Legal Ethics: Maintaining IOLTA and Law Office Management
Best Practices

October 27 and 28, 2020
9:00 a.m. – 11:00 a.m.

CT Bar Association
Webinar

CT Bar Institute, Inc.
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LAWYERS’ PRINCIPLES OF PROFESSIONALISM

As a lawyer, I have dedicated myself to making our system of justice work fairly and efficiently for all. I am an officer of this Court and recognize the obligation I have to advance the rule of law and preserve and foster the integrity of the legal system. To this end, I commit myself not only to observe the Connecticut Rules of Professional Conduct, but also conduct myself in accordance with the following Principles of Professionalism when dealing with my clients, opposing parties, fellow counsel, self-represented parties, the Courts, and the general public.

Civility:

Civility and courtesy are the hallmarks of professionalism. As such,

- I will be courteous, polite, respectful, and civil, both in oral and in written communications;
- I will refrain from using litigation or any other legal procedure to harass an opposing party;
- I will not impute improper motives to my adversary unless clearly justified by the facts and essential to resolution of the issue;
- I will treat the representation of a client as the client’s transaction or dispute and not as a dispute with my adversary;
- I will respond to all communications timely and respectfully and allow my adversary a reasonable time to respond;
- I will avoid making groundless objections in the discovery process and work cooperatively to resolve those that are asserted with merit;
- I will agree to reasonable requests for extensions of time and for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;
- I will try to consult with my adversary before scheduling depositions, meetings, or hearings, and I will cooperate with her when schedule changes are requested;
- When scheduled meetings, hearings, or depositions have to be canceled, I will notify my adversary and, if appropriate, the Court (or other tribunal) as early as possible and enlist their involvement in rescheduling; and
- I will not serve motions and pleadings at such time or in such manner as will unfairly limit the other party’s opportunity to respond.

Honesty:

Honesty and truthfulness are critical to the integrity of the legal profession – they are core values that must be observed at all times and they go hand in hand with my fiduciary duty. As such,

- I will not knowingly make untrue statements of fact or of law to my client, adversary or the Court;
- I will honor my word;
- I will not maintain or assist in maintaining any cause of action or advancing any position that is false or unlawful;
• I will withdraw voluntarily claims, defenses, or arguments when it becomes apparent that they do not have merit or are superfluous;
• I will not file frivolous motions or advance frivolous positions;
• When engaged in a transaction, I will make sure all involved are aware of changes I make to documents and not conceal changes.

**Competency:**

Having the necessary ability, knowledge, and skill to effectively advise and advocate for a client’s interests is critical to the lawyer’s function in their community. As such,

• I will keep myself current in the areas in which I practice, and, will associate with, or refer my client to, counsel knowledgeable in another field of practice when necessary;
• I will maintain proficiency in those technological advances that are necessary for me to competently represent my clients.
• I will seek mentoring and guidance throughout my career in order to ensure that I act with diligence and competency.

**Responsibility:**

I recognize that my client’s interests and the administration of justice in general are best served when I work responsibly, effectively, and cooperatively with those with whom I interact. As such,

• 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 my adversary of any likely problem;
• I will make every effort to agree with my adversary, 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;
• I will be punctual in attending Court hearings, conferences, meetings, and depositions;
• I will refrain from excessive and abusive discovery, and I will comply with all reasonable discovery requests;
• In civil matters, I will stipulate to facts as to which there is no genuine dispute;
• I will refrain from causing unreasonable delays;
• Where consistent with my client’s interests, I will communicate with my adversary in an effort to avoid needless controversial litigation and to resolve litigation that has actually commenced;
• 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.
Mentoring:
I owe a duty to the legal profession to counsel less experienced lawyers on the practice of the law and these Principles, and to seek mentoring myself. As such:

- I will exemplify through my behavior and teach through my words the importance of collegiality and ethical and civil behavior;
- I will emphasize the importance of providing clients with a high standard of representation through competency and the exercise of sound judgment;
- I will stress the role of our profession as a public service, to building and fostering the rule of law;
- I will welcome requests for guidance and advice.

Honor:
I recognize the honor of the legal profession and will always act in a manner consistent with the respect, courtesy, and weight that it deserves. As such,

- I will be guided by what is best for my client and the interests of justice, not what advances my own financial interests;
- I will be a vigorous and zealous advocate on behalf of my client, but I recognize that, as an officer of the Court, excessive zeal may be detrimental to the interests of a properly functioning system of justice;
- 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, as a member of a self-regulating profession, report violations of the Rules of Professional Conduct as required by those rules;
- I will protect the image of the legal profession in my daily activities and in the ways I communicate with the public;
- 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; and
- I will support and advocate for fair and equal treatment under the law for all persons, regardless of race, color, ancestry, sex, pregnancy, religion, national origin, ethnicity, disability, status as a veteran, age, gender identity, gender expression or marital status, sexual orientation, or creed and will always conduct myself in such a way as to promote equality and justice for all.

Nothing in these Principles shall supersede, supplement, or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which a lawyer’s conduct might be judged, or become a basis for the imposition of any civil, criminal, or professional liability.
Legal Ethics: Maintaining IOLTA & Law Office Management Best Practices  
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Via Zoom

Agenda  
October 27, 2020

**Desi Imetovski**, General Counsel, University of Bridgeport  
9 a.m. – 10 a.m.

Rule 1.15 overview  
- Defining IOLTA  
- Overview of general IOLTA accounting concepts  
- Establishing an IOLTA  
- Required Records – brief review  
- Best Practices for Risk Management

**Patricia King**, Corporation Counsel, City of New Haven  
10 a.m. – 11 a.m.

Review of relevant Practice Book sections  
- PB Sec. 2-27 – Client’s Funds, Lawyer Registration  
- PB Sec. 2-28 – Overdraft Notifications

Interplay with other Rules of Professional Conduct  
- RPC 1.5  
- RPC 1.16  
- RPC 5.1  
- RPC 5.3

Third Party Claims – Rule 1.15(g)  
Disputed Claims – Rule 1.15(f)

October 28, 2020

**Suzanne Sutton** – Cohen & Wolf PC, Bridgeport  
9 a.m. – 10:00 p.m.

Random Audits: Investigation/Disciplinary proceedings  
- Random Audits v. Investigatory Audits  
- Responding to Random Audits and Investigatory Audits  
- Rule 1.6  
- Case Law, Ethics Opinions or Grievance decisions relating to audits and risk management  
- Anecdotes Re: How NOT to use your IOLTA account

**Frances Mickelson-Dera** – Connecticut Statewide Grievance Committee, Judicial Branch, Hartford  
10 p.m. – 11:00 p.m.

- Common Errors and Omissions  
- Notice of Audit  
- What Statewide Grievance Committee looks for in Audit Process  
- Report Card
Faculty Biographies

Desi Imetovski, University of Bridgeport

**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.

Patricia King, City of New Haven – Office of Corporation Counsel

**Patricia King** graduated from the University of Massachusetts in 1973 and the University of Connecticut Schools of Law and Social Work in 1982. Since 1983, she has worked as a Juvenile Court Advocate, an Assistant State’s Attorney in the Judicial District of Waterbury, an Assistant Corporation Counsel for the City of New Haven. She worked in two New Haven firms as a private practitioner for approximately seven years, handling primarily civil matters, including the Colonial Realty litigation, then as a partner in Moscowitz & King, LLC, focusing on criminal defense. She was one of the three attorneys initially hired to staff the Office of the Chief Disciplinary Counsel at its inception in 2004. She was Chief Disciplinary Counsel between July 2012 and February 2015. After retiring from the Office of the Chief Disciplinary Counsel’s Office, she joined Geraghty & Bonnano where her work focused on legal ethics, attorney misconduct and legal malpractice. She is currently Corporation Counsel for the City of New Haven – Office of Corporation Counsel.

Pat has been active in her home in New Haven, having served for 9 years on the City Plan Commission, and has been chair of the New Haven Board of Zoning Appeals since 2013. She is fluent in Spanish. She has been an adjunct professor at the Quinnipiac University School of Law since 1997, where she has taught legal skills, Introduction to Representing Clients, and Lawyers Professional Responsibility. She is actively involved in the law schools International Human Rights Law Society and has accompanied the group on its annual service trip to Nicaragua in 2012 and 2014.

Frances Mickelson-Dera, Connecticut Statewide Grievance Committee, Judicial Branch

**Frances Mickelson-Dera** began her legal career as Temporary Assistant Clerk, Caseflow at Hartford Superior Court. She then went into private practice at David T. Chase Enterprises in Hartford, CT as Corporate Litigation Counsel. In October 2000 she joined the Statewide Grievance Committee as Assistant Bar Counsel and First Assistant Bar Counsel in July 2007.
Attorney Mickelson-Dera administers the random audit program and conducts all investigations of overdrafts to IOLTA accounts. In addition, she performs extensive audits at the behest of the Statewide Grievance Committee, the Office of the Chief Disciplinary Counsel and the Courts.

Attorney Mickelson-Dera attended the University of West Florida with a BA in Studio Art and a BA in Education, graduating Cum Laude in 1982. She then went on to graduate from Western New England School of Law.

Suzanne B. Sutton, Cohen & Wolf PC

Suzanne B. Sutton serves as Of Counsel to Cohen and Wolf PC and is a resident of the firm’s Bridgeport office. Ms. Sutton has extensive experience in attorney discipline matters and bankruptcy law. She is a member of the firm’s Legal Ethics, Litigation and Bankruptcy Groups.

Prior to joining Cohen and Wolf PC, Ms. Sutton spent approximately nine years at the Office of Chief Disciplinary Counsel and was appointed First Assistant Chief Disciplinary Counsel. As a disciplinary counsel she investigated, negotiated and prosecuted all matters of grievance complaints and unauthorized practice of law issues. Her experience as Assistant Chief Disciplinary Counsel is reflected in a significant number of Superior Court, Appellate Court, Supreme Court and grievance panel decisions. Her practice now focusses on defending attorneys in the area of attorney discipline and professional malpractice. She also serves as an expert witness in the area of attorney discipline.

In addition to grievance matters, Ms. Sutton has extensive experience in commercial law and bankruptcy. She has represented individuals and businesses in Chapter 7, 13 and 11 cases and has served as a Chapter 7 Panel Trustee for the District of Connecticut.

Ms. Sutton is a member of the Connecticut Bar Association, and is the Vice Chair of the Professional Responsibility Section of the Connecticut bar Association, as well as a member of the Commercial Law and Bankruptcy Section of the Connecticut Bar Association. She often participates in legal ethics seminars for the Connecticut Bar Association and for individual County Bar Associations. Ms. Sutton is an adjunct legal ethics professor at the University of Hartford and she is a Justice of the Peace in the Town of Orange. She has served on the Town of Orange Inland Wetlands Commission and on the Board of the Orange Hills Women’s Golf Association.

Ms. Sutton received her B.A. in 1985 from the University of Connecticut and her J.D. from Quinnipiac University School of Law in 1988 where she served as a Law Review editor and was a published contributor. She is admitted to practice in the State of Connecticut and in the United States District Court District of Connecticut.
LEGAL ETHICS: MAINTAINING IOLTA & LAW OFFICE MANAGEMENT BEST PRACTICES

Prepared for the Connecticut Bar Association
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October 28, 2020
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RULE 1.15
SAFEKEEPING OF PROPERTY
WHAT IS AN IOLTA?
IOLTA funds are NOT a Poker Pot
More like individual, segregated sub-accounts
EXAMPLE

- TOTAL IOLTA FUNDS $100,000.00
  - Client A $ 5,000.00
  - Client B $ 10,000.00
  - Client C $ 50,000.00
  - Client D $ 20,000.00
  - Client E $ 14,500.00
  - Cushion for bank fees (non client $) $ 500.00

TOTAL $100,000.00
RULE 1.15(a)(5) Safekeeping Property

“IOLTA” – “an interest bearing account established by a lawyer or law firm for client funds at an eligible institution from which funds may be withdrawn upon request by the depositor without delay.”
RULE 1.15(a)

- Money or property of clients or third persons that is in a lawyer’s possession in connection with representation must be separate from a lawyer’s own property.
- The account must be maintained in the state where the lawyer’s office is situated.
- The property must be identified – and appropriately safeguarded.
- Complete records must be kept.
- Records must be preserved for a period of 7 years after the termination of representation.
- Register account as part of annual registration (or update as necessary).
WHERE DO I OPEN AN IOLTA ACCOUNT?
RULE 1.15(i)

An IOLTA must be established only at an eligible institution.

Practice Tip: CT Bar Foundation keeps a list of qualifying institutions.
RULE 1.15(c)

Lawyer may deposit their own funds…for the sole purpose of paying bank service charges…but only in an amount necessary for those purposes.
RULE 1.15(d)

Absent a written fee 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 and expenses incurred.
RULE 1.15(e)

PROMPT notification to client or third person when funds have been received.
IOLTA RECORD KEEPING

WHAT RECORDS SHOULD BE KEPT?
RULE 1.15(j)

Outlines which records must keep for a period of 7 years after termination of the representation.
Rule 1.15(j)(1)-(10)

1. Receipt & disbursement journals showing a record of all deposits and withdrawals for each client;
2. Client ledgers;
3. Retainer and compensation agreement (see Rule 1.5);
4. Accountings to each client showing disbursements;
5. Copies of bills for legal fees and expenses;
6. Copies of records showing disbursements;
7. Actual or electronic copies of checkbook registers, bank statements, records of deposits, pre-numbered canceled checks, and substitute checks;
8. Copies of all electronic transfers;
9. Monthly trial balances & at least quarterly reconciliations; and
10. Copies of those portions of the client files which are reasonably related to the client trust account transaction.
BEST PRACTICE TIPS

• Learn basic accounting principles.
• Get a bookkeeper if you need one.
• Store IOLTA checks and bank statements in a secure place.
• Limit access to IOLTA checks.
• Limit authorized signatories.
• Make backup copies of documents.
Example Client A

Client A

Retainer $5,000.00
20 hours @ $250 p/h ($5,000.00)
Total Funds $ 0.00

• Copy of retainer agreement;
• Copy of deposit slip (evidence of deposit);
• Copy of legal billing statement;
• Copy of check for payment to firm (evidence of payment);
• Copy of client accounting; AND
• Copy of close out letter (BONUS! End the representation in writing).
Example Client C

Client C Running Balance

Retainer $100,000.00

Costs

Marshal Service Fee (Ms. Marshal) $ 300.00
Filing Fee (CT Judicial Branch) $ 475.00

Legal Fees

Legal Fees (Payment to Firm) $ 49,225.00

TOTAL FUNDS $ 50,000.00

What documents are needed to substantiate Client C IOLTA Funds?
Example Client C Cont.

- Copy of retainer agreement;
- Copy of deposit slip (or evidence of payment of retainer);
- Copy of marshal service bill & copy of evidence of payment;
- Evidence of filing & copy of evidence of payment of filing fee;
- Legal billing statement; and
- Copy of running ledger balance for Client C.
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.
Practice Book Rules

P.B. 2-27 – Attorney Registration

Update registration every year

Remember to update IOLTA account information

Delete dormant or closed accounts
P.B. 2-28 –
Overdraft notifications

- Bank is required to notify SGC of overdraft for insufficient funds within 7 business days.

- **Note** – Rule distinguishes between “insufficient funds” and “uncollected funds” but bank will report overdraft for either reason.

- Don’t depend on the teller’s statement that funds are available.

- Keep track of your own funds in IOLTA account.

- Failure to cooperate with audit will get you suspended.
Rule 1.5 – Fees and Fee Agreements

Rule 1.15(d) Fees paid in advance must be kept in IOLTA account until earned; rule permits fees to go into other account if there is written agreement with client otherwise.

Best to include in fee agreement

Beware – Rule does not contain exemption from requirement that fees must be held until earned.

In flat fee cases, fee agreement should state hourly rate in case you are discharged. You should keep rough track on time on the file so you can calculate earned fee.
Rule 1.16 - Termination of representation

- Must provide an accounting of client funds upon discharge or termination.
- Refund any unearned fee paid in advance.
Rule 5.1 - Duty to Supervise

Lawyer with managerial authority has obligation to ensure that firm has in effect measures giving reasonable assurance that all lawyers follow Rules of Professional Conduct. Vicarious liability for misconduct of subordinate if lawyer knew of or failed to avoid or mitigate misconduct.
Rule 5.3 – Duty to Supervise Non-Lawyer Assistance

Includes duty to supervise staff charged with maintaining IOLTA account, whether regular staff or outside contractor.

- Responsibility is not avoided by assigning the job to staff or outside contractor.
- SGC maintains a list of accountants and bookkeepers with particular expertise in IOLTA accounting.
- **Beware** - A CPA does not guarantee competence in IOLTA accounting.
Rule 1.15 (f) Disputed claims

- Funds are disputed if two or more persons claim an interest in the same funds.
- Property must be kept separate from lawyer’s property until dispute is resolved.
- Lawyer cannot unilaterally decide dispute.
- Funds not in dispute may be disbursed.
- Resolution of dispute should be memorialized in writing.

Resources - CBA Fee Dispute Resolution Program, Interpleader action in Superior Court, CGS Sec. 52-484, PB Sec. 23-43, 23-44;
Rule 1.15 (g)  
Third Party Claims

“Interest” for purposes of this rule, is a legal interest, such as a civil judgment, lien, or letter of protection, not the mere assertion of a claim.

If the lawyer is unclear as to whether a claim amounts to a legal interest, the lawyer must make a written request to the third party or its agent for information needed so the lawyer can determine the nature of the claim. If the lawyer does not receive a response within 60 days, the lawyer may distribute the funds.

Resource – Read the Commentary on Subsection (f).
CBA Informal Opinions

- Informal Opinion 17-02 – Discusses obligations under Rule 1.15(g);
- Informal Opinion 16-01 – Discusses lawyer’s obligation to protect fee of discharged attorney.
Informal Opinion 17-02

A Lawyer’s Obligations When Third Parties Assert Claims to Property in the Lawyer’s Possession (Rule 1.15: The Safe Keeping of Property)

The Committee takes this opportunity to address the recently amended Rule 1.15 and the safekeeping of property in the lawyer’s possession.

Attorneys, of course, have an unambiguous obligation to protect client funds in their possession, and violation of that obligation will generally lead to a heavy disciplinary penalty. But there are also circumstances in which an attorney will have an obligation to safeguard funds or other property that come into the lawyer’s possession where a third party, and not just the client, has an interest. In regard to such obligations, Rule 1.15 (The Safe Keeping of Property) provides, in pertinent part, as follows:

- (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.¹

The analysis of whether an attorney must continue to hold funds or other property in his or her possession when a client and a third person each claim an interest begins with the threshold question of whether the third party has an “interest” sufficient to trigger the obligation to hold the funds.² If the attorney determines that the third party has an interest within the meaning of the Rule, subsection (f) dictates that the attorney hold that portion of the funds or property subject to the dispute until the dispute is resolved.

The Committee has previously identified four specific situations in which an attorney is required to hold funds or property in which a third party claims an interest: when

(1) the lawyer knows of a valid judgment concerning the disposition of the property;
(2) the lawyer knows of a valid statutory or judgment lien against the property;
(3) 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;

or

(4) the lawyer knows of a consensual security agreement or assignment concerning the property.

See Informal Opinions 99-06, 99-39, 01-05, 01-08, and 02-02.

The Official Commentary to Rule 1.15 now reflects similar limitations on what constitutes a valid interest within the meaning of the Rule.

¹ Subsection (g), discussed below, is a recent addition to Rule 1.15.

² Often, a Rule 1.15(b) question will require a threshold determination of what legal right, if any, a third party has to property, often a mixed question of law and ethics. See e.g. Silver v. Statewide Grievance Committee, 242 Conn. 186 (1997) (dismissing appeal where certification improvidently granted). In Silver, Justices Berdon and McDonald concurred in the decision, but wrote separately to emphasize their disapproval of the Statewide Grievance Committee attempting to use attorney discipline “for the benefit of . . . insurance companies [claiming lien rights in personal injury settlement recoveries and] to wield the grievance process in order to accomplish what could not be accomplished through law or equity” because the claimed liens were not mature or otherwise judicially enforceable. Id. at 199-200.
The requirement that an attorney segregate and retain client funds to which a third party asserts a claim sometimes leaves attorneys in the difficult position of having to decide between compliance with the Rule 1.15 duty to safeguard funds on behalf of a third party and compliance with a client’s demand to be paid what the client believes he or she is entitled to receive. The addition of subsection (g) to Rule 1.15 (in effect as of January 1, 2016) was intended to address this dilemma.

First, subsection (g) codifies within the Rule itself that “the mere assertion of a claim by a third party” is not enough to establish an “interest” within the meaning of the Rule. Second, subsection (g) provides that an attorney faced with a third party’s claim to have an interest in funds held by the attorney may make a written request for documentation to substantiate the claimed “interest.” If the attorney has not received such substantiation within 60 days of making the written request, he or she may distribute to the client the funds claimed to be subject to the dispute, and may do so without fear of being in violation of the Rule.

The comments to Rule 1.15 provide that: “a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.” This is not to say that an attorney may never resolve a dispute. As the Committee has previously written: “It is important that the lawyer not decide who should receive the funds unless both the client and the physician (or other third party), have agreed that he may do so and the lawyer has determined that he can ethically do so under Rule 1.7 and other applicable rules.” Informal Opinion 01-11 (emphasis added).

If, however, an attorney determines that a third party has a valid interest in the property and the dispute cannot be resolved through the attorney’s reasonable efforts, the attorney should inform the third party and the client, in writing, that: (1) the attorney may not unilaterally assume to arbitrate the dispute between the client and the third party; (2) the funds will be held in an interest bearing account until the dispute is resolved; and (3) the funds money will remain there until the attorney receives a copy of a judgment or arbitration decision in favor of either party or a signed stipulation or agreement.

Rule 1.15 also expressly addresses, in subsection (f), exactly what the attorney is obligated to segregate and safeguard: only that portion of the property that is subject to the dispute. For example, in an opinion concerning a question about a fee dispute, the Committee opined that the attorney was obligated to hold only the portion in dispute and not the entire amount of the fee. Informal Opinion 02-02.

Rule 1.15 does not, however, provide a basis for civil enforcement of a claimed right to property held by an attorney, nor may it properly be invoked in defense of one attorney’s claim against another for recovery of a fee the attorney earned. As our Supreme Court has noted, the rules of conduct are to “‘provide guidance and structure for regulating conduct through disciplinary agencies. They are not designed to be a basis for civil liability. Furthermore, the

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3 Attorneys should keep in mind that duties arising from other law may impose additional obligations on a lawyer in handling other people’s money. See Rule 1.15, Official Commentary (“The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services.”).
purpose of the Rules can be subverted when they are invoked by opposing parties as procedural weapons." Gagne v. Vaccaro, 255 Conn. 390, 403 (2001) (quoting Scope section of the Rules of Professional Conduct).

THE COMMITTEE ON PROFESSIONAL ETHICS

BY

Marcy Tench Stovall, Chair
INFORMAL OPINION 16-01

Duty to Safeguard Discharged Attorney’s Fee

In the course of civil litigation, a lawyer’s handling of the client’s employment discrimination case resulted in discovery sanctions that limited the client’s damages claims. After the client hired new counsel, the court dismissed the action, in large part because of the discovery issues. Successor counsel refiled the action under the Accidental Failure of Suit Statute, and was able to obtain a settlement for the client.

Predecessor counsel has asserted a lien for a substantial portion of the recovery. The client, however, is considering bringing a legal malpractice claim against her former attorney for the discovery misconduct that, she claims, lowered the settlement value of her claim.

The questions presented are: (1) whether successor counsel has an obligation to safeguard the settlement funds in view of the claimed lien from the prior attorney; (2) whether successor counsel must continue to hold the funds while the malpractice claim is being determined; and (3) whether any portion of the proceeds may be disbursed to the client or the current attorney? In responding to these inquiries, the Committee assumes the existence of an appropriate engagement agreement between the prior attorney and the client.

The short answers are: (1) the lawyer holding the funds has an obligation to safeguard the portion of the funds representing the discharged attorney’s fee claim; and (2) the lawyer holding the funds may not take it upon himself to determine the proper distribution of the funds; and (3) the lawyer may disburse any portion of the funds as to which there are no disputed interests.

Duty to Safeguard

Rule 1.15(f) (Safeguarding Property) governs this situation. That Rule provides as follows:

(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.

A lawyer's common law equitable lien on property recovered by the client, usually called a charging lien, qualifies as a "legal interest" subject to protection under Rule 1.15. See Informal Opinion 02-02 (Duty to Protect Discharged Counsel's Fees in Certain Circumstances); Official Commentary to Rule 1.15 (providing examples of interests subject to protection under the Rule). Accordingly, to the extent the lawyer holding the funds is on notice of the former attorney’s assertion of a charging lien against the funds, the lawyer is obligated to "segregate and safeguard" the funds that are subject to the competing interests of the client and/or successor counsel. Rule 1.15, Official Commentary (where lawyer has a “duty under applicable law to protect such third-party interests against wrongful interference by the client . . . the lawyer must refuse to surrender the property to the client until the competing interests are resolved”).

The lawyer may, however, disburse any portion of the funds as to which there are no competing interests.

**The Lawyer May Not Decide How the Funds Are to Be Distributed**

The Official Commentary Rule 1.15 provides that where there are disputed or conflicting interests in property held subject to the Rule, “[a] lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.” Accordingly, the lawyer holding the funds may not undertake to determine respective rights to the settlement funds, nor may the lawyer make any unilateral determination of the reasonableness of the discharged attorney’s fee or the extent, if any, to which the client’s malpractice claim may act as an offset to the first lawyer’s fee claim. The lawyer may, and probably should, encourage the client and her former attorney to negotiate a resolution. The Committee takes no position on the best mechanism for resolving such disputes, but notes that the Official Commentary suggests that “the lawyer may file an action to have a court resolve the dispute.”

THE COMMITTEE ON PROFESSIONAL ETHICS

BY [Signature]

Marcy Tench Stovall, Chair
INTERPLEADER – Revised 07/01/2018

An interpleader is an equitable action brought when any person has, or is alleged to have, any money or other property in his or her possession that is claimed by two or more persons. Either the possessor of the money or property or any of the persons claiming an interest in it, may bring a complaint (bill of interpleader). (Section 52-484 of the Connecticut General Statutes and Section 23-43 of the Connecticut Practice Book and Section 23-44 of the Connecticut Practice Book).

Documents to be filed:

1. An original writ of summons and complaint (bill of interpleader)

Note: This type of action must be filed electronically in accordance with the E-Services Procedures and Technical Standards.

Note: The complaint must:

- allege only facts that show that there are adverse claims to the fund or property (Section 23-43 of the Connecticut Practice Book),
- join all parties who claim to be entitled to or have an interest in such money or other property, (Section 52-484 of the Connecticut General Statutes) and
- claim an allowance for counsel fees and disbursements, if any are sought. (Section 52-484 of the Connecticut General Statutes).

Note: The money in dispute is not deposited with the clerk until an interlocutory judgment of interpleader is entered and the deposit of the funds is ordered by the court.

2. A proper officer’s return of service
3. The current entry fee is $360.

Note on subsequent proceedings:

- Once all parties have filed responses to the Plaintiff’s complaint seeking a decree of interpleader, a Motion for Interlocutory Judgment of Interpleader must be filed and scheduled on the short calendar.
- The Motion for Interlocutory Judgment ordering the parties to interplead by stating their claims to the funds or property will be heard.
- Once the Motion for Interlocutory Judgment is entered, the parties must file waivers, statements of claim, or responses to the claims or responses of the other parties. Parties who do not file a claim or response will be defaulted.
- The case will then proceed to disposition as a regular civil case. (Section 23-44 of the Connecticut Practice Book)
Suzanne B. Sutton
s.sutton@cohenandwolf.com

IOLTA Account Management Seminar

Not just a law firm. Your law firm.
Yikes! How did I get chosen and how much time do I have to prepare?!

- Truly random nature
- Approximately 10 days
Can I plead the Fifth?

NO!

Disciplinary Counsel v. Benson
Snaider
Is IOLTA Account Information privileged?

Not necessarily

RPC 1.6
Can I keep overages or unaccounted money?

Not usually 😞
What Happens if I get Grieved?

• 1. ANSWER ! (Rule 8.1)
• 2. Contact your carrier.
• 3. Have an objective person review.
• 4. Be detailed and include any documentation supporting your response.
What Happens If Probable cause Is Found?

• 1. A hearing on the merits with the Office of Chief Disciplinary Counsel.
• 2. Misconduct must be proven by clear and convincing evidence.
• 3. Have witnesses ready.
• 4. 2-37 discipline after hearing.
• 5. Presentment ordered after hearing.
Rule 1.5 (b)/ Rule 1.2
Scope of Representation

- WRITTEN retainer agreement
- EXPLAIN the WRITTEN retainer agreement
- Who’s the boss? Objectives of representation; means to an end.
- As a real estate attorney do I still need a retainer agreement?
Misappropriation of Client Funds

What is misappropriation?

What about just really poor bookkeeping is that misappropriation?

Staff misappropriations?

What is the discipline difference between a violation under 1.15 and a violation under 2-47?
Predecessor counsel has asserted a lien for a substantial portion of the recovery. The client, however, is considering bringing a legal malpractice claim against her former attorney for the discovery misconduct that, she claims, lowered the settlement value of her claim.

The questions presented are: (1) whether successor counsel has an obligation to safeguard the settlement funds in view of the claimed lien from the prior attorney; (2) whether successor counsel must continue to hold the funds while the malpractice claim is being determined; and (3) whether any portion of the proceeds may be disbursed to the client or the current attorney?

The short answers are: (1) the lawyer holding the funds has an obligation to safeguard the portion of the funds representing the discharged attorney's fee claim; and (2) the lawyer holding the funds may not take it upon himself to determine the proper distribution of the funds; and (3) the lawyer may disburse any portion of the funds as to which there are no disputed interests.
Informal 12-01.
In representing personal clients you regularly face situations in which a tortfeasor carries liability coverage "inadequate" to pay the full amount of hospital or other medical bills incurred in treatment of the client's injuries and also compensate your client for the injuries sustained because you find "the hospitals are frequently unwilling to significantly compromise their fees." In framing the issues, you ask whether a pro rata allocation of the "net" settlement (among the plaintiff and all the medical providers after payment of attorney's fees) would be fair, noting that in a specific matter on which you are presently engaged, your client has "insisted that the hospital not be paid or be paid less than its claimed statutory Connecticut General Statute §49-73 lien because the hospital will not compromise its charges in an amount satisfactory to [your] client." In this specific instance, both you and the tortfeasor's carrier have received formal notice of the hospital's statutory lien.
You would have an obligation to safeguard the settlement proceeds until the parties have come to an agreement on the amount of the hospital's lien.

You also have obligations under Rules 1.1 and 1.3 to timely advise your client both of the existence and reach of the statutory hospital lien, to determine that the lien amount represents the actual cost of the services and materials supplied in treatment of the client and for which the hospital seeks payment of its lien in compliance with Conn. Gen. Stat. §49-73(a) and, in those instances in which you judge there to be inadequate funds available to satisfy the hospital's lien, the bills of other medical providers and also fully compensate the client, the further obligation to make a good faith attempt to negotiate a reduction of the hospital lien with a view to satisfying both the hospital and your client, understanding that the hospital has no obligation to accept less than its full lien amount.
Does reimbursement help?

2019 decision: Random audit found that atty withdrew $30,000 from his IOLTA account in excess of what he had earned. Deposited back money just before the audit.

- Remorse, restitution and letters to payees.
- 18 months without the need to go through reinstatement.

Different case: Reimbursement of funds with no remorse = 2 years.

Page 59 of 88
Is it really an escrow account?

• Disputed payment placed into an “escrow” account which was actually a checking account in he and his parent’s name. CV 17-6018377

• Disputed payment kept in a “escrow” account actually attorney’s operating account.
IOLTA ACCOUNT MANAGEMENT AND YOUR OBLIGATIONS TO SAFEGUARD CLIENTS' FUNDS

It’s Not Your Money
To Borrow
To Loan or
To Use
INTEREST ON LAWYERS TRUST ACCOUNTS

• Purpose of Establishing the IOLTA Program
• Funds held therein are held in a fiduciary capacity
• Funds must be safeguarded at all times
WHAT ARE MY OBLIGATIONS TO CLIENTS OR THIRD PERSONS FOR WHOM I AM HOLDING FUNDS

• Safeguard fund held at all times
• Maintain funds held in an IOLTA, escrow or other trust account
• Promptly notify a client or known interest-holder that you are holding their funds
• Promptly deliver funds to the appropriate interest holder
• Report all IOLTA account information to the SGC
MORE OBLIGATIONS TO CLIENTS OR THIRD PERSONS FOR WHOM I AM HOLDING FUNDS

• Participate in the IOLTA program if holding funds of more than one client
• Safeguard disputed funds
• Maintain all records as enumerated in Rule 1.15 (j) of the Rules of Professional Conduct for 7 years
WHAT IS THE DIFFERENCE BETWEEN A TRUST ACCOUNT AND AN IOLTA ACCOUNT

• Trust Account
• IOLTA Account
• Connecticut Bar Foundation
• Eligible Institution versus Approved Institution
WAYS THE COURT PROTECTS CLIENTS’ FUNDS

• Rule 1.15 of the Rules of Professional Conduct – Safekeeping Property
• Practice Book Section 2-27 – Client Funds, Registration and the Audit Program
• Practice Book Section 2-28 – Overdraft Notification
• Practice Book Section 2-47A – Mandatory Disbarment/Knowing Misappropriation
WHAT RULE 1.15 OF THE RULES OF PROFESSIONAL CONDUCT REQUIRES

• An IOLTA must be utilized when holding the funds of more than one client
• Funds must be held in a “eligible institution”
• Funds may not be “co-mingled”
• Records required by the rule must be maintained for 7 years
• Funds may only be taken as fees when earned
• Must notify interest-holder of receipt of funds
• Must remit funds to the interest-holder promptly
WHAT ELSE RULE 1.15 OF THE RULES OF PROFESSIONAL CONDUCT REQUIRES

• Must provide a full accounting of funds
• Must hold disputed funds in the IOLTA account until resolution by a third party
• Must perform a “cost-benefit analysis” on funds that are a significant amount and are expected to be held for a significant amount to time
• Only a lawyer or someone under the direct supervision of the lawyer may be a signatory
• Deposits must be made with sufficient detail
• Withdrawals may not be made of CASH nor may checks be made payable to CASH
WHAT RECORDS MUST I MAINTAIN FOR MY IOLTA ACCOUNT?

• Receipt and disbursement journal or general ledger
• Individual client ledgers
• Copies of Retainer Agreements
• Copies of accountings done for a client or third person
• Copies of billing invoices
• Bank statements, deposit receipts, checks, wire transfer orders
• Client totals or trial balances
• Quarterly Reconciliations
• “Copies of those portions of client files that are reasonably related to the client trust account transactions”
WHAT DOES THE PRACTICE BOOK REQUIRE?

• Funds that are held in any fiduciary capacity shall be deposited into accounts that are clearly identified as “trust” or “escrow”
• All IOLTA accounts must be registered with the SGC
• Funds must be deposited into an “approved Institution”
• Banks must report any overdraft on an IOLTA account except:
  * Deposit made within one business day sufficient to cover the check  OR
  * The instrument is presented against uncollected funds and PAID
THE RANDOM AUDIT PROGRAM – WHY??

• Established due to the increase in defalcations by attorneys
• Deterrent
• Educational Opportunity as an Unplanned Benefit
THE RANDOM AUDIT PROGRAM – WHO????

• Any attorney who has registered an IOLTA account
THE RANDOM AUDIT PROGRAM – WHEN????

• Random Selection
• Ten days from the date the account is selected
THE RANDOM AUDIT PROGRAM – WHERE???

• At your law office
• Via U.S. Mail if home office or out of state
THE RANDOM AUDIT PROGRAM – HOW????

• Selection of your IOLTA account
• Notice, option letter and questionnaire
• Prepare copies as request before the audit team arrives
• Call with any questions
• The audit
• The EXIT INTERVIEW
THE RANDOM AUDIT PROGRAM – THE REPORT CARD

• Identifies all Errors and Omissions
• Commentary
• Directives
• Compliance
POSSIBLE OUTCOMES OF A RANDOM AUDIT

• Full compliance and file is closed
• Craft long term mentoring
• Retain a bookkeeper or accountant
• Close the old IOLTA and open a new IOLTA
• Refer to a Grievance panel
• Refer to the OCDC
COMMON ERRORS AND OMISSIONS

• Uncashed checks
• Stale client balances
• Three-way reconciliations not performed
• No running balance on the general ledger
• No running balance on the individual client ledgers
• No individual client ledgers at all
• And the beat goes on....
HOW TO PERFORM A THREE-WAY RECONCILIATION

• What you will need
  * The most recent bank statement
  * List of Client totals held
  * The general ledger
  * List of outstanding checks
## GENERAL LEDGER

<table>
<thead>
<tr>
<th>Date</th>
<th>Check Number</th>
<th>Client / Memo</th>
<th>Receipt</th>
<th>Disbursement</th>
<th>Running Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/1/13</td>
<td>01</td>
<td>Sara Doe</td>
<td>350.00</td>
<td></td>
<td>$89,516.05</td>
</tr>
<tr>
<td>10/1/13</td>
<td>02</td>
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<td></td>
<td>$89,466.96</td>
</tr>
<tr>
<td>10/16/13</td>
<td>04</td>
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<td>(2000.00)</td>
<td></td>
<td>$84,466.96</td>
</tr>
<tr>
<td>10/18/13</td>
<td>05</td>
<td>Sara Smith</td>
<td>2,600.00</td>
<td></td>
<td>$81,866.96</td>
</tr>
<tr>
<td>10/31/13</td>
<td>INTEREST</td>
<td></td>
<td>36.17</td>
<td></td>
<td>$81,703.13</td>
</tr>
<tr>
<td>11/1/13</td>
<td>INTEREST</td>
<td></td>
<td>36.17</td>
<td></td>
<td>$81,666.96</td>
</tr>
<tr>
<td>11/14/13</td>
<td>06</td>
<td>John Doe</td>
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<td></td>
<td>$79,545.96</td>
</tr>
<tr>
<td>12/2/13</td>
<td>08</td>
<td>INTEREST</td>
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<td></td>
<td>$77,179.03</td>
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<tr>
<td>12/23/13</td>
<td>09</td>
<td>Sara Smith</td>
<td>10,000.00</td>
<td></td>
<td>$67,145.96</td>
</tr>
<tr>
<td>12/30/13</td>
<td>10</td>
<td>DEPOSIT</td>
<td>Sara Smith</td>
<td>15,000.00</td>
<td>$82,145.96</td>
</tr>
<tr>
<td>2/10/13</td>
<td>John Doe</td>
<td>Client Name</td>
<td>8.00</td>
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<td>$67,166.70</td>
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<tr>
<td>2/14</td>
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<td>3218</td>
<td></td>
<td>$67,158.96</td>
</tr>
<tr>
<td>1/10/14</td>
<td>DEPOSIT</td>
<td>Client Name</td>
<td>56,685.55</td>
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<td>$123,852.25</td>
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<tr>
<td>1/16/14</td>
<td>12</td>
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<td>$120,844.25</td>
</tr>
<tr>
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<td>$120,872.1</td>
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<tr>
<td>2/18/14</td>
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<td>John Doe</td>
<td>15,000.00</td>
<td></td>
<td>$105,844.25</td>
</tr>
<tr>
<td>2/20/14</td>
<td>DEBIT</td>
<td>Department of</td>
<td></td>
<td></td>
<td>$100,344.25</td>
</tr>
<tr>
<td>2/20/14</td>
<td>SCII</td>
<td>Revenue Services</td>
<td>17,994.48</td>
<td></td>
<td>$79,849.77</td>
</tr>
</tbody>
</table>
CLIENT TOTALS

- CLIENT TOTALS HELD ON DECEMBER 31, 2013

<table>
<thead>
<tr>
<th>Client Name</th>
<th>Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>SMITH</td>
<td>$25.00</td>
</tr>
<tr>
<td>JONES</td>
<td>$145.00</td>
</tr>
<tr>
<td>DOE, JOHN</td>
<td>$79,545.96</td>
</tr>
<tr>
<td>DOE, JANE</td>
<td>$0.01</td>
</tr>
<tr>
<td>WHITE</td>
<td>$110.00</td>
</tr>
<tr>
<td>BLACK</td>
<td>$8.00</td>
</tr>
<tr>
<td>ADAMS</td>
<td>$11.17</td>
</tr>
<tr>
<td>EDWARDS</td>
<td>$4.63</td>
</tr>
<tr>
<td>TOTAL</td>
<td>$79,849.77</td>
</tr>
</tbody>
</table>
## INDIVIDUAL CLIENT LEDGER

<table>
<thead>
<tr>
<th>Date</th>
<th>Check Number</th>
<th>Payee</th>
<th>Client Memo</th>
<th>Receipt</th>
<th>Disbursement</th>
<th>Running Balance</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/1/13</td>
<td></td>
<td>Beginning Balance</td>
<td></td>
<td>89,866.05</td>
<td></td>
<td>89,866.05</td>
</tr>
<tr>
<td>1/1/13</td>
<td>01</td>
<td>Jane Doe</td>
<td>John Doe</td>
<td>(350.00)</td>
<td></td>
<td>89,466.96</td>
</tr>
<tr>
<td>1/1/13</td>
<td>02</td>
<td>Title Company</td>
<td></td>
<td>(49109)</td>
<td></td>
<td>84,266.96</td>
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<tr>
<td>1/4/13</td>
<td>03</td>
<td>John Doe</td>
<td>John Doe</td>
<td></td>
<td>(2,600.00)</td>
<td>81,666.96</td>
</tr>
<tr>
<td>1/6/13</td>
<td>04</td>
<td>Tax Collector</td>
<td>John Doe</td>
<td></td>
<td>(2,600.00)</td>
<td>79,545.96</td>
</tr>
<tr>
<td>1/8/13</td>
<td>05</td>
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<td>John Doe</td>
<td></td>
<td>(2,600.00)</td>
<td>79,545.96</td>
</tr>
<tr>
<td>1/1/13</td>
<td></td>
<td>DEPOSIT</td>
<td>John Doe</td>
<td></td>
<td></td>
<td>81,703.13</td>
</tr>
<tr>
<td>1/1/13</td>
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<td>INTEREST</td>
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<td>(36.17)</td>
<td></td>
<td>81,666.96</td>
</tr>
<tr>
<td>1/14/13</td>
<td>06</td>
<td>Town Clerk</td>
<td>John Doe</td>
<td></td>
<td>(1211100)</td>
<td>79,545.96</td>
</tr>
</tbody>
</table>

*Rule 11150(2) requires that the individual client ledger shows 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.*
THREE-WAY RECONCILIATION

• Bank Balance on February 28, 2014........$85,949.77
• Minus Outstanding Checks .......................$ 6100.00
    $79,849.77
• General Ledger Balance $79,849.77
• Client Totals $79,849.77
SUCCESS

• IF THE THREE FIGURES MATCH
• THEN YOU HAVE RECONCILED
• YOUR IOLTA ACCOUNT!!!!!
FRAUD ALERT!!!!

• EMAIL SCAMS
✓ Hacking your email account
✓ Soliciting Legal Services
✓ Fifty Shades of Gray
✓ If it sounds too good to be true it likely is too good to be true!

• EMPLOYEE EMBEZZLEMENT
• FRAUDULENT CHECKS
AVOIDING THE TRAPS

• Attorney Oversight on a Regular Basis
• Two signatures required on checks over a set amount
• TRUST but verify
• Due Diligence
• Utilize Positive Pay
THINK ABOUT IT

• Failure to protect your clients’ funds held in your IOLTA implicates Rule 1.15 of the Rules of Professional Conduct

• Failure to Report Misuse of your clients’ funds account implicates Rule 8.3 of the Rules of Professional Conduct

• In reporting misappropriation, duties of client confidentiality may be implicated
REPORTING OR RESEARCHING FRAUD

• [http://lawyerscam.blogspot.com](http://lawyerscam.blogspot.com)

• [www.ftc.gov](http://www.ftc.gov)

• [www.icsgov](http://www.icsgov)

• [www.fraud.org](http://www.fraud.org)