account for service charges, fees, etc.³
- ☐ The clients' funds account held more than \$500 in non-client, third party or the firm's own funds.
- ☐ The attorney was co-mingling the funds of his clients with his own funds.
- ☐ The attorney has failed to identify and account for wire transfers.
- ☐ The attorney has failed to confirm that wire transfers orders or prepared wire timely made at the time of the closing.⁴
- ☐ The attorney has submitted inaccurate wire transfer orders or prepared wire transfer orders that contain the wrong account information.
- ☐ The attorney has failed to maintain complete financial records for each client for seven years after final disbursement.
- ☐ The attorney held funds in the clients' funds account belonging to a single client or third person in excess of \$10,000 for longer than sixty business days.
- ☐ The attorney has failed to remit the interest earned on the clients' funds account to the CT Bar Foundation.
- ☐ It is not clear from the bank statements audited that the attorney has been remitting the interest earned on the clients' funds account to the CT Bar Foundation.
- ☐ The attorney has suffered overdrafts on the clients' funds account.
- ☐ Overdrafts appearing on the clients' funds account bank statements were not reported to the Statewide Grievance Committee.

³ "Allowable reasonable fees" are check charges, per deposit charges, fee in lieu of minimum balance, FDIC fees, sweep fees or maintenance fees.

⁴ See Ethics Rule 99-1.

Random Audit No.
RANDOM AUDIT REPORT CARD

Attorney or Firm Name: _____ Juris # FIRM
Bank Name: _____ Audit Date: _____
Account No. : _____ Auditor: _____

- ☐ The HUD-1 contained inaccuracies, errors or omissions.
- ☐ At the time of the clients funds account was selected, there were attorneys who had failed to register their most recent and accurate information with The Statewide Grievance Committee.
- ☐ Client ledgers showed a negative balance.
- ☐ Attorney held funds for individual client(s) whose matters were inactive for over six months.

RECOMMENDED

- ☐ Checks disbursed should be cleared or cashed in a timely manner.
- ☐ Checks should contain a sufficient "memo" description to determine its purposes.
- ☐ Deposit tickets should contain a sufficient "memo" description to determine its purpose.
- ☐ Checks should not have been signed by an unauthorized signatory on the account.
- ☐ Checks made payable to the attorney should contain a sufficient "memo" description to determine its purpose.
- ☐ Checks made payable to "cash" lack a sufficient paper trail to document the disbursement adequately. At a minimum the check should contain a memo identifying the client or third party reference and payee.
- ☐ Checks were not presented to the account in a reasonably numerical order.
- ☐ The attorney did not prepare or retain a HUD-1.
- ☐ The attorney has failed to sufficient identify, or has failed to identify at all, the source of the funds indicated on the deposits slips.

Random Audit No.
RANDOM AUDIT REPORT CARD

Attorney or Firm Name: _____ Juris # FIRM _____
Bank Name: _____ Audit Date: _____
Account No. : _____ Auditor: _____

- ☐ The attorney's fees and/or retainers were not properly accounted for from the time of receipt to the time of disbursement.
- ☐ Financial documents prepared by the attorney are illegible.
- ☐ The financial documents are not kept in a suitable storage area that assures they are appropriately safeguarded.

Rule 8.1: Bar Admission & Disciplinary Matters

“(1) Knowingly make a false statement of material fact; or
(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly **fail to respond to a lawful demand for information from an admissions or disciplinary authority**, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.”

Rule 8.1: Bar Admission & Disciplinary Matters

- *Office of the Chief Disciplinary Counsel v. Cayo*, No. FSTCV176032309S, 2018 WL 1787694 (Conn. Super. Ct. Feb. 22, 2018)
- *Office of the Chief Disciplinary Counsel v. Sebadduka*, No. HHDCV176084134S, 2018 WL 632210 (Conn. Super. Ct. Jan. 2, 2018)

Rule 8.1: Bar Admission & Disciplinary Matters

- *Disciplinary Counsel v. Freeman*, No. HHDCV136046989S, 2018 WL 2749687 (Conn. Super. Ct. May 14, 2018)
- *Disciplinary Counsel v. Mitchell-Hoffler*, No. UWY186038074, 2018 WL 3508785 (Conn. Super. Ct. July 2, 2018)

Conclusion

- The accounting standards in Rule 1.15 must be followed in the safe-keeping of client funds.
- The rules are not intended to trap the unwary, but are present to protect the property of clients held in trust accounts.



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That's all Folks!