

RULE 1.15: GENERAL DUTIES REGARDING SAFEKEEPING PROPERTY

(a) A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer's own purposes without authorization.

(b) A lawyer must hold funds or property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own funds or property. All such funds must be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent of the client or third person. A client trust account means an IOLTA account as defined in Rule 1.15C(b), or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in Rule 1.15C(c). Other, tangible property must be identified as such and appropriately safeguarded. Each client trust account must be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary care.

(c) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges or minimum balance requirements on that account, but only in an amount necessary for that purpose.

(d) A lawyer must deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses are incurred. A lawyer must deposit in the lawyer's general account or other account belonging to the lawyer funds received as a fixed fee, an engagement retainer, or a special purpose retainer, as described in Rule 1.5.

(e) Upon receiving funds or property in which a client or third person has an interest, a lawyer must 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 must promptly deliver to the client or third person any funds or property that the client or third person is entitled to receive. Upon request by the client or third person, a lawyer must promptly render a full accounting regarding such funds or property.

(f) When in the course of representation a lawyer is in possession of funds or property in which two or more persons (one of whom may be the lawyer) claim interests, the funds or property must be kept separate by the lawyer until the dispute is resolved. The lawyer must promptly distribute all portions of the funds or property as to which the interests are not in dispute.

(g) Withdrawals from a client trust account must be made only by check payable to a named payee or by electronic transfer and not by cash. No check may be made payable to "cash." No withdrawal of cash may be made from a deposit to a client trust account or by automated teller or cash dispensing machine.

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015; amended Mar. 1, 2023, eff. July 1, 2023.

Comment

[1] An attorney's unauthorized use of another's funds is called conversion. The Illinois

Supreme Court has drawn a distinction between the common-law tort of conversion and the conduct by an attorney that warrants the imposition of discipline, noting that “[a] typical, although not necessarily exclusive, type of conversion by an attorney which warrants discipline involves the conversion of funds that have been deposited or received by an attorney for a specific purpose or for the use of another.” *In re Thebus*, 108 Ill. 2d 255, 264 (1985). Conversion of trust funds occurs when a lawyer uses those funds for a purpose other than that for which they were delivered. Conversion is typically proven when the client trust account is either overdrawn or when the lawyer allows the balance in the client trust account to become less than the sum total of all client and/or third person funds the lawyer is required to maintain in trust. *In re Ushijima*, 119 Ill. 2d 51, 58 (1987); *In re Cheronis*, 114 Ill. 2d 527 (1986).

[2] Funds of clients and third persons include amounts received by a lawyer to secure payment of legal fees and expenses and to be withdrawn by the lawyer only as fees are earned and expenses incurred; funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm; and funds in which two or more persons (one of whom may be the lawyer) claim interests.

[3] 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 monies, in one or more client trust accounts. Client trust accounts should be made identifiable through their designation as “client trust account” or “client funds account” or words of similar import indicating the fiduciary nature of the account. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[4] While normally it is impermissible to commingle the lawyer’s own funds with client funds, paragraph (c) provides that it is permissible when necessary to pay bank service charges or to meet minimum balance requirements on that account. The lawyer must keep accurate records regarding which part of the funds belong to the lawyer.

[5] A lawyer who receives funds or property by any means must take reasonable steps to safeguard and segregate client and third-person funds and property pursuant to Rule 1.15. Lawyers using an electronic payment method, including credit cards, ACH transfers (Automated Clearing House electronic funds transfers), and online payment systems, to accept the payment of client or third-person funds must take reasonable steps to ensure that the use of such a method does not result in any commingling with the funds of the lawyer, does not risk the loss of any client or third- person funds, and does not compromise the identity of any client or third-person funds. A lawyer also must take reasonable steps to ensure that client or third-person funds accepted through an electronic payment method are transferred immediately to an IOLTA account or non-IOLTA client trust account maintained by the lawyer.

[6] In addition to the steps described in Comment [5], lawyers have an obligation to make a reasonable investigation into the reliability, stability, and viability of an electronic payment method or system to determine whether the method or system takes appropriate measures to segregate, safeguard, and ensure the prompt transfer of client funds. Rule 1.1 governs a lawyer’s

duty to understand the benefits and risks of relevant technology. Rule 1.6 governs a lawyer's duty to maintain confidentiality of information relating to a representation.

[7] Paragraph (d) relates to legal fees and expenses that have been paid in advance. The types of fee agreements are described, and the reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.

[8] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client 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 must be promptly distributed. Specific guidance concerning client trust accounts is provided in the Client Trust Account Handbook published by the Illinois Attorney Registration and Disciplinary Commission and available on its website (www.iardc.org).

[9] Paragraph (f) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims 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.

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