



## **What You Need to Know about IOLTA**

**December 10, 2019**

**1:00 p.m. – 3:00 p.m.**

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**Bethel, CT**

**CT Bar Institute, Inc.**

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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*

## Table of Contents

Agenda .....	4
Faculty Biographies .....	5
What You Need to Know about IOLTA and Handling Client Funds Presentation .....	6
Legal Ethics: Maintaining IOLTA & Complying with the Connecticut Rules of Professional Conduct Presentation .....	40
Rule 1.15 and Commentary .....	57
Statewide Grievance Committee Ethics Opinion 99-1 (discusses handling mortgage funds) .....	67
CBA Standing Committee on Professional Ethics, Informal Opinion 95-20, <i>Extent of Lawyer’s Obligation to Third Parties Pursuant to Rules 1.15(b) and (c)</i> .....	68
CBA Standing Committee on Professional Ethics, Informal Opinion 01-08, <i>Extent of Lawyer’s Obligation to Third Parties Pursuant to Rules 1.15(b) and (c) (revising 95-20)</i> .....	72
CBA Standing Committee on Professional Ethics, Informal Opinion 2014-02, <i>Payment of Advance Fees and Costs by Credit Card</i> .....	73
Email message from Michael Bowler, Statewide Bar Counsel (December 3, 2014) re Warning of Internet Scam Affecting Connecticut Attorneys .....	80
Statewide Grievance Committee Website FAQ ( <a href="https://jud.ct.gov/SGC/faq_audit.htm#R14">https://jud.ct.gov/SGC/faq_audit.htm#R14</a> ): What are the most common errors and omissions that are found in a random audit? .....	82
See also: ABA Formal Opinion 475, Safeguarding Fees That Are Subject to Division With Other Counsel (December 7, 2019) <a href="https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_475.pdf">https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/aba_formal_opinion_475.pdf</a>	
Exhibit 1: Law Office Transactions by Account .....	87
Exhibit 2: Law Office IOLTA Account .....	88
Exhibit 3: Statewide Grievance Committee Random Audit Questionnaire .....	93
Exhibit 4: Random Audit Report Card .....	95

# What You Need to Know about IOLTA (EDU191210)

## Agenda

- 1:00 p.m. – 2:00 p.m.      Overview of Rule 1.15 of the Rules of Professional Conduct & Its Interplay with Other Provisions of the Rules Risk Management Strategies  
**Mary T. Stovall**, Pullman & Comley LLC, Bridgeport
- 2:00 p.m. – 3:00 p.m.      Accounting Concepts  
Complying with Random Audits, Overdraft Notifications, and Statewide Grievance Committee Investigations  
**Desi Imetovski**, Former Assistant Chief Disciplinary Counsel, Shelton

# Faculty Biographies

## Desi Imetovski, Esquire

Attorney Imetovski is a former Assistant Chief Disciplinary Counsel having prosecuted attorney misconduct matters on behalf of the State of Connecticut Judicial Branch. Attorney Imetovski is also a past member of a local grievance panel which determines probable cause of attorney misconduct. She has represented and counseled attorneys and law firms regarding attorney ethics, law office management issues as well as random IOLTA audit preparation. Attorney Imetovski continues to speak across the state to various legal organizations concerning the Connecticut Rules of Professional Conduct and legal ethics.

## Marcy Tench Stovall, Pullman & Comley LLC

Marcy Tench Stovall is Counsel at Pullman & Comley, LLC, and practices in the areas of professional liability, civil litigation, appellate practice, and employment law. In professional responsibility matters, Marcy regularly represents law firms and attorneys in malpractice litigation, as well as licensing, disciplinary and sanctions matters. Since 2000 she has served on the Connecticut Bar Association's Standing Committee on Professional Ethics, which issues opinions on attorney ethics, and currently serves as its chair.

Marcy has been a presenter at seminars on attorney ethics, professional responsibility and law firm risk management, and has authored or co-authored: *Client Consent to Future Conflicts Will Not Apply Where Disclosure is Inadequate* (ABA/BNA Lawyers' Manual on Professional Conduct); *Lawyer Mobility and Imputed Law Firm Disqualification: Implementing Timely and Effective Ethical Screens* (Connecticut Lawyer); *Attorney Advertising in Connecticut: Everything You Need to Know about the New Era of Oversight and Regulation* (Connecticut Lawyer); *Conflict Waivers: When in Doubt, Spell It Out* (Connecticut Lawyer); *Responding to a Disciplinary Complaint: The Do's and Don'ts* (Connecticut Law Tribune); and *Advancing Client Costs: Pitfalls and Changes in Rule 1.8(e)* (Connecticut Law Tribune).

# WHAT YOU NEED TO KNOW ABOUT IOLTA AND HANDLING CLIENT FUNDS

- Rule 1.15 of the Rules of Professional Conduct & Its Interplay with Other Provisions of the Rules
- Risk Management Strategies

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December 10, 2019

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## Primary Command of Rule 1.15

Funds and Other Property that Do Not Belong to the Lawyer Must Be:

- (1) Safeguarded; and
- (2) Segregated from the Lawyer's own Funds and Accounts.



# There's More to Rule 1.15 than IOLTA: Segregating Client Funds

## Rule 1.15(b):

- Lawyer “shall hold” funds and other property of clients or third parties “*separate*” from the lawyer’s own funds and property.
  - Every lawyer / law firm must have:
    - A client funds account
    - An operating account
  
- Complete records of those funds “shall be kept” and preserved for 7 years from the end of the representation.

# Keeping Client Funds “Separate”

- Never commingle attorney’s funds with client funds.
- Always remember and respect that the client and business accounts are separate.
- Never “borrow” from the client funds account (unless you want to be disbarred).
- Never withdraw fees from a client funds account before earning those fees.
- Never use a client funds account as a rainy day fund to “save” fees after they’ve been earned.

## Do not misappropriate client money. (Duh!)

A court finding that “a lawyer has knowingly misappropriated a client’s funds or other property held in trust” triggers automatic disbarment with no right to apply for reinstatement for 12 years. P.B. § 2-47A; §2-53(c)



## Practice Tips

- Manage accounts in a hands on way
- Use checks that clearly indicate that it is client funds account
  - Rules require that the account name must clearly indicate that it's a client funds account
  - Use “trust,” “client funds,” “escrow,” or “IOLTA” in the name
- Avoid online banking and transfers with client funds accounts
- Don't use a debit card tied to the client funds account, and never have a debit card with ATM privileges
- For small and solo firms: keep the firm's IOLTA and business accounts at one bank and the attorney's personal accounts at another.
  - If the lawyer's personal accounts are at a different bank, no risk that the bank will tie the IOLTA account to debit cards for the personal accounts since.

# Rule 1.15(c): A Limited Exception

- Rule 1.15(c) contains a limited exception to the strict command to segregate client funds and lawyer funds:
  - A lawyer may keep funds in the client trust account in an amount necessary to:
    - Pay the bank’s service charges on the account;
    - Maintain a minimum balance necessary to have fees waived; and/or
    - Cover credit card fees.

# Credit Card Fees

- Have some system for tracking credit card fees.
- Ideally, the credit card carrier will charge fees to your firm's operating account while depositing funds to the client funds account.
- Be aware that any credit card payment may be subject to a chargeback.
  - See CBA Standing Committee on Professional Ethics, Informal Opinion 2014-02, *Payment of Advance Fees and Costs by Credit Card*

## Practice Tips:

- Don't record unearned fees as income.
  - Until the funds are earned, they don't belong to you. The belong to the client.
- Don't ever pay expenses from the client funds account, even if the payment is from fees already earned. Transfer first to operating account.
- When you receive fees for services already provided, the payment should go in the operating account.



# Rule 1.15(j): Ten Required Records

## **Practice Book § 2-27 and Rule 1.15(j) impose on attorneys the obligation to keep records of all of the following:**

1. All deposits into, and all withdrawals/disbursements from, the account (date, source, description), 1.15(j)(1);
2. A ledger record for each client showing date, source, description for every monetary transaction for that client, 1.15(j)(2);
3. Client retainer and fee agreements, which Rule 1.5 requires, 1.15(j)(3);
4. Accountings showing disbursements to clients or third persons, 1.15(j)(4);
5. Bills for fees and expenses, 1.15(j)(5);

# Rule 1.15(j): Ten Required Records

6. Disbursements on behalf of clients, 1.15(j)(6);
7. Physical or electronic records of check registers, bank statements, deposit records, cancelled checks, 1.15(j)(7);
8. All electronic transfers, including name of authorizing person, date, recipient, confirmation, date and time transfer of funds completed, 1.15(j)(8);
9. Monthly trial balances and “at least quarterly reconciliations,” 1.15(j)(9); and
10. The catchall: anything else from the client file “reasonably related to” transactions involving the client funds account, 1.15(j)(10).

## Commentary to Rule 1.15:

- A trial balance is “the sum of balances of each client’s ledger card (or electronic equivalent),” and it should be “compared on a monthly basis with a control balance.”
- Quarterly reconciliation is the recommended *minimum*, but “monthly reconciliation is the preferred practice.”
- Detailed summary of what lawyers need to know about record keeping and the “Check Clearing for the 21<sup>st</sup> Century Act,” 21 U.S.C. §5001 et seq., also known as the “Check 21 Act”

## Practice Tips

1. Every *check* should contain a sufficient “memo” description to determine its purpose.
  - ESPECIALLY checks made to the attorney, which should always be backed up with a sufficient paper trail to document the disbursement adequately.
  - Rule 1.15(k)(3): withdrawals from client funds accounts may never be made to “cash.”
  
2. Every *deposit ticket* should contain a sufficient “memo” description to determine its purpose *and* the source of the funds indicated on the deposits slips.

## Practice Tip:

- When setting up the IOLTA account, set up the systems for keeping track of all of the records you are required to keep in connection with client funds.
- That way you implement best practices right from the start.

The lawyer, not the bank, is responsible  
for banking records.

- If banking records are electronic, lawyer has the responsibility to download and maintain the records in *retrievable and printable* form.

In Other Words:  
Don't Count on the Bank to Keep  
Electronic Records

# What Goes into the Client Funds Account?

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- Fees paid but not yet earned
- Settlement proceeds
- Funds held in escrow or for real estate closings

# Rule 1.15(d): The Rule and Its Exception

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## Rule 1.15(d):

*Absent a written agreement with the client otherwise, 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 the fees are earned or expenses incurred.*

(emphasis added)

# There's More to Rule 1.15 than IOLTA: Other People's Money

- Subsection (e): the lawyer's obligations in disbursing and delivering funds or property in which a client or a third party has an interest:
  - First, notify the client or third person of the receipt of the funds or property;
  - Second, “promptly deliver” the funds or property the client or third party “is entitled to receive”;
  - Third, if requested, provide an accounting of the property.

# There's More to Rule 1.15 than IOLTA: Other People's Money

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- Subsection (f): the lawyer's obligations in disbursing and delivering funds or property in which *multiple* parties have, or claim to have, an interest in the same property.
- What happens when those parties dispute entitlement?

# Resolving Disputes Over Competing Claims of Interest

- First Rule:
  - The lawyer may not unilaterally resolve the dispute.
- Second Rule:
  - The lawyer must keep the disputed portion separate.
- Third Rule:
  - The lawyer should distribute portion(s) of funds to extent interests in the funds are clear and undisputed.
- Fourth Rule:
  - The lawyer “shall segregate and safeguard” any funds or property where interests in the property are disputed and unresolved.

# Rule 1.15(e) & (f): What Is an Interest?

## Rule 1.15 Commentary explains:

The word “interest(s)” as used in subsections (e), (f) and (g) includes, but is not limited to:

(1) a valid judgment concerning disposition of the property;

(2) a valid statutory or judgment lien, or other lien recognized by law, against the property;

# Rule 1.15(e) & (f): What Is an Interest? (cont'd)

(3) a letter of protection or similar obligation that is both:

(a) directly related to the property held by the lawyer,

*and*

(b) an obligation specifically entered into to aid the lawyer in obtaining the property; or

(4) a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

# Rule 1.15(e) & (f): What Is an Interest? (cont'd)

- Rule 1.15(g):

In the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within sixty days, the lawyer may distribute the funds in question to the client.

# IOLTA – Special Considerations in Safeguarding Client Funds

- Pursuant to statute *and* court rule, attorneys and law firms *must* participate in the program for Interest on Lawyers' Trust Accounts (IOLTA)
  - Amended Conn. Gen. Stat. §51-81c (eff. Oct. 1, 2009)
  - Rule 1.15(h) and (i)
  
- Old Rule: funds in amounts less than \$10,000 or expected to be held less than 60 business days received IOLTA treatment.
  
- New Rule: Pursuant to Rule 1.15(h), attorney must consider 7 factors to determine whether a deposit should: (a) receive IOLTA treatment; or (b) be held in a separate account for the benefit of client or other party.

# 7 Factors Determining IOLTA or Non-IOLTA Treatment

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## Interest Earning Factors

1. Duration of the deposit;
2. Amount of funds to deposit;
3. Current interest rate;

# 17 Factors Determining IOLTA or Non-IOLTA Treatment

## Administrative Cost Factors:

4. Cost of establishing interest-bearing (non-IOLTA) account;
5. Cost of attorney time to maintain non-IOLTA account;
6. Cost of preparing tax reports for non-IOLTA account;

## Catch-all Factor:

7. Any other circumstances affecting whether funds will earn more income than the administrative costs to maintain account.



# IOLTA: Default Rule Benefits

## IOLTA

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Both the statute and the Rule (subsection (h)) provide that a lawyer *will not* be subject to disciplinary consequences where he or she makes a good faith – but mistaken – determination that a deposit should be placed in an IOLTA program account.

- Pursuant to the statute (but not the court Rule), proceeds from a mortgage loan must be deposited into IOLTA, **unless** the client directs the funds to an interest-bearing account for the client's benefit
- Both the Rule and the statute provide for an opt-out: a deposit may be placed in interest-bearing account with the interest earmarked for *the client or third party* “regardless of the amount . . . or the period . . . expected to be held. . .” Rule 1.15(i)(6).

Can be in either:

Separate client funds account in client's name, or

Pooled client funds account with subaccounting for computing interest earned

Make sure you remit the interest  
earned on the clients' funds account  
to the CT Bar Foundation.

- No commingling of client funds with attorney's own funds
- Keep complete and accurate records, properly stored and maintained
- Safeguard and segregate property (documents, things, money) that clients and third parties entrusted to lawyer

# Things to Keep in Mind About Random Audits

- Don't panic: the purpose of the audit is not discipline, but to make sure lawyers and law firms are in compliance with their obligations.
- Nearly every audit turns up some shortcoming in bookkeeping.
- But few audits result in discipline, and then almost always it is because the lawyer or law firm either did not comply with the audit requirements or failed to correct problems once they were identified in the audit.

# Contact Information

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# **LEGAL ETHICS: MAINTAINING IOLTA & COMPLYING WITH THE CONNECTICUT RULES OF PROFESSIONAL CONDUCT**

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Prepared for the Connecticut Bar Association  
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December 10, 2019  
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# RULE 1.15

## SAFEKEEPING OF PROPERTY

## Rule 1.15(5)(j)-(n)

Sets forth what financial documents are required to be kept and created in connection with IOLTA and for how long

# Ledger

Centralized compilation for all ledger items – a recording of all deposits & withdrawals, running balances, etc.

# Retainer Agreement

RPC 1.5 – written agreement with client outlining the scope of services, fees to be charged, etc.

# Individual Client Ledgers

Separate ledger which shows the transactions (deposits, withdrawals, etc.) associated with a specific client

Exhibit 1

# Bills for Legal Fees & Expenses

Copies of all bills paid on behalf of specific client associated with the representation (e.g. filing fees, marshal service fees, courier fees, etc.)

# Other Financial Records

Must keep checkbook registers, bank statements, records of deposits, prenumbered canceled checks, evidence of electronic transfers to and from the account with “sufficient detail to identify the client and transaction with specificity.”

# Reconciling Bank Statements

- It is the act of comparing two (2) sets of records to check that figures are correct and in agreement
- Must be performed at least quarterly

Exhibit 2

# Statewide Grievance Committee

Agency with the authority to conduct random audits, request documents in connection with an overdraft investigation and overall authority to audit IOLTAs

# Random Audit / Overdraft Notice

## **Random Audit Letter**

- Notices received, certified, return receipt
- Request for information
- Time set for inspection of records

Exhibit 3

## **Overdraft Notice**

- Request for explanation

# Report Card

- Sets out findings of an audit
- Details financial information maintained or not maintained
- Makes recommendations based on findings

## Exhibit 4

# Complying with Random Audits or Responding to Overdraft Notifications

- **Rule 2-27 Clients' Funds Lawyer's Registration**

Such books of account and statement of reconciliation, and any other records required to be maintained pursuant to 1.15...shall be made available upon request of the Statewide Grievance Committee... .for review, examination or audit... .”

- Failure to cooperate with request for records will lead to suspension from practice

# Best Practices

- Implement accounting software
- Hire bookkeeper
- Reconcile IOLTA monthly
- Review reconciliations of third-party with ORIGINAL bank statements

## Best Practices Cont.

- Store financial documents in safe place
- Limit access to IOLTA checks
- Make backup copies of documents
- Implement policies and procedures for wire transfers (i.e. multi-step authentication)
- **MUST KEEP RECORDS FOR AT LEAST 7 YEARS**

## Rule 5.3

### Responsibilities Regarding Non-Lawyer Assistance

- Partners or lawyers with “comparable managerial authority” are tasked with making sure there are policies and procedures in place for non-lawyers to follow and to assure that the non-lawyer’s conduct is “compatible with the professional obligations of the lawyer”
- Lawyer is responsible for the non-lawyers conduct if the lawyer orders or has knowledge of specific conduct, ratifies the conduct involved; or when a non-lawyer’s conduct could have been avoided or mitigated and failed to take reasonable remedial action.

# Final Thoughts

- Strong law office management practices and systems are a part of successful lawyering.
- There will be no excuse or reason sufficient to warrant straying from the Rules of Professional Conduct as they relate to IOLTA funds.
- Even with a bookkeeper and/or support staff- the lawyer is responsible for supervising all staff and making sure the IOLTA is not being mishandled.

## Connecticut Rules - Practice Book

### Connecticut Rules of Professional Conduct

#### CLIENT LAWYER RELATIONSHIPS

(a) As used in this Rule, the terms below shall have the following meanings:

- (1) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA account administrative or maintenance fee.
- (2) An "eligible institution" means
  - (i) a bank or savings and loan association authorized by federal or state law to do business in Connecticut, the deposits of which are insured by an agency of the United States government, or
  - (i) an open-end investment company registered with the United States Securities and Exchange Commission and authorized by federal or state law to do business in Connecticut. In addition, an eligible institution shall meet the requirements set forth in subsection (i) (3) below. The determination of whether or not an institution is an eligible institution shall be made by the organization designated by the judges of the superior court to administer the program pursuant to subsection (i) (4) below, subject to the dispute resolution process provided in subsection (i) (4) (E) below.
- (3) "Federal Funds Target Rate" means the target level for the federal funds rate set by the Federal Open Market Committee of the Board of Governors of the Federal Reserve System from time to time or, if such rate is no longer available, any comparable successor rate. If such rate or successor rate is set as a range, the term "Federal Funds Target Rate" means the upper limit of such range.
- (4) "Interest- or dividend-bearing account" means
  - (i) an interest-bearing checking account, or
  - (i) an investment product which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund. A daily financial institution repurchase agreement must be fully collateralized by U.S. Government Securities and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, must have total assets of at least \$250,000,000.
- (5) "IOLTA account" means an interest- or dividend-bearing account established by a lawyer or law firm for clients' funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay. An IOLTA account shall include only client or third person funds, except as permitted by subsection (i) (6) below. The determination of whether or not an interest- or dividend-bearing account meets the requirements of an IOLTA account shall be made by the organization designated by the judges of the

superior court to administer the program pursuant to subsection (i) (4) below.

(6) "Non-IOLTA account" means an interest-or dividend-bearing account, other than an IOLTA account, from which funds may be withdrawn upon request by the depositor without delay.

(7) "U.S. Government Securities" means direct obligations of the United States government, or obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof, including United States government-sponsored enterprises, as such term is defined by applicable federal statutes and regulations.

(b) 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 seven years after termination of the representation.

(c) A 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 or obtaining a waiver of fees and service charges on the account, but only in an amount necessary for those purposes.

(d) Absent a written agreement with the client otherwise, 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.

(e) 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 or third person, 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.

(f) 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) have interests, the property shall be kept separate by the lawyer until any competing interests are resolved. The lawyer shall promptly distribute all portions of the property as to which the lawyer is able to identify the parties that have interests and as to which there are no competing interests. Where there are competing interests in the property or a portion of the property, the lawyer shall segregate and safeguard the property subject to the competing interests.

(g) The word "interest(s)" as used in this subsection and subsections (e) and (f) means more than the mere assertion of a claim by a third party. In the event a lawyer is notified by a third party or a third party's agent of a claim to funds held by the lawyer on behalf of a client, but it is unclear to the lawyer whether the third party has a valid interest within the meaning of this Rule, the lawyer may make a written request that the third party or third party's agent provide the lawyer such reasonable information and/or documentation as needed to assist the lawyer in determining whether substantial grounds exist for the third party's claim to the funds. If the third party or third party's agent fails to comply with such a request within sixty days, the lawyer may distribute the funds in question to the client.

(h) Notwithstanding subsections (b), (c), (d), (e) and (f), lawyers and law firms shall participate in the statutory program for the use of interest earned on lawyers' clients' funds accounts to provide funding for the delivery of legal services to the poor by nonprofit corporations whose

principal purpose is providing legal services to the poor and for law school scholarships based on financial need. Lawyers and law firms shall place a client's or third person's funds in an IOLTA account if the lawyer or law firm determines, in good faith, that the funds cannot earn income for the client in excess of the costs incurred to secure such income. For the purpose of making this good faith determination of whether a client's funds cannot earn income for the client in excess of the costs incurred to secure such income, the lawyer or law firm shall consider the following factors:

- (1) The amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding or matter for which the funds are held;
- (3) the rates of interest, dividends or yield at eligible institutions where the funds are to be deposited;
- (4) the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the benefit of the client, including service charges, minimum balance requirements or fees imposed by the eligible institutions;
- (5) the costs of the services of the lawyer or law firm in connection with establishing and maintaining the account or other appropriate investments;
- (6) the costs of preparing any tax reports required for income earned on the funds in the account or other appropriate investments; and
- (7) any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure such income. No lawyer shall be subject to discipline for determining in good faith to deposit funds in the interest earned on lawyers' clients' funds account in accordance with this subsection.

(i) An IOLTA account may only be established at an eligible institution that meets the following requirements:

- (1) No earnings from the IOLTA account shall be made available to a lawyer or law firm.
- (2) Lawyers or law firms depositing a client's or third person's funds in an IOLTA account shall direct the depository institution:
  - (A) To remit interest or dividends, net of allowable reasonable fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practices, at least quarterly, to the organization designated by the judges of the superior court to administer this statutory program;
  - (B) To transmit to the organization administering the program with each remittance a report that identifies the name of the lawyer or law firm for whom the remittance is sent, the amount of remittance attributable to each IOLTA account, the rate and type of interest or dividends applied, the amount of interest or dividends earned, the amount and type of fees and service charges deducted, if any, and the average account balance for the period for which the report is made and such other information as is reasonably required by such organization; and
  - (C) To transmit to the depositing lawyer or law firm at the same time a report in accordance with the institution's normal procedures for reporting to its depositors.
- (3) Participation by banks, savings and loan associations, and investment companies in the

- ) IOLTA program is voluntary. An eligible institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:
  - (A) The eligible institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. In lieu of the rate set forth in the first sentence of this subparagraph, an eligible institution may pay a rate equal to the higher of either (i) one percent per annum, or (ii) sixty percent of the Federal Funds Target Rate. Such alternate rate shall be determined for each calendar quarter as of the first business day of such quarter and shall be deemed net of allowable reasonable fees and service charges. The eligible institution may offer, and the lawyer or law firm may request, a sweep account that provides a mechanism for the overnight investment of balances in the IOLTA account in an interest- or dividend-bearing account that is a daily financial institution repurchase agreement or a money market fund. Nothing in this Rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and service charges on an IOLTA account. An eligible institution may choose to pay the higher interest or dividend rate on an IOLTA account in lieu of establishing it as a higher rate product.
  - (B) Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers.
  - (C) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest earned on an IOLTA account.
  - ) Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. 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. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.
- (4) The judges of the superior court, upon recommendation of the chief court administrator, shall designate an organization qualified under Sec. 501 (c) (3) of the Internal Revenue Code, or any subsequent corresponding Internal Revenue Code of the United States, as from time to time amended, to administer the program. The chief court administrator shall cause to be printed in the Connecticut Law Journal an appropriate announcement identifying the designated organization. The organization administering the program shall comply with the following:
  - (A) Each June mail to each judge of the superior court and to each lawyer or law firm participating in the program a detailed annual report of all funds disbursed under

- ) the program including the amount disbursed to each recipient of funds;
- ( Each June submit the following in detail to the chief court administrator for approval and comment by the Executive Committee of the superior court:
  - B ) (i) its proposed goals and objectives for the program;
  - (ii) the procedures it has established to avoid discrimination in the awarding of grants;
  - (iii) information regarding the insurance and fidelity bond it has procured;
  - )
  - (i) a description of the recommendations and advice it has received from the v) Advisory Panel established by General Statutes § 51-81c and the action it has taken to implement such recommendations and advice;
  - ( the method it utilizes to allocate between the two uses of funds provided for in v) § 51-81c and the frequency with which it disburses funds for such purposes;
  - )
  - (v) the procedures it has established to monitor grantees to ensure that any i) limitations or restrictions on the use of the granted funds have been observed by the grantees, such procedures to include the receipt of annual audits of each grantee showing compliance with grant awards and setting forth quantifiable levels of services that each grantee has provided with grant funds;
  - (v) the procedures it has established to ensure that no funds that have been ii) awarded to grantees are used for lobbying purposes; and
  - (vi) the procedures it has established to segregate funds to be disbursed under ii) the program from other funds of the organization;
- (C) Allow the judicial branch access to its books and records upon reasonable notice;
- )
- (D) Submit to audits by the judicial branch; and
- ( Provide for a dispute resolution process for resolving disputes as to whether a E) bank, savings and loan association, or open-end investment company is an eligible institution within the meaning of this Rule.
- )
- (5) Before an organization may be designated to administer this program, it shall file with the chief court administrator, and the judges of the superior court shall have approved, a resolution of the board of directors of such an organization which includes provisions:
  - ( Establishing that all funds the organization might receive pursuant to subsection (i) A) (2) (A) above will be exclusively devoted to providing funding for the delivery of legal services to the poor by nonprofit corporations whose principal purpose is providing legal services to the poor and for law school scholarships based on financial need and to the collection, management and distribution of such funds;
  - ( Establishing that all interest and dividends earned on such funds, less allowable B) reasonable fees, if any, shall be used exclusively for such purposes;
  - )

- ( C ) Establishing and describing the methods the organization will utilize to implement and administer the program and to allocate funds to be disbursed under the program, the frequency with which the funds will be disbursed by the organization for such purposes, and the segregation of such funds from other funds of the organization;
- ( D ) Establishing that the organization shall consult with and receive recommendations from the Advisory Panel established by General Statutes § [51-81c](#) regarding the implementation and administration of the program, including the method of allocation and the allocation of funds to be disbursed under such program;
- ( E ) Establishing that the organization shall comply with the requirements of this Rule; and
- ( F ) Establishing that said resolution will not be amended, and the facts and undertakings set forth in it will not be altered, until the same shall have been approved by the judges of the superior court and ninety days have elapsed after publication by the chief court administrator of the notice of such approval in the Connecticut Law Journal.

(6) Nothing in this subsection (i) shall prevent a lawyer or law firm from depositing a client's or third person's funds, regardless of the amount of such funds or the period for which such funds are expected to be held, in a separate non-IOLTA account established on behalf of and for the benefit of the client or third person. Such an account shall be established as:

- ( A ) A separate clients' funds account for the particular client or third person on which the interest or dividends will be paid to the client or third person; or
- ( B ) A pooled clients' funds account with subaccounting by the bank, savings and loan association or investment company or by the lawyer or law firm, which provides for the computation of interest or dividends earned by each client's or third person's funds and the payment thereof to the client or third person.

(i) A lawyer who practices in this jurisdiction shall maintain current financial records as provided in this Rule and shall retain the following records for a period of seven years after termination of the representation:

- (1) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- (2) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, 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;
- (3) copies of retainer and compensation agreements with clients as required by Rule [1.5](#) of the Rules of Professional Conduct;
- (4) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- (5) copies of bills for legal fees and expenses rendered to clients;

- (6) copies of records showing disbursements on behalf of clients;
- (7) the physical or electronic equivalents of all checkbook registers, bank statements,
  - ) records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;
- (8) records of all electronic transfers from client trust accounts, including the name of the
  - ) person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;
- (9) copies of monthly trial balances and at least quarterly reconciliations of the client trust
  - ) accounts maintained by the lawyer; and
- (1) copies of those portions of client files that are reasonably related to client trust account
  - ) transactions.
- (k) With respect to client trust accounts required by this Rule:
  - ) (1) only a lawyer admitted to practice law in this jurisdiction or a person under the direct
    - ) supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account;
  - (2) receipts shall be deposited intact and records of deposit should be sufficiently detailed to
    - ) identify each item; and
  - (3) withdrawals shall be made only by check payable to a named payee or by authorized
    - ) electronic transfer and not to cash.
- (l) The records required by this Rule may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.
- (m) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make
  - ) reasonable arrangements for the maintenance of client trust account records specified in this Rule.
- (n) Upon the sale of a law practice, the seller shall make reasonable arrangements for the
  - ) maintenance of records specified in this Rule.

**Cite as Conn. R. Prof'l. Cond. 1.15**

**History.** P.B. 1978-1997, Rule 1.15. Amended June 26, 2006, to take effect Sept. 1, 2006; amended June 29, 2007, to take effect Sept. 1, 2007; amended June 30, 2008, to take effect Aug. 1, 2008; amended June 21, 2010, to take effect Aug. 1, 2010; amended June 20, 2011, to take effect Jan. 1, 2012; amended June 12, 2015, to take effect Jan. 1, 2016.

**Note: COMMENTARY: A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts. Separate trust accounts may be warranted when administering estate moneys or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices. While normally it is impermissible**

to commingle the lawyer's own funds with client funds, subsection (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds is the lawyer's. Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the clients' funds account funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed. Subsection (f) also recognizes that third parties, such as a client's creditor who has alien on funds recovered in a personal injury action, may have lawful interests in specific funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party interests against wrongful interference by the client. In such cases the lawyer must refuse to surrender the property to the client until the competing interests are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute. The word "interest(s)" as used in subsections (e), (f) and (g) includes, but is not limited to, the following: a valid judgment concerning disposition of the property; a valid statutory or judgment lien, or other lien recognized by law, against the property; a letter of protection or similar obligation that is both (a) directly related to the property held by the lawyer, and (b) an obligation specifically entered into to aid the lawyer in obtaining the property; or a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity. The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule. A "lawyers' fund" for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate. Subsection (i) requires lawyers and law firms to participate in the statutory IOLTA program. The lawyer or law firm should review its IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person. Subsection (j) lists the basic financial records that a lawyer must maintain with regard to all trust accounts of a law firm. These include the standard books of account, and the supporting records that are necessary to safeguard and account for the receipt and disbursement of client or third person funds as required by Rule 1.15 of the Rules of Professional Conduct. Subsection (j) requires that lawyers maintain client trust account records, including the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks for a period of at least seven years after termination of each particular legal engagement or representation. The "Check Clearing for the 21st Century Act" or "Check 21 Act," codified at [12 U.S.C. § 5001](#) et seq., recognizes "substitute checks" as the legal equivalent of an original check. A "substitute check" is defined at [12 U.S.C. § 5002\(16\)](#) as paper reproduction of the original check that contains an image of the front and back of the original check; bears a magnetic ink character recognition ("MICR") line containing all the information appearing on the MICR line of the original check; conforms with generally applicable industry standards for substitute checks; and is suitable for automated processing in the same manner as the original check. Banks, as defined in [12 U.S.C. § 5002\(2\)](#), are not required to return to customers the original canceled checks. Most banks now provide electronic images of checks to customers who have access to their accounts on internet based websites. It is the lawyer's responsibility to download electronic images. Electronic images shall be maintained for the requisite number of years and shall be readily available for printing upon request or shall be

printed and maintained for the requisite number years. The ACH (Automated Clearing House) Network is an electronic funds transfer or payment system that primarily provides for the interbank clearing of electronic payments between originating and receiving participating financial institutions. ACH transactions are payment instructions to either debit or credit a deposit account. ACH payments are used in a variety of payment environments including bill payments, business-to-business payments, and government payments (e.g. tax refunds). In addition to the primary use of ACH transactions, retailers and third parties use the ACH system for other types of transactions including electronic check conversion (ECC). ECC is the process of transmitting MICR information from the bottom of a check, converting check payments to ACH transactions depending upon the authorization given by the account holder at the point-of-purchase. In this type of transaction, the lawyer should be careful to comply with the requirements of subsection (j) (8). There are five types of check conversions where a lawyer should be careful to comply with the requirements of subsection (j) (8). First, in a "point-of-purchase conversion," a paper check is converted into a debit at the point of purchase, and the paper check is returned to the issuer. Second, in a "backoffice conversion," a paper check is presented at the point-of-purchase and is later converted into a debit, and the paper check is destroyed. Third, in a "account-receivable conversion," a paper check is converted into a debit, and the paper check is destroyed. Fourth, in a "telephone-initiated debit" or "check-by-phone" conversion, bank account information is provided via the telephone, and the information is converted to a debit. Fifth, in a "web-initiated debit," an electronic payment is initiated through a secure web environment. Subsection (j) (8) applies to each of the types of electronic funds transfers described. All electronic funds transfers shall be recorded, and a lawyer should not reuse a check number which has been previously used in an electronic transfer transaction. The potential of these records to serve as safeguards is realized only if the procedures set forth in subsection (j) (9) are regularly performed. The trial balance is the sum of balances of each client's ledger card (or the electronic equivalent). Its value lies in comparing it on a monthly basis to a control balance. The control balance starts with the previous month's balance, then adds receipts from the Trust Receipts Journal and subtracts disbursements from the Trust Disbursements Journal. Once the total matches the trial balance, the reconciliation readily follows by adding amounts of any outstanding checks and subtracting any deposits not credited by the bank at month's end. This balance should agree with the bank statement. Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliation is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions. In some situations, documentation in addition to that listed in subdivisions (1) through (9) of subsection (i) is necessary for a complete understanding of a trust account transaction. The type of document that a lawyer must retain under subdivision (10) of subsection (i) because it is "reasonably related" to a client trust transaction will vary depending on the nature of the transaction and the significance of the document in shedding light on the transaction. Examples of documents that typically must be retained under this subdivision include correspondence between the client and lawyer relating to a disagreement over fees or costs or the distribution of proceeds, settlement agreements contemplating payment of funds, settlement statements issued to the client, documentation relating to sharing litigation costs and attorney fees for subrogated claims, agreements for division of fees between lawyers, guarantees of payment to third parties out of proceeds recovered on behalf of a client, and copies of bills, receipts or correspondence related to any payments to third parties on behalf of a client (whether made from the client's funds or from the lawyer's funds advanced for the benefit of the client). Subsection (k) lists minimal accounting controls for client trust accounts. It also enunciates the requirement that only a lawyer admitted to the practice of law in this jurisdiction or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorized to make electronic transfers from a client trust account. While it is permissible to grant limited nonlawyer access to a client trust account, such access should be limited and closely monitored by the lawyer. The lawyer has a nondelegable duty to

protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See Rules [5.1](#) and [5.3](#) of the Rules of Professional Conduct. Authorized electronic transfers shall be limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; or (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account. The requirements in subdivision (2) of subsection (k) that receipts shall be deposited intact mean that a lawyer cannot deposit one check or negotiable instrument into two or more accounts at the same time, a practice commonly known as a split deposit. Subsection (l) allows the use of alternative media for the maintenance of client trust account records if printed copies of necessary reports can be produced. If trust records are computerized, a system of regular and frequent (preferably daily) backup procedures is essential. If a lawyer uses third-party electronic or internet based file storage, the lawyer must make reasonable efforts to ensure that the company has in place, or will establish reasonable procedures to protect the confidentiality of client information. See ABA Formal Ethics Opinion 398 (1995). Records required by subsection (j) shall be readily accessible and shall be readily available to be produced upon request by the client or third person who has an interest as provided in Rule 1.15 of the Rules of Professional Conduct, or by the official request of a disciplinary authority, including but not limited to, a subpoena duces tecum. Personal identifying information in records produced upon request by the client or third person or by disciplinary authority shall remain confidential and shall be disclosed only in a manner to ensure client confidentiality as otherwise required by law or court rule. Subsections (m) and (n) provide for the preservation of a lawyer's client trust account records in the event of dissolution or sale of a law practice. Regardless of the arrangements the partners or shareholders make among themselves for maintenance of the client trust records, each partner may be held responsible for ensuring the availability of these records. For the purposes of these Rules, the terms "law firm," "partner," and "reasonable" are defined in accordance with Rules [1.0\(d\)](#), [\(h\)](#), and [\(i\)](#) of the Rules of Professional Conduct.

# STATEWIDE GRIEVANCE COMMITTEE

*Ethics Opinions of the Statewide Grievance Committee are published exactly as submitted and are not subject to editing by the Commission on Official Legal Publications.*

## ETHICS OPINION 99-1

The Statewide Grievance Committee has been made aware of certain mortgage lenders' operating procedures regarding loan closings. Rather than supplying the loan funds to the Connecticut attorney acting as settlement agent prior to the scheduled closing date, these lenders' procedures entail supplying the loan funds to the attorney/settlement agent on the day of the closing by inter-bank electronic funds transfers, commonly called "wire transfers." Such wire transfers result in the loan funds being credited to the attorney/agent's trustee bank account. This procedure has proven problematic due to the not infrequent errors and omissions of persons involved in the wire transfer process, working either on behalf of the lending institutions, or on behalf of the drawee or the depository banks transacting the wire transfers.

More than occasionally, errors and omissions in wire transfers have resulted in delays in receipt of the loan funds well past the dates of the loan closings. In rare cases, the loan funds have not been provided at all. A contributory cause of such situations is the failure of the attorneys involved to have confirmed the actual receipt of the loan funds in their trustee accounts. In some cases, it appears that attorneys may have proceeded to close loans and disburse funds from their trustee accounts despite being aware that the loan funds had not yet been received at the times of the closings and disbursements.

Connecticut attorneys are obligated under Rule 1.15 of the Rules of Professional Conduct to hold their individual clients' funds separate and to safeguard them from loss or misuse. When there are other clients' funds on deposit in an attorney's trust account, the effects of that attorney's closing a loan and disbursing funds prior to the actual receipt of the loan proceeds is to put those other clients' funds to a clearly unauthorized use and to put those other clients at some risk of losing their funds.

The practice of disbursing funds at a closing before the actual receipt of the loan proceeds also undermines the effectiveness of the statutory program for the use of interest earned on attorneys' clients' funds accounts. Improperly advancing other clients' funds in place of the funds intended to finance the real estate transactions reduces the balance of funds in the affected accounts below what they would otherwise have been, had the loan funding been received and deposited. Thus, less interest is earned by the accounts and made available for the purposes of the statutory program.

When the balance of other clients' funds in a trustee account is not sufficiently large, the practice in question causes the account to be overdrawn. Such overdrafts implicate the attorney in the mishandling of other clients' funds and can cause additional costs, inconvenience and distress for third parties. Also, such overdrafts can cause a situation reportable to this Committee under the overdraft notification program established under the provisions of Practice Book § 2-28. Such notifications cause additional work for this Committee with resultant costs to the public which finances it.

Attorneys need to avoid all these negative effects by taking reasonably prudent actions to safeguard all their clients' interests, in accordance with the Rules of Professional Conduct. At a minimum, such actions include obtaining confirmation of the receipt of wire transfers to the credit of the proper bank account prior to the closing of the transaction the funds are intended to finance. Such confirmation should be obtained from an appropriate source at the bank to which the funds are to be transferred. Seeking such confirmation would provide the attorneys either with reasonable assurance of the receipt and availability of the funds or with notice of the errors or omissions that might have prevented their receipt. Naturally, if receipt of the funds cannot be confirmed, the transaction should not be closed.

The Committee is aware of the practice of closing transactions upon the exchange of checks. That practice can be distinguished from the one discussed above by the fact that the closing attorney has available at the time of disbursing his checks, certified checks or checks drawn by the lending bank on its own funds which, if free from irregularities and if properly endorsed, can be reasonably relied on to provide the intended funds. Thus, this Opinion does not apply to the case where an attorney closes a transaction in reliance on such checks and he or she intends and reasonably expects to deposit the checks immediately after the closing so that they will be available upon the first presentation of any check drawn for the closing.

## Connecticut Ethics Opinion

1995.

### Informal 95-20.

May 1, 1995

INFORMAL OPINION 95-20

Extent of a Lawyer's Obligation to Third Parties, Pursuant to Rule 1.15(b) and (c)

Rule 1.15 of the Rules of Professional Conduct regulates the disposition of funds held by a lawyer "in which a client or a third party has an interest." This opinion explores the extent of the lawyer's duty to discover and protect such "interests."

Rule 1.15(b) states:

(b) 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.

This opinion will try to answer three questions:

- 1) What is an "interest" in property?
- 2) What interests create duties for the lawyer under Rule 1.15(b)?
- 3) What duty is imposed upon the lawyer to seek out "interests"?

#### 1. WHAT IS AN INTEREST IN PROPERTY?

The Committee believes that the only "interests" affected by the Rule are legal interests. Legal interests include:

- (a) Judgments: Claims which have been perfected by judgment or judicial decree;
- (b) Statutory or judgment liens: Only those liens applicable to the property in question need be considered. For example, if the property held by the lawyer is money, a mechanic's lien would not be an interest because the subject of that lien is real property. Just what liens create an interest is a legal question to be determined on the facts of each situation.
- (c) Letters of Protection: This special category of interests is created by the lawyer for the benefit of the client in the litigation which is the source of the funds held by the lawyer.
- (d) Consensual security agreements: When the property is tangible, it may be the subject of a security agreement between the client and a creditor who could assert a claim to the property.

#### 2. WHAT INTERESTS CREATE DUTIES FOR THE LAWYER UNDER RULE 1.15?

Rule 1.15(b) imposes upon the lawyer a fiduciary duty to protect the "interests" of those "entitled to receive" funds or other property in the lawyer's possession. When a lawyer has actual knowledge<sup>1</sup> of a cognizable interest, however, Rule 1.15(b) requires the lawyer to: (a) notify the third party promptly of the receipt of property in which the third party claims an interest; and (b) either hold the property safely, Rule 1.15(a), or deliver property to a third party who is "entitled to receive" it.

The mere assertion of a third-party claim to property is insufficient to create a duty to deliver property to that third party. The Comment to Rule 1.15 states in part:

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer may not unilaterally assume to arbitrate a dispute between the client and the third party.

The lawyer's first duty is to the client. The Rules should not be interpreted to place the lawyer in a conflict situation, Rule 1.7(b), whenever a third party has or may have a claim to property in the lawyer's possession.

Similarly, the Rule should not be interpreted in an unconstitutional way. Rule 1.15(b) could be read to require an attorney to hold property belonging to a client, against the wishes of the client, whenever a third party asserts an interest in the property. The Rule thus effectively creates a pre-judgment attachment by the lawyer of property that the lawyer has received as a result of his representation of the client. Because the Rule is a state creation, due process rights of the client are implicated by these provisions. *Connecticut v. Doebr*, 500 U.S., 111 S.Ct. 2105, 2113 (1991). Rule 1.15(b) must therefore be construed to protect those rights.

In the absence of exceptional circumstances,<sup>2</sup> property cannot be seized or encumbered without a prior judicial adversarial hearing. *Sniadach v. Family Finance Corp. of Bay View*, 395 U.S. 337, 89 S.Ct. 1820 (1969); *Fuentes v. Shevin*, 407 U.S. 67, 92 S.Ct. 1983 (1972); *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 95 S.Ct. 719 (1975); *Connecticut v. Doebr*, *supra*. "Even the temporary or partial impairments to property rights that attachments, liens and similar encumbrances entail are sufficient to merit due process protection." *Id.* The U.S. Supreme Court has held that significant procedural safeguards are required before "a state statute enabl[es] an individual to deprive another of his or her property by means of the prejudgment attachment or similar procedure." *Id.* These safeguards usually include notice and a judicial hearing prior to the deprivation. Rule 1.15(b), of course, provides no procedural safeguards at all. The Committee believes that the Rule cannot be interpreted to require the lawyer to effect an unconstitutional deprivation of the client's property by seizing it for an indefinite period without any provision for a judicial determination of the claimed "interest."

This Committee concludes that the lawyer is constitutionally obligated to deliver the property to the client on demand, despite third party claims to the property, except in three limited situations:

- (a) if the lawyer knows of a valid judgment concerning disposition of the property;
- (b) the lawyer knows of a valid statutory or judgment lien against the property;<sup>3</sup> or
- (c) the lawyer knows of a letter of protection<sup>4</sup> or similar obligation that is both: (i) directly related to the property held by the lawyer; and (ii)  
(an obligation specifically entered into to aid the lawyer in obtaining the property).

(a) Judgments

A valid judgment concerning disposition of the property is a judicial determination that a third party is the owner of property. When that property is held by a lawyer, the lawyer must promptly deliver the property to the third party, its rightful owner. The lawyer cannot allow the client to interfere with the third party's judicially determined rights. Although the client may be upset if the lawyer delivers the property, no ethical conflict of interest is involved because the property does not belong to the client.

#### (b) Statutory and Judgment Liens

A statutory or judgment lien creates a presumptive interest in property, but it is not a final determination of rights to that property. If the client challenges payment of the lien, the lawyer has an obligation to recognize the rights of both the third party and the client. However, the lawyer "may not unilaterally assume to arbitrate a dispute between the client and the third party." Comment, Rule 1.15. Therefore, the lawyer must hold the property as a fiduciary, Rule 1.15(a), and encourage a judicial resolution of the competing claims.<sup>5</sup>

#### (c) Letters of Protection

Letters of protection issued by lawyers with client authority may create enforceable assignments. Some authorities hold that a lawyer is personally liable for paying funds to a client in the face of an assignment. *Herzog v. Irace*, 594 A.2d 1106 (Me. 1991); *Leon v. Martinez*, 84 N.Y.2d 83 (N.Y. 1994); *Dahar v. Grzandziedl*, 599 A.2d 217 (Penn. Super. 1991); *Bonanza Motors, Inc. v. Webb*, 657 P.2d 1102 (Idaho 1983). In the absence of Connecticut authority on the question, we assume for the purposes of this opinion that a lawyer who is a party to a valid assignment may be personally liable for its breach. Though dicta in *Leon v. Martinez* interprets DR 9-102(c)(4) to require a lawyer to honor a valid assignment by promptly paying an assignee even in the face of client objection, other authorities hold that a lawyer may escrow funds subject to an assignment in the face of client objection. *Dahar v. Grzandziedl*, *supra*, Oregon State Bar Board of Governors Ethics Op. 1991-52 1991 WL 279119 Lawyer may keep funds in escrow if client has colorable objections against release of funds to assignee. Philadelphia Bar Association Professional Guidance Committee Opinion 91-9 1991 WL 160102. We agree with these authorities and it is our opinion that in the face of a colorable or plausible objection by a client to the release of funds pursuant to an assignment, the contested funds must be held in escrow until the dispute is resolved by the claimants or by adjudication. See Comments to Rule of Professional Conduct 1.15, Connecticut Bar Association; Informal Opinion 92-5. We distinguish our endorsement of the holding of funds in this situation from the situation discussed in part 2 above, for here it is the action of the client in approving the issuance of a letter of protection that deprives the client of the immediate use of the funds. *cf. Herzog v. Irace*, *supra*.

#### (d) Consensual Security Interests

Although a third party may hold a security interest in property the lawyer has received, that interest differs from those discussed above. A security agreement is merely a contract which creates a priority interest in property superior to that of other creditors. It neither creates a presumption of ownership (as does a statutory lien), nor bears a direct relationship to the legal action from which the lawyer obtained the property (as is a letter of protection). The constitutional rights of the client require a court, not the lawyer, to determine any rights of the "secured" third party to the property.<sup>6</sup> The lawyer therefore must deliver property to the client even when the lawyer has actual knowledge of a consensual security agreement.<sup>7</sup>

#### (e) General Creditors

General creditors have no legal interest in the property held by the lawyer, and Rule 1.15(b) does not apply to claims of a client's general creditors.

### 3. THE LAWYER HAS NO DUTY TO SEEK OUT CLAIMANTS

It has been suggested that the lawyer who receives property may have an obligation to discover whether third parties have "interests" in the funds. The Committee rejects this suggestion. The lawyer represents the client, not the client's creditors. Only where the lawyer has actual knowledge of a legal interest does the lawyer have an ethical duty to protect that interest. The lawyer then must notify the claimant of receipt of the property and must handle the property as Rule 1.15(b) requires. See

Informal Opinion 92-5. To require the lawyer to ask the client if he owes anyone money, or if he ever collected welfare, Gen. Stat. 17-283a, see Informal Opinion 87-4;8 could also require the lawyer to violate Rule 1.17 or 1.8(b).

Rule 1.15(b) applies only where the lawyer has actual knowledge of a valid legal interest.

1. The Rules of Professional Conduct define "knowingly" to mean "actual knowledge of the fact in question." The Rules reasonably only require action when the lawyer has actual knowledge of the relevant facts.

2. See e.g., *Mitchell v. W.T. Grant Co.*, 416 U.S. 600, 94 S.Ct. 1895, 1901 (1974) (allegation that property will be unavailable to satisfy a judgment unless seized without notice and a hearing).

3. As noted in section 3), *infra*, only actual knowledge of such liens would obligate the lawyer to pay over client objection. The lawyer can be expected, however, to have actual knowledge or any statutory lien that is directly connected to the litigation, e.g., the underinsured motorists lien of 38a-369, or the hospital lien of 49-73. It must be noted, however, that the lawyer should not pay, but merely escrow, funds if there are defenses to the application of the lien that the client could assert. See constitutional discussion in text, *supra*. This decision is fact and law specific to each case.

4. A properly drawn Letter of Protection will include the client's promise that he or she will not challenge payment under the terms of the Letter if a judgment is obtained. Without that express promise, however, a Letter of Protection cannot be paid over the client's objection. Informal Opinion 92-5. As discussed, *infra*, the funds must be held until the dispute is resolved.

5. Whether the lawyer should pursue an interpleader action will depend upon the circumstances of each case.

6. See references hereinabove commencing with *Connecticut v. Doehr*.

7. To the extent that Informal Opinion 92-29 is inconsistent with this opinion, that portion is withdrawn. That opinion did not consider the constitutional issues addressed here.

8. Note that the ultimate paragraph of Informal Opinion 87-4 makes clear that it specifically does not address Rule 1.15(b). This present opinion would require the lawyer, because he has actual knowledge, to inform the town, and to hold the funds in escrow.

**NOTE:** This informal opinion is contrary to the position of the Statewide Grievance Committee on both the issue of the scope of the Rule and its constitutionality. Cases pending in the Superior Court in Hartford are Respondents' appeals of Statewide Grievance Committee reprimands. *Roy Scharf v. Statewide Grievance Committee*, CV 94-0536033; *Alan Silver v. Statewide Grievance Committee*, CV 94-0541319 and CV 94-0534243.

## Connecticut Ethics Opinion

2001.

### Informal 01-08.

June 26, 2001

INFORMAL OPINION 01-08

Extent of a Lawyer's Obligation to Third Parties, Pursuant to Rule 1.15(b) and (c)  
(Revising Informal Opinions 95-20 and 99-6)

In our Informal Opinions 95-20 and 99-6, we listed three exceptions to the principle that a lawyer is constitutionally obligated to deliver property of the client to the client, on demand, despite third-party claims to the property. Those exceptions are:

- (a) If the lawyer knows of a valid judgment concerning disposition of the property;
- (b) If the lawyer knows of a valid statutory or judgment lien against the property; or
- (c) If the lawyer knows of a letter of protection or similar obligation that is both:
  - (i) directly related to the property held by the lawyer; and
  - (ii) an obligation specifically entered into to aid the lawyer in obtaining the property.

The committee herewith adds a fourth exception to the rule:

- (d) The lawyer knows of a written assignment, signed by the client, conveying an interest in the funds or other property to another person or entity.

The common law does not permit assignments of causes of action to recover for personal injuries. *Berlinski v. Ovellette*, 164 Conn. 482. However, there is, of course, a crucial distinction between an enforceable interest in the proceeds of an action, and the right to maintain the action itself. *Kennedy v. Collins Law Firm, PC*, 1999 W.L. 195813 (Connecticut Superior Court). In the case of *Silver v. The Statewide Grievance Committee*, 242 Conn. 186, the Connecticut Supreme Court dismissed the appeal as having been improvidently granted. However, in their concurrence, two justices (Berdon and McDonald) included the following statement: "If there was, for example, a valid assignment by the client of an interest in the settlement proceeds, then that, of course, would be binding on the lawyer and it would be unethical for the lawyer to ignore it once it has been brought to his attention." (Citing cases from Idaho, New Jersey and New York.)

There is hereby added to Informal Opinions 95-20 and 99-6 a fourth exception to the obligation of a lawyer to deliver property to a client on demand.



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**Professional Ethics Committee**

Approved March 19, 2014

**INFORMAL OPINION 2014-02**

**PAYMENT OF ADVANCE FEES AND COSTS BY CREDIT CARD**

In 2005 this Committee opined that the Connecticut Rules of Professional Conduct permit a lawyer to receive client payments by credit card. See Informal Opinion 05-14 (2005) (Client Payments via Pay Pal Account and Credit Card). We now address this question in greater depth and in view of developments in the credit card processing market. The primary question before the Committee is whether Rules permit a lawyer to accept advances for fees and costs by credit card payment, and if so, what precautions and practices the lawyer should follow in order to comply with the Rules.

Enabling a client to use a credit card to pay already incurred fees or costs or to pay in advance can be a benefit to both the lawyer as the merchant (in financial system jargon) and the client as the cardholder. For the lawyer there is assurance of timely payment.<sup>1</sup> For the client there is a benefit of deferring or spreading out over time the actual disbursement of funds, and frequently the benefit of earning "points" on the client's credit card. Furthermore, use of the credit card system enables a lawyer to provide a client with necessary and timely legal services in situations where the client is presently unable to make a fee payment or advance payment that the lawyer reasonably requires. Of course the banking system and credit card processing system have

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<sup>1</sup> See Amy Porter, "Why It Pays To Accept Credit Cards," CONNECTICUT LAWYER, May/June 2011.

associated costs and these costs are usually recovered from both the card holder and the merchant receiving the payment.

There are two principal issues: How the lawyer handles (1) credit card processing fees, and (2) chargebacks. In this Opinion, we explain the mechanics of fees and chargebacks, and how the lawyer accepting advance payment by credit card should handle them.

We have reviewed the ethics opinions and IOLTA rules of various other states. Several states have in recent years addressed credit card payments through amendment of their counterpart<sup>2</sup> of Rule 1.15 of the Connecticut Rules of Professional Conduct; this Rule generally requires safekeeping of client property and is summarized below in pertinent part. While some ethics opinions flatly proscribe receipt of advance payments of fees or costs by credit card,<sup>3</sup> this is a distinctly minority position.

We discern a consensus on what constitutes best practices, which we discuss below. As a preliminary matter, we note that many states require that a lawyer obtain the client's written consent to payment by credit card—for fees already earned and costs already incurred, as well as for advance payments. We do not find a basis in the Connecticut Rules of Professional Conduct for such a requirement, but we do recommend obtaining such written consent before the lawyer accepts any credit card payment from the client. A properly crafted consent and engagement agreement may reduce the likelihood of a chargeback.

Connecticut Rule of Professional Conduct 1.15 (Safekeeping Property) does not restrict the type of account into which payments for fees already earned or costs already incurred may be deposited, whether payment is made by cash, check, debit card, credit card or other electronic funds transfer means. Such payments are the lawyer's property.

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<sup>2</sup> See, e.g., Wisconsin Supreme Court Rule 20:1.15(e)(4)(h).

<sup>3</sup> See Alaska Bar Assoc. Opinion 85-5 (1985), Arizona Bar Assoc. Opinion 08-01 (2008) (obviated by Arizona Supreme Court Rule 43), California Bar Assoc. Opinion 2007-172 (2007), and Vermont Bar Assoc. Advisory Opinion 89-10 (1989).

As we discuss further below, Rule 1.15 provides that absent a written agreement providing otherwise a lawyer shall hold advance payment of fees and costs as client-property in a trust account that is separate from the lawyer's own property. Such advance payments must be held in an IOLTA account if the lawyer determines that the funds would not earn income for the client in excess of the costs incurred in an individual trust account.<sup>4</sup> Funds may only be withdrawn when fees are earned or costs incurred.

### Credit Card Fees

As we understand the current financial services industry practice, a vendor accepting credit card payments will have a merchant bank account to which such payments are credited. Normally, credit card processing fees are debited from the merchant bank account. A typical fee is about 2.5% of the transaction amount.

Consistent with the ethical opinions or Rules of other jurisdictions that have addressed this issue, we opine here that, absent client consent to the contrary, a lawyer must pay out of the lawyer's own funds any fee associated with payment by credit card. While credit card fees are not explicitly addressed in Rule 1.15, a lawyer's overarching duty under the Rule to safeguard the client's property leads us to conclude that the lawyer must absorb such charges—that is, must treat them as an overhead cost or ordinary cost of doing business—unless the client has in writing agreed to some other arrangement.<sup>5</sup> This is true whether the client payment represents an advance for fees or costs, or constitutes fees already earned or costs already incurred.

Rule 1.15(d) provides that advance payments may only be deposited into a "client trust account," which we understand to be either the lawyer's IOLTA account or an individual trust account that the lawyer maintains for the benefit of the client, absent a written agreement providing

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<sup>4</sup> Rule 1.15(e). Since the most common trust account is an IOLTA account, we refer to that type of account hereafter.

<sup>5</sup> While the Rules of Professional Conduct would permit a lawyer and client to reach an agreement whereby the client will pay the credit card fee, we note that Conn. Gen. Statutes 42-133ff(a) provides that "[n]o seller may impose a surcharge" on a credit card transaction. That provision might be interpreted as prohibiting a client from agreeing in writing to compensate the lawyer for the merchant card fee.

otherwise. This means that when advance payments are made by credit card, the lawyer must, absent written client consent otherwise, immediately deposit the lawyer's own funds into the client trust account to cover any charge that has been debited from the client's payment by the card-issuing bank or processor.<sup>6</sup> As indicated in the next section of this Opinion, there exist commercial credit card processing businesses which represent that their services enable a lawyer to avoid having the lawyer's IOLTA account absorb the cost of the credit card fee, by charging the fee to an account (designated by the lawyer) that contains only the lawyer's funds—e.g., the lawyer's operating account.

### Chargebacks

A credit card holder may dispute the validity of a charge after having authorized the credit card payment, commonly by asserting that the goods and services bargained for have not been delivered as agreed upon. In such a circumstance, the holder (for our purposes, the client) acting through the holder's card-issuing bank can cause a "chargeback"—a debit from the bank account of the merchant (here, the lawyer)—of the prior authorized credit payment. We have been advised by several credit card processors that a chargeback typically will be made within one or two months, but that as many as nine months may elapse between the payment credit and the chargeback debit. A chargeback can be contested by the lawyer within the rules of the banking and credit card processing systems.<sup>7</sup>

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<sup>6</sup> The provisions of Rule 1.15 were clearly not written with credit card payments in mind. For instance, section (c) allows the lawyer to put the lawyer's own funds into a client trust account in order to pay "bank service charges," but there is no mention of payment of credit card fees. Some states have updated Rule 1.15(c) to explicitly provide that lawyers may also deposit funds in a client's trust account in order to cover the shortfall caused by fees associated with credit card payments. See, e.g., North Dakota Rule 1.15(b). The Committee believes that Connecticut's Rule 1.15(c) should likewise be updated. Even without an amendment, however, we believe that Rule 1.15, entitled "Safekeeping Property," not only permits but *requires* that the lawyer deposit the lawyer's own funds to an IOLTA or other client's trust account to cover credit card fees, absent a written client agreement saying that the client will absorb such fees. In the absence of the client's written agreement to pay credit card fees, we consider the lawyer's payment of the fees by depositing the lawyer's own funds into an IOLTA or individual trust account to be payment to the account of funds that actually belong to the client.

<sup>7</sup> The Committee has been informed by financial services professionals that chargebacks to lawyers occur infrequently and are often decided in favor of the lawyer. The Supreme Court

Rule 1.15(e) requires that when a lawyer keeps funds belonging to different clients, those funds may be comingled only in the lawyer's IOLTA account. Any chargeback that debits the IOLTA account would debit the entrusted funds of other clients if a client initiates a chargeback after the lawyer has withdrawn part or all of the advance payment. While it might be possible to manage an IOLTA account so that a client's advance payment would not be withdrawn until the allowable chargeback period has expired, in our opinion unless a lawyer's fund management system is sufficient to avoid risk of exposing IOLTA account funds of one or more clients to the possibility of a chargeback debit associated with another client, then the lawyer should not use such arrangement.

For credit card payments of already earned fees and incurred costs, the typical arrangement is to have the lawyer's operating account be the merchant account into which payments are credited and from which fees and chargebacks are debited. This arrangement does not implicate any provision of the Rules of Professional Conduct. If the lawyer and client desire that advance payments be made by credit card, however, the best way to ensure compliance with Rule 1.15(d) (requiring that lawyers place client funds in a trust account), Rule 1.15(e) (providing that lawyers may comingle client funds only in an IOLTA account), and Rule 1.15 as a whole (requiring that lawyers safeguard all client funds) is for a lawyer to have two different merchant accounts: the IOLTA account for receiving fees and costs paid in advance, and the lawyer's operating account for debiting all credit card fees and chargebacks—as well as for receiving payments of earned fees and incurred costs.<sup>8</sup> With such an arrangement in place, the lawyer would be able to designate which account—the IOLTA account or the operating account—should be credited with a given credit card payment, while the lawyer's operating account would be charged all credit card fees and chargebacks.

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recently held that the federal Credit Repair Organizations Act does not preclude enforcement of a written agreement obligating the client to arbitrate the dispute underlying the chargeback. *CompuCredit Corp. v. Greenwood*, 132 S. Ct. 665 (2012).

<sup>8</sup> See, e.g., North Dakota Ethics Opinion 09-05 (2009); State Bar of Michigan Ethics Opinion RI-344 (2008); Oregon Bar Assoc. Formal Opinion 2006-172 (2005).

Financial professionals have advised the Committee that there are credit card processors (entities whose purpose is to facilitate the transaction between the card-issuer bank and the merchant bank) operating in Connecticut that enable lawyers to have two credit card merchant accounts in accordance with the procedures we have recommended. See [www.lawpay.com](http://www.lawpay.com), [www.lawcharge.com](http://www.lawcharge.com), and [www.atticus.com](http://www.atticus.com).<sup>9</sup>

There may well be alternative ways of complying with the requirements of Rule 1.15. We recommend the procedures set forth above because they ensure the proper handling of credit card processing fees and avoid comingling of client property and the lawyer's property, even for a short period of time. However, we opine that it would also be permissible for a credit card advance payment to be credited to a lawyer's operating account provided such advance payment is without delay transferred to an IOLTA account (or to an individual client trust account). As long as the funds are immediately transferred to a client trust account, their initial receipt into the lawyer's operating account may be understood as facilitating the transaction between the lawyer and the client. In these circumstances, the funds are not "held" or "kept" with the lawyer's property, which is prohibited by Rule 1.15(b). See Informal Opinion 05-14 (opining that where a client pays unearned fees through PayPal to the lawyer's operating account and the lawyer within 24 hours transfers the funds to a trust account, Rule 1.15(b) is not violated because the operating account is merely a "temporary conduit" to receive and transfer client funds).

#### Other Issues

Any credit card transaction must be consistent with the confidentiality requirements of Rule 1.6, and the communication requirements of Rule 1.4. The client, as well as the lawyer, should understand that entities such as banks and credit card processing companies may routinely be able to access and question credit card transactions of the client. If in that connection a merchant-lawyer is required to give any information about the nature of the charge, we suggest it should be no more revealing than "legal services" or "professional services."

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<sup>9</sup> See also Connecticut Bar Association Membership Benefits, Office Savings, "LawPay – Credit Card Processing for Attorneys". See also, advertisement of [lawpay.com](http://lawpay.com) in CONNECTICUT LAWYER, September 2013.

A lawyer making arrangements to receive payments by credit card should also be mindful of the requirements of pertinent tax laws, financial regulations, and standards—such as the Truth in Lending Act, the Electronic Fund Transfer Act, Internal Revenue Code Section 6050W, and the Payment Card Industry Data Security Standards (PCI-DDS).

THE COMMITTEE ON PROFESSIONAL ETHICS

By \_\_\_\_\_

John R. Logan, Chair

## Stovall, Marcy

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**From:** Connecticut Judicial Branch <statewide.grievance@judicialmail.ct.gov>  
**Sent:** Wednesday, December 3, 2014 10:58 AM  
**To:** Bowler, Michael  
**Subject:** Warning of Internet Scam Affecting Connecticut Attorneys

### STATEWIDE GRIEVANCE COMMITTEE

Over the past few years, several attorneys in Connecticut have fallen victim to an internet scam. The purpose of this email is to explain the basics of the scam and its disciplinary ramifications for the victimized attorney in an effort to prevent further recurrence of the problem.

#### The Scam

Although there are multiple variations, the scam typically begins with an email to the attorney from a potential client who is overseas, often in Europe or Japan. The potential client requests representation in a commercial collection matter against a local debtor. The debt is usually in the six or low seven figure range. The attorney agrees to the representation and emails a retainer agreement to the potential client, which is signed and returned by email.

Almost immediately after the attorney is retained, the client reports that a settlement has been reached independently with the debtor and that the client has informed the debtor to mail the settlement proceeds via bank or cashier's check to the attorney. The client advises the attorney to deposit the debtor's check when it is received, then to wire the net proceeds to the client after deducting the attorney's fee. The attorney does as instructed: the check is deposited into the attorney's clients' funds account, then the net proceeds minus the attorney's fee are wired to the client's account overseas.

When the attorney's bank presents the debtor's check for payment from the issuing bank, the check is not honored because it is a forgery. By then, the client has disappeared with the money that was wired by the attorney from the bogus settlement. The attorney's bank immediately deducts existing funds from the clients' funds account to cover the wire transfer, which implicates the funds of other clients and third parties, and often results in an overdraft. If the clients' funds account is overdrawn as a result of the scam, the overdraft must be reported to the Statewide Grievance Committee by the attorney's bank.

#### Ethical Implications

Attorneys are required by Rule 1.15(b) of the Rules of Professional Conduct to safeguard the funds of clients and third parties in a clients' funds account (a/k/a an "IOLTA" or "trust" account). When an attorney falls victim to the scam described above, the attorney's bank will use whatever funds are available in the clients' funds account to cover the dishonored check. This action jeopardizes client and third party funds that are in the account, and violates Rule 1.15(b) of the Rules of Professional Conduct.

#### Other Thoughts

The perpetrators of the scam are incredibly sophisticated and thorough in their story. We have seen the use of false websites and the misappropriation of the names of existing people and companies in both the foreign country and the United States. The forged check is impossible for an untrained person to spot as a fake. Be wary of correspondence, especially from the debtor, that does not contain a telephone number or email address. Prior to depositing the debtor's check, the attorney should speak directly with the debtor to verify the transaction. Attorneys should wait for the funds to be honored by the issuing bank before wiring any funds.

If you are contacted by a scammer, notify your local authorities or the Connecticut regional office of the FBI at (203) 777-6311 or newhaven@ic.fbi.gov.

Remember, if something looks too good to be true it probably is.

Please contact us with questions at [Statewide.Grievance@jud.ct.gov](mailto:Statewide.Grievance@jud.ct.gov).

Michael P. Bowler  
Statewide Bar Counsel

14. What are the most common errors and omissions that are found in a random audit?

- a. No disbursement/receipt ledger (Rule 1.15 (i)(1) of the Rules of Professional Conduct).

The attorney holding client or third person funds must maintain a general receipt and disbursement journal that indicates each receipt and disbursement containing a record of deposits to and withdrawals from the 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.

- b. No individual client ledger card (Rule 1.15 (i)(2) of the Rules of Professional Conduct).

The attorney must 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 trust account on behalf of that individual client. The audit team will verify the existence and accuracy of the individual client ledgers.

- c. Client Ledger updates not performed on regular basis (Practice Book §2-27(a)).

The attorney 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 trust account on any given day for any individual client and for all the clients collectively.

- d. No quarterly reconciliation (Rule 1.15(i)(9) of the Rules of Professional Conduct).

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

- e. Quarterly reconciliation is not accurate (Rule 1.15(i)(9) of the Rules of Professional Conduct and Practice Book §2-27(a)).

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

- f. More than \$500 in attorney's personal funds held in the bank account (Rule 1.15 (b) and (c) of the Rules of Professional Conduct).

In order to avoid the impermissible co-mingling of funds held in trust with the funds of the attorney, the Statewide Grievance Committee has determined that attorneys should maintain only de minimis amount of personal funds, sufficient to cover administrative costs, in the trust 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 trust account. The fees must be disbursed as they are earned.

- g. The attorney is using the trust account for personal transactions (Rule 1.15 (b) and (c) of the Rules of Professional Conduct).

This practice is prohibited. If the audit team detects checks or other types of disbursements that are paid to questionable recipients (e.g. credit card companies, nonlaw-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 or third person.

- h. 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 will be able to complete the reconciliation faster.

- i. 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 will be able to complete the reconciliation process faster.

- j. Fee retainers not properly accounted for (Rule 1.15(d) of the Rules of Professional Conduct).

Fees taken by the attorneys 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.

- k. Payments made to cash, cash withdrawals, debits and on-line payments (Rule 1.15 (j)(3) of the Rules of Professional Conduct).

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

- l. Checks outstanding for over six months and the interest-holders are known (Rule 1.15 (e) of the Rules of Professional Conduct).

An attorney has the obligation to make sure that the funds that he or she is holding are transferred to the interest-holder in a timely manner. The attorney must keep a list of all the checks that are outstanding from month to month. This step is essential to a proper reconciliation. If a check is not cashed within six months of its disbursement, the attorney should contact the payee and offer to issue a replacement check. If the payee declines to accept a new check, then the attorney should return the money to the person who funded the check. If, after due diligence, the attorney is unable to locate the payee or the person who funded the check, the funds may be earmarked to escheat to the state after the completion of the statutory waiting period. Connecticut General Statute Sec. 3-61(a). Under no circumstances may the attorney take these funds.

- m. Funds in a trust account where the interest-holder is unknown (Rule 1.15 (b) and (e) of the Rules of Professional Conduct and Practice Book §2-27).

If an attorney's trust account contains funds that are not allocated to any representation, then the attorney must use due diligence to determine who owns those funds. If the attorney cannot determine who owns the funds, then those funds should be removed from the trust account and placed in a separate account for safe keeping. After the completion of the statutory waiting period, if no claim has been made for the funds, then the funds may be escheated to the state as abandoned fiduciary funds. Under no circumstances, may the attorney take these funds, unless the attorney is able to substantiate the funds are fees earned.

- n. Un-reimbursed fees or service charges on the account (Rule 1.15 (b) and (c) of the Rules of Professional Conduct).

The funds held in a trust account presumptively belong to clients. Therefore, fees assessed against the trust account should not be paid by a client. The attorney may deposit the attorney's own funds in a 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 trust accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable administrative or maintenance fee. NOTE that fees may be deducted from interest or dividends earned on a trust account, however, no fees or service charges other than allowable reasonable fees may be assessed against the accrued interest or dividends

on a trust account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the attorney or law firm maintaining the trust account.

- o. Attorney has failed to update the registration information (Practice Book §2-27(d) and §2-28(c)).

As part of the random audit process, the audit team verifies that each attorney who has reported the selected trust account has registered on a yearly basis with the Statewide Grievance Committee and is still employed by the firm who uses the selected trust funds account and has registered the correct firm and bank name. Letters are sent to the attorneys who are not in compliance and the letters are copied to the firm. Failure to register is considered misconduct.

- p. Attorney has not properly designated the account as a trust account (Rule 1.15(b) of the Rules of Professional Conduct and Practice Book §2-28(b)).

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

- q. HUD-1 contained inaccuracies, errors or omissions (Practice Book §2-27(a) and (b)).

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.

- r. Interest not remitted to Connecticut Bar Foundation (Rule 1.15(g) of the Rules of Professional Conduct).

The Rules require that interest earned on the trust 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.

- s. Overdrafts on the account were not reported to the Statewide Grievance Committee (Practice Book §2-28).

The audit team will investigate any overdraft situation that occurred during the audit period. All overdrafts to the trust 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.

- t. Unacceptable storage location for financial data (Rule 1.15(b) of the Rules of Professional Conduct).

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

- u. Attorney is not maintaining financial data for at least 7 years (Rule 1.15 (b) and (i) of the Rules of Professional Conduct and Practice Book §2-27 (b)).

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

- v. Financial documents prepared by attorney are illegible (Practice Book §2-27 (e)).

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

Law Office  
Transactions by Account  
As of October 26, 2010

Type	Date	Num	Name	Memo	Cir	Split	Amount	Balance
<b>B</b>								
Customer Real Estate Deposits	10/14/2010		n Ave			RE IOLTA	45,012.00	0.00
Deposit	10/14/2010					RE IOLTA	45,012.00	0.00
Check	10/14/2010	1589	Wire Fee	(P)		RE IOLTA	4,540.00	49,552.00
Check	10/14/2010	1591	Wire Fee			RE IOLTA	-12.00	49,540.00
Deposit	10/15/2010	1589	Webster Bank			RE IOLTA	-12.00	49,528.00
Check	10/15/2010	1590	Weichert Realtors			RE IOLTA	118,935.23	168,463.23
Check	10/15/2010	1591	Real Estate Two			RE IOLTA	-4,885.00	163,578.23
Check	10/15/2010	1592	Ariaration Water Co.			RE IOLTA	-3,490.00	160,088.23
Check	10/15/2010	1593	Tax Collector			RE IOLTA	-233.34	159,854.89
Check	10/15/2010	1594	First American Title			RE IOLTA	-413.40	159,441.49
Check	10/15/2010	1595	Kelley Recording			RE IOLTA	-479.60	158,961.89
Check	10/15/2010	1596	n Town Clerk			RE IOLTA	-50.00	158,911.89
Check	10/15/2010	1597	Commissioner of R...			RE IOLTA	-213.00	158,698.89
Check	10/15/2010	1598	Wire Fee			RE IOLTA	-1,174.40	157,524.49
Check	10/15/2010	1598	Wire Fee			RE IOLTA	-417.50	157,106.99
Check	10/15/2010	1598	Wire Fee			RE IOLTA	-835.00	156,271.99
Check	10/15/2010	1598	Wire Fee			RE IOLTA	-12.00	156,259.99
Check	10/15/2010	1598	Wire Fee			RE IOLTA	-25.00	156,234.99
Deposit	10/22/2010					RE IOLTA	-156,239.99	-5.00
Total						RE IOLTA	5.00	0.00
Total Customer Real Estate Deposits								
TOTAL							0.00	0.00

Exhibit 1

**Exhibit 2**

008934

LAW OFFICE ( )  
IOLTA ACCT  
PMB 303

October 31, 2010  
Total days in statement period: 31  
(20)

Page 1 of 4

Dr

Direct Inquiries to:  
CALL CENTER  
1-800-894-0300

Peoples United Bank  
4180 Madison Avenue  
Trumbull CT 06611

**Summary of Account Balance**

Account	Number	Ending Balance
Client Funds Business Checking		\$1,603.72

**Client Funds Business Checking**

Average balance \$16,640.84

Date	Description	Additions	Subtractions	Balance
09-30	Beginning balance			\$21,680.51
10-04	Check 1577		-50.00	21,630.51
10-06	Check 1585		-1,257.80	20,372.71
10-06	Check 1586		-172,715.00	-152,342.29
10-06	#Wire Xfr Cr Domestic	174,693.00		22,350.71
10-06	#Service Charge		-12.00	22,338.71
	WIRE XFR IN DOMSTC			
10-12	Check 1583		-50.00	22,288.71
10-13	Check 1580		-460.00	21,828.71
10-14	Check 1582		-505.20	21,323.51
10-14	#Wire Xfr Cr Domestic	45,012.00		66,335.51
10-14	#Service Charge		-12.00	66,323.51
	WIRE XFR IN DOMSTC			
10-14	#Wire Xfr Cr Domestic	4,540.00		70,863.51
10-14	#Service Charge		-12.00	70,851.51
	WIRE XFR IN DOMSTC			
10-15	#Wire Xfr Cr Domestic	118,935.23		189,786.74
10-15	#Service Charge		-12.00	189,774.74
	WIRE XFR IN DOMSTC			
10-15	#Wire Xfr Out Domstc		-156,239.99	33,534.75

**20 Enclosures**

Number	Date	Amount
1577	10-04	50.00
1580 *	10-13	460.00
1582 *	10-14	505.20
1583	10-12	50.00
1584	10-19	153.00
1585	10-06	1,257.80
1586	10-06	172,715.00
1587	10-18	6,150.00
1588	10-18	14,666.19
1589	10-22	4,885.00
1590	10-20	3,490.00
1591	10-22	233.34
1592	10-20	413.40
1593	10-22	479.60
1594	10-25	50.00
1595	10-21	213.00
1596	10-19	1,174.40
1597	10-21	417.50
1601 *	10-29	191.00
1602	10-28	1,121.60

\* Skip in check sequence

Statement of Account



Page 2 of 4

Date	Description	Additions	Subtractions	Balance
10-15	#Service Charge WIREOUT USD DOMSTC		-25.00	33,509.75
10-18	Check 1587		-6,150.00	27,359.75
10-18	Check 1588		-14,666.19	12,693.56
10-19	Check 1584		-153.00	12,540.56
10-19	Check 1596		-1,174.40	11,366.16
10-20	Check 1590		-3,490.00	7,876.16
10-20	Check 1592		-413.40	7,462.76
10-21	Check 1595		-213.00	7,249.76
10-21	Check 1597		-417.50	6,832.26
10-22	Check 1589		-4,885.00	1,947.26
10-22	Check 1591		-233.34	1,713.92
10-22	Check 1593		-479.60	1,234.32
10-22	#Deposit	588.16		1,822.48
10-25	Check 1594		-50.00	1,772.48
10-26	#Wire Xfr Cr Domestic	1,155.84		2,928.32
10-26	#Service Charge WIRE XFR IN DOMSTC		-12.00	2,916.32
10-28	Check 1602		-1,121.60	1,794.72
10-29	Check 1601		-191.00	1,603.72
10-31	<b>Ending totals</b>	<b>344,924.23</b>	<b>-365,001.02</b>	<b>\$1,603.72</b>

	Total for this period	Total year-to-date
Total Overdraft Fees	\$0.00	\$0.00
Total Returned Item Fees	\$0.00	\$0.00

4:04 PM  
11/10/10

Law  
**Reconciliation Summary**  
RE IOLTA, Period Ending 10/31/2010

	<u>Oct 31, 10</u>
Beginning Balance	21,680.51
Cleared Transactions	
Checks and Payments - 27 items	-365,001.02
Deposits and Credits - 8 items	344,924.23
Total Cleared Transactions	<u>-20,076.79</u>
Cleared Balance	<u>1,603.72</u>
Uncleared Transactions	
Checks and Payments - 4 items	<u>-1,309.40</u>
Total Uncleared Transactions	<u>-1,309.40</u>
Register Balance as of 10/31/2010	<u>294.32</u>
Ending Balance	<u>294.32</u>

*in Acct.*

**Law (**  
**Reconciliation Detail**  
**RE IOLTA, Period Ending 10/31/2010**

Type	Date	Num	Name	Clr	Amount	Balance
<b>Beginning Balance</b>						21,680.51
<b>Cleared Transactions</b>						
<b>Checks and Payments - 27 items</b>						
Check	9/24/2010	1577	Kelley Recording	X	-50.00	-50.00
Check	9/29/2010	1580	Summit Financial G...	X	-460.00	-510.00
Check	10/6/2010	1586		X	-172,715.00	-173,225.00
Check	10/6/2010	1585	L..., Esq...	X	-1,257.80	-174,482.80
Check	10/6/2010	1582	First American Title ...	X	-505.20	-174,988.00
Check	10/6/2010	1584	Derby Town Clerk	X	-153.00	-175,141.00
Check	10/6/2010	1583	Kelley Recording	X	-50.00	-175,191.00
Check	10/6/2010	wire	Wire Fee	X	-12.00	-175,203.00
Check	10/13/2010	1588	Estate of	X	-14,666.19	-189,869.19
Check	10/13/2010	1587	Timothy O'Leary	X	-6,150.00	-196,019.19
Check	10/14/2010	wire	Wire Fee	X	-12.00	-196,031.19
Check	10/14/2010	wire	Wire Fee	X	-12.00	-196,043.19
Check	10/15/2010	wire	Bendett & McHugh ...	X	-156,239.99	-352,283.18
Check	10/15/2010	1589	Weichert Realtors	X	-4,885.00	-357,168.18
Check	10/15/2010	1590		X	-3,490.00	-360,658.18
Check	10/15/2010	1596	..., Esq...	X	-1,174.40	-361,832.58
Check	10/15/2010	1593	First American Title ...	X	-479.60	-362,312.18
Check	10/15/2010	1597	Shelton Town Clerk	X	-417.50	-362,729.68
Check	10/15/2010	1592	Shelton Tax Collector	X	-413.40	-363,143.08
Check	10/15/2010	1591	Aquarion Water Co....	X	-233.34	-363,376.42
Check	10/15/2010	1595	Shelton Town Clerk	X	-213.00	-363,589.42
Check	10/15/2010	1594	Kelley Recording	X	-50.00	-363,639.42
Check	10/15/2010	wire	Wire Fee	X	-25.00	-363,664.42
Check	10/15/2010	wire	Wire Fee	X	-12.00	-363,676.42
Check	10/26/2010	1602		X	-1,121.60	-364,798.02
Check	10/26/2010	1601	Shelton Town Clerk	X	-191.00	-364,989.02
Check	10/26/2010	wire	Wire Fee	X	-12.00	-365,001.02
<b>Total Checks and Payments</b>					-365,001.02	-365,001.02
<b>Deposits and Credits - 8 items</b>						
Check	10/6/2010			X	0.00	0.00
Deposit	10/6/2010			X	174,693.00	174,693.00
Deposit	10/14/2010			X	4,540.00	179,233.00
Deposit	10/14/2010			X	45,012.00	224,245.00
Deposit	10/15/2010			X	118,935.23	343,180.23
Deposit	10/22/2010			X	5.00	343,185.23
Deposit	10/22/2010			X	583.16	343,768.39
Deposit	10/26/2010			X	1,155.84	344,924.23
<b>Total Deposits and Credits</b>					344,924.23	344,924.23
<b>Total Cleared Transactions</b>					-20,076.79	-20,076.79
<b>Cleared Balance</b>					-20,076.79	1,603.72
<b>Uncleared Transactions</b>						
<b>Checks and Payments - 4 items</b>						
Check	12/30/2008	1320	Woodbridge Approa...		-60.00	-60.00
Check	10/15/2010	1598	Commissioner of R...		-835.00	-895.00
Check	10/26/2010	1599	First American Title ...		-364.40	-1,259.40
Check	10/26/2010	1600	Kelley Recording		-50.00	-1,309.40
<b>Total Checks and Payments</b>					-1,309.40	-1,309.40
<b>Total Uncleared Transactions</b>					-1,309.40	-1,309.40
<b>Register Balance as of 10/31/2010</b>					-21,386.19	294.32
<b>Ending Balance</b>					<b>-21,386.19</b>	<b>294.32</b>

Date		DOLLARS	CENTS
10/22/2010			
CURRENCY		5	00
COIN			
1	Client x	583	16
2	Client y	00	00
3			
4			
5			
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
TOTAL FROM OTHER SIDE			
LESS CASH RETURNED			
TOTAL ITEMS	2	TOTAL DEPOSIT	588 16

0000121

\$ 588.16

PLEASE BE SURE ALL ITEMS ARE PROPERLY ENDORSED.  
 DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.

PEOPLE'S BANK  
 CONNECTICUT

DEPOSIT TICKET  
 LLC

# Exhibit 3

## Statewide Grievance Committee Random Audit Questionnaire

Random Audit # \_\_\_\_\_

PLEASE ANSWER THE FOLLOWING QUESTIONS AND IMMEDIATELY RETURN THE COMPLETED QUESTIONNAIRE WITH THE NOTICE OF RANDOM AUDIT OPTION TO THE STATEWIDE GRIEVANCE COMMITTEE BY FAX AT 860-568-4953.

1. Nature of Law Practice _____ Phone number _____	7. After you received our notice of audit, did you create any records that were not previously maintained? Yes / No
2. On average, for a given month, please advise; a.) The number of checks written _____ b.) Deposits made _____ c.) Wires in/out _____ d.) Debits made _____	8. If the answer to question 7 is yes, describe which records were prepared, when and by whom.
3. With regard to the randomly selected Trust Account, what records are currently maintained? Trust Checkbook Yes / No Trust Disbursement Book Yes / No Individual Client Ledger Sheets Yes / No Deposit Slips Yes / No Trust Receipts Book Yes / No Bank Reconciliation Yes / No	9. Are legal fees withdrawn from the Trust Account when they are earned? Yes / No  If not, please explain.
4. Has a signature stamp ever been used for any of the trust accounts? Yes / No	10. If you use a computer accounting program, please specify which program is used.
5. Do you employ personnel for record keeping duties? Yes / No  If so, please explain their responsibilities in regard to the Trust Account.	11. If applicable, how are electronic transfers from the Trust Account initiated?
6. Are the Trust Account Reconciliations reviewed by an attorney in your office? Yes / No  Are the Trust Account Reconciliations reviewed by a staff person? Yes / No  If so, by whom and how frequent is the review?	12. Where is the financial data stored and for how long?

Note: If you need more space please write your answers on a separate sheet of paper and attach them with the questionnaire.

## 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(S) AT THE TIME OF THE AUDIT (PRACTICE BOOK § 2-27). PLEASE NOTE ALL DOCUMENTS PROVIDED SHOULD BE COPIES, NOT ORIGINALS. THE AUDIT PERIOD FOR THE DOCUMENTATION TO BE PRODUCED IS AUGUST 1, 2018 THROUGH JANUARY 31, 2019.**

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 (general ledger) 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 were held during the audit period. Show all deposits, withdrawals and a running balance.
4. Copies of Bank statements for the randomly selected account.
5. For the randomly selected account, please provide the quarterly reconciliations of the receipts and disbursements journal, client's individual ledgers for the audit period, 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. Identify each signatory's job description/title.
8. All deposit slips and wire transfer orders pertaining to the randomly selected account. For batch deposits, identify an amount and client name comprising the entire deposit.
9. For closings that occurred during the audit period, be prepared to provide the TILA/RESPA Integrated Disclosure forms and settlement statements at the request of the auditor(s).
10. A list of balances held for each client as of the last day of the audit period.
11. Financial records pertaining to all electronic transfers made from the clients' funds account.
12. Financial records pertaining to all electronic transfers made into the clients' funds account.

**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.**

# Exhibit 4

Random Audit No. 19-0XXX

## RANDOM AUDIT REPORT CARD

Attorney or Firm Name: Some Big Law Firm

Juris #: 999999

Bank Name: Some Big Bank

Audit Date: July 24, 2019

Account No. 999999999999

Auditor: **JBG / CRW**

### REQUIRED

- The account is not properly designated as a clients' funds account.<sup>1</sup>
- The clients' funds account checks and/or deposit slips are not appropriately labeled.
- The attorney does not maintain a receipt and disbursement ledger (general ledger).
- The attorney does not maintain a running balance on the receipt and disbursement ledger (general ledger).
- The receipt and disbursement ledger does not show the date of each transaction.
- The receipt and disbursement ledger does not show the client name on each transaction.
- The receipt and disbursement ledger does not show the source and/or description of each deposit.
- The attorney has made deposits of one instrument into two or more different accounts (split deposit).
- The receipt and disbursement ledger does not show the payee for each disbursement.
- The receipt and disbursement ledger does not show the purpose of each transaction.
- The attorney does not maintain a client ledger card<sup>2</sup> (individual client ledger) for EACH client referenced in the financial documents.

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

<sup>2</sup> 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 REPORT CARD**

Attorney or Firm Name: Duey Cheetham and How

Juris #: 999999

Bank Name: Some Big Bank

Audit Date: July 24, 2019

Account No. 999999999999

Auditor: **JBG / CRW**

- The attorney held an excessive amount of funds in the clients' funds account belonging to a single client or third person for longer than sixty business days.
- The attorney allowed an individual who is not authorized under the Rules of Professional Conduct to be a signatory on the clients' funds account and/or to direct transfers to or from the clients' funds account.
- 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.
- The TILA/RESPA Integrated Disclosure forms (s) 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.
- Attorney held funds for individual client(s) whose matters were inactive for over six months.
- Attorney held funds for individual client(s) whose matters were inactive for over three years.
- The attorney has misused the clients' funds account.
- The attorney has misused his or her clients' funds.
- Checks were made payable to cash.

Random Audit No. 19-0XXX

**RANDOM AUDIT REPORT CARD**

Attorney or Firm Name: Duey Cheetham and How

Juris #: 999999

Bank Name: Some Big Bank

Audit Date: July 24, 2019

Account No. 999999999999

Auditor: **JBG / CRW**

- Checks that were outstanding in excess of three months were not detected or investigated by the attorney.
- Checks were outstanding in excess of three years.
- The attorney has failed to (timely) reimburse the clients' funds account for service charges, fees etc.<sup>3</sup>
- The clients' funds account held more than \$500 in non-client, third party or the firm's own funds.
- The attorney has inadequately tracked the fees taken.
- 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 were timely made at the time of the closing.<sup>4</sup>
- 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; this includes check book registers, bank statements, records of deposits, and canceled and checks.
- The attorney has failed to maintain records relating to all electronic transfers made from the clients' funds account.
- The attorney has failed to include in the records relating to electronic transfers made from the clients' funds account the name of the person authorizing the transfer, the date of the transfer, the name of the recipient and/or the date on which the transfer occurred.

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

<sup>4</sup> See Ethics Rule 99-1.

Random Audit No. 19-0XXX

**RANDOM AUDIT REPORT CARD**

Attorney or Firm Name: Duey Cheetham and How

Juris #: 999999

Bank Name: Some Big Bank

Audit Date: July 24, 2019

Account No. 999999999999

Auditor: **JBG / CRW**

- The attorney does not maintain a running balance on the individual client ledgers.
- The attorney's individual client ledgers do not indicate the source of all funds deposited into the clients' funds account on behalf of that client.
- The attorney's individual client ledgers do not indicate the amounts of all charges and withdrawals.
- The attorney's individual client ledgers do not indicate the payees on all disbursements made from the clients' funds account on behalf of that client.
- The general ledgers contained inaccuracies.
- The client ledgers contained inaccuracies
- The client ledgers contained negative balances.
- The general ledger contained negative balances.
- After conducting the reconciliation, the clients' funds account showed a negative balance.
- The attorney has not performed, at a minimum, complete three way quarterly reconciliations.
- The attorney has failed to maintain a list of trial balances (balances held on behalf of each client on the last day of the period of reconciliation).
- The attorney has not maintained accurate reconciliations.
- There were funds held in the account that the firm could not attribute to a client, third person or the firm.
- Checks were outstanding in excess of six months.

Random Audit No. 19-0XXX

**RANDOM AUDIT REPORT CARD**

Attorney or Firm Name: Duey Cheetham and How

Juris #: 999999

Bank Name: Some Big Bank

Audit Date: July 24, 2019

Account No. 999999999999

Auditor: **JBG / CRW**

- The attorney has made cash withdrawals from the clients' funds account.
- The language in the retainer agreement is not in compliance with the Rules of Professional Conduct.
- The attorney has failed to maintain copies of retainer and compensation agreements with clients as required by Rule 1.5 of the Rules of Professional Conduct.
- The attorney has failed to maintain copies of billing invoices for legal fees rendered.
- The attorney failed to obtain written retainer agreements.
- The attorney or attorneys did not pay the client security fee and was administratively suspended at the time the clients' funds account was selected for audit.

**RECOMMENDED**

- It is strongly recommended that the firm refrain from using any form of signature stamp for the clients' funds account.
- Recommend obtaining the assistance of a professional bookkeeper or accountant to bring the clients' funds account into compliance with the Rules.
- Checks disbursed should be cleared or cashed in a timely manner.
- Checks should contain a sufficient "memo" description to determine its purpose.
- Deposit tickets should contain a sufficiently detailed description to determine the amount, source of all funds deposited and the client on whose behalf the deposited funds were made.
- Checks made payable to the attorney should contain a sufficient "memo" description to determine its purpose.
- Checks were not presented to the account in a reasonably numerical order.

Random Audit No. 19-0XXX

**RANDOM AUDIT REPORT CARD**

Attorney or Firm Name: Duey Cheetham and How

Juris #: 999999

Bank Name: Some Big Bank

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Account No. 999999999999

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- 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.