

LAWYER TRUST ACCOUNTS: SELF AUDIT

AN OCDC CHECKLIST TO HELP LAWYERS REDUCE RISKS, MEET FIDUCIARY OBLIGATIONS, AND ASSURE COMPLIANCE WITH THE SUPREME COURT OF MISSOURI'S RULES OF PROFESSIONAL CONDUCT.

JULY 2021

1

SETTING UP IOLTA ACCOUNTS

- I have an IOLTA Trust Account at a financial institution deemed **eligible** by the Missouri Lawyer Trust Account Foundation and **approved** by the Missouri Supreme Court Advisory Committee. *Rule 4-1.145(a)(5); Rule 4-1.145(a)(2).*
- I have reported and updated my bank and account number on my **Annual Enrollment Statement** with the Supreme Court of Missouri. *Rule 4-1.15(h).*
- I don't have a trust account, but I am **exempt** because of a specific provision of Rule 1.15 (h); and, I have checked the appropriate box on my Annual Enrollment statement. *Rule 4-1.15(h).*
- My trust account is in a financial institution located in the **same state** as my law office. *Rule 4-1.15(h)(4).*

2

RECEIPTS & DEPOSITS

- Receipts are deposited daily and intact** into my trust account. I make no "split deposits." *Rule 4-1.15(a)(4) and Comment 4.*
- I immediately **notify my clients** (or third parties) when I receive funds on their behalf. *Rule 4-1.15(d).*
- For every receipt into my trust account, **my simultaneous records** include:
 - Payor identity
 - Reason for payment and reason for holding funds
 - Receipt date
 - Receipt to payor
 - Deposit receipt (bank record)
 - Client identity
 - Copy of check*Rule 4-1.15(a)(4) and Rule 4-1.15(d).*
- As soon as I receive** any of these funds, I deposit them into my trust account:
 - Court costs and client expenses
 - Settlement proceeds
 - Client or third-party funds
 - Advance fees and flat fees in excess of \$2,000.

2

RECEIPTS & DEPOSITS, CONTINUED

- I do not withdraw fees until earned. *Rule 4-1.15(c) and Rule 4-1.15 Comments 5 & 6.*
- I withdraw fees as soon as they are earned, in accord with a regular and reasonable billing cycle, and in most circumstances, within one month. *Rule 4-1.15(a).*
- I may deposit limited funds in my trust account for the sole purpose of paying known bank service charges. I maintain accurate up-to-date records of the amounts held and expended for bank fees. But, I do not deposit or hold additional funds in my trust account as a protection buffer against overdrafts or for any other reason. *Rule 4-1.15(b) & Rule 4-1.15, Comment 6.*

3

DISBURSEMENTS

- For every **payment** from my trust account, my **simultaneous records** include:
 - Client identity
 - Payor identity
 - Payment date
 - Reason for payment - with client reference
 - Copy of check
 - Entries in account journal and account ledger
 - Related records
 - Settlement sheet
 - Correspondence to client regarding payment
 - Correspondence to payee regarding payment
- I **never take cash withdrawals** or allow checks for "Cash" or "Bearer." *Rule 4-1.15(a)(5).*
- Before any disbursements** are made from my trust account, I confirm that:
 - I have reasonable cause to believe the funds deposited are both "collected" and "**good funds.**" *Rule 4-1.15(a)(6) and Rule 1.15 Comment 5.*
 - I have allowed a "**reasonable time**" to pass for the deposited funds to be actually collected and "good funds." *Rule 4-1.15(a)(6).* (*Rule 4-1.15 Comment 5* indicates that **10 days** is normally reasonable.)
 - I have verified the balance in the trust account.
- I have a written agreement with my bank that **no charges** will be assessed against my trust account for credit card transactions. *Rule 4-1.15.*

4

RECORDS

- At any time, I have the following trust account records completed and up-to-date:**
 - A **general journal** showing all deposits and withdrawals, identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursements;
 - A **ledger for each separate client** or beneficiary 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 payees;
 - **Fee agreements**, engagement letters, retainer agreements;

RECORDS, CONTINUED

- **Accountings** to clients or third persons showing the disbursement of funds to them or on their behalves;
- **Invoices** for legal fees and expenses rendered to clients;
- **Disbursement** records;
- The physical or electronic equivalents of all **checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks** provided by a financial institution;
- Records of all **electronic transfers** to and 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;
- **Reconciliations** of the client trust accounts;
- **Portions of client files** that are reasonably related to client trust account transactions;
- **Credit card transaction records** with clients to the extent permitted by law and the payment card industry data security standard; and
- **Receipts** for cash received.

Rule 4-1.15(f) and Comments 11 & 19.

- I maintain all trust accounting records described above (in paper or electronic form) for the latter of **six years** from the end of the representation or when the last related transaction occurs, **despite any agreement** I reach with my client to return or destroy the client file before six years.
Rule 4-1.15(f). Rule 1.22(d).
- All **partners** in my firm understand that each may be **held responsible** for ensuring the availability and accuracy of these records. *Rule 4-1.15 Comment 12.*

ROUTINE PRACTICES

- I **regularly reconcile** my trust account by carefully comparing these records:
- Bank statements;
 - Related checks and deposit slips;
 - All transactions in my account journal;
 - Transactions in each client's ledger; and
 - Explanations of transactions noted in correspondence, settlement sheets, etc.
- Rule 4-1.15(a)(7); Comment 18.*
- In managing my trust account, I know that I may delegate tasks, but I recognize that I **cannot delegate responsibility**.
- If I delegate tasks, I've consulted with a risk manager or a CPA to learn steps to establish protections and dual controls. *Rule 4-1.15(a)(3) and Comment 2.*
- I **personally conduct frequent and regular reconciliations**, being the first person in my office to open bank statements.
- I understand that I **am deemed to know what accurate accountings** of my trust account would reflect.
In re Farris, 472 S.W.3d 549 (Mo. banc 2015).

5

ROUTINE PRACTICES, CONTINUED

- I recognize that only a lawyer admitted to practice law in Missouri or a person under the direct supervision of the lawyer shall be an **authorized signatory** or authorize transfers from a client trust account. *Rule 1.15(a)(3).*
- I **regularly review each client ledger** in my trust account to determine that no client's balance is negative.
- Upon request** by any payee, I promptly provide a **full accounting**. *Rule 4-1.15(d).*
- If a dispute arises** as to rights to any funds I hold, I **promptly separate the disputed funds**. *Rule 4-1.15(e); Comment 7.*
- As to funds received or held that are related to disputed funds, I **promptly distribute undisputed portions** to appropriate payees. *Rule 4-1.15(e). Comment 7.*

6

PROHIBITED PRACTICES

- I **never use my client trust account to pay personal or professional expenses. I understand that such use of my trust account places my clients' funds at risk of seizure by my creditors.** *Rule 4-1.15.*
- Even if my client trust account goes unused for an extended period, I refrain from using it for any purpose other than for client or third-party funds as permitted in Rule 4-1.15. I understand that such use of my trust account could place my future clients' funds at risk of seizure by my creditors. *Rule 4-1.15.*
- I do not hold funds to coerce clients into any position. *Rule 4-1.15. Comment 7.*

7

UNDERSTANDING RULES ABOUT FEES

- I understand that I **may not contract with clients to accept non-refundable fees** or declare certain fees to be earned upon receipt, because all fees are subject to review for reasonableness and all advance fees in excess of \$2,000 must be held in a trust account until earned. *Formal Opinion 128, as amended.*
- I understand that even though an advance flat fee that will be promptly paid and which does not exceed \$2,000 may be placed directly into the office operating account, **I will have to refund any unearned portion** if the attorney-client relationship is terminated. *Rule 4-1.15 Comment 20*

8

SECURITY

- My trust account is **titled as a CLIENT TRUST ACCOUNT** or similar words. And, that denomination appears on my checks and deposit slips. *Rule 4-1.15(a).*
- To prevent mistakes, I keep my trust account checks, deposit slips, and records **physically and electronically secure and separate** from all other accounts and financial materials. *Rule 4-1.15(a).*

- I maintain **written policies and procedures** for handling funds and maintain records for my trust and operating accounts. And, I have confirmed that my policies comply with the requirements of the most current versions of Rules 4-1.145, 4-1.15, and 4-1.155. *Rule 4-1.15, Comment 2. In re Farris, 472 S.W.3d 549 (Mo. banc 2015).*
- I have trained my staff**, and retrained them this year, on firm policies and procedures for handling funds and maintaining financial records. *Rule 4-1.15, Comment 2 and Rule 4-5.3.*
- We annually contract with an external accounting professional to analyze my trust and operating account procedures and actual practices. *(Recommended to reduce the possibility or severity of mistakes and misuse by authorized and unauthorized actors.) Rule 4-1.15, Comment 2.*
- I require dual control** before each trust account transaction may be completed.
- I use a different color for trust accounting checks and checkbook covers than for other accounts. *Recommended to prevent mistakes and reduce risk of internal fraud.*
- We are extremely cautious and suspicious if unknown parties** (prospective clients) ask us to receive or briefly hold funds, especially when sent by cashier's check. We talk to our banker and risk manager before accepting any such arrangements.
- In recognition of my personal and professional accountability for protecting client and third-party funds, and regardless of whether I delegate certain tasks, **I undertake careful analysis of account history upon noticing any of the following warning signs in my operating or trust account:**
- Lack of monthly reconciliations of bank accounts;
 - Unopened bank statements or unopened bills;
 - Frequent trips to the bank;
 - Complaints from vendors or third parties that they are not being timely paid or that they did not receive a check that had been issued;
 - Past due law office bills such as phone or other utility bills;
 - Operating account or personal account checks written to the trust account;
 - Monthly checks for the same amount (such as a car or mortgage payment);
 - Unusual urgency about resolving a case (settlement, closing, etc.);
 - Signs of a lifestyle beyond the means of the lawyer or employee;
 - Signs of depression or alcohol or drug abuse;
 - Blank or incomplete check stubs or deposit slips;
 - Missing checks;
 - Accounts that do not balance;
 - Checks returned for insufficient funds;
 - Unidentified counter withdrawals or electronic transfers;
 - Round-numbered checks;
 - Checks clearing significantly out of sequence;
 - Excessive voided checks;
 - Checks made payable to an unfamiliar vendor;
 - Excessive checks to a particular vendor;
 - Possessiveness, secretiveness, or defensiveness of the lawyer or employee responsible for bookkeeping

(The list in this paragraph was provided by The Office of Disciplinary Counsel to the Supreme Court of South Carolina and The Professional Responsibility Committee of the South Carolina Bar.)
Rule 4-1.15, Comment 2. In re Farris, 472 S.W.3d 549 (Mo. banc 2015).

FIRM ACKNOWLEDGEMENTS

- I recently read **Rules 4-1.145, 4-1.15, and 4-1.155**. If I had questions or concerns about my ethical obligations under those rules, I sought advice from the Legal Ethics Counsel, *mo-legal-ethics.org*, 573-638-2263. If I had questions or concerns about establishing an account or working with a financial institution, I sought advice from the Administrator of the Missouri Lawyer Trust Account Foundation, *moiolta.org*.
- I recently reviewed **Rule 4-1.155** to help me **determine whether particular deposits should be held in an IOLTA account**, or instead, be placed in a dedicated trust account for the benefit of a client (because, e.g., the amount of funds deposited is large and/or will be held for an extended period).
- I understand that my license to practice law in Missouri establishes my **irrefutable consent for my bank to report any overdrafts** in my trust account to the Office of Chief Disciplinary Counsel. *Rule 4-1.15(a)(2). Rule 4-1.15-Advisory Committee Regulation.*
- I understand that the **OCDC will investigate any trust account overdraft** and **I will be expected to produce records** required by Rule 4-1.15. *Rule 4-8.1.*
- I have recently reviewed the regulations related to FDIC coverage of funds held in trust accounts. *fdic.gov.*
- I recognize that I may not hold client funds to coerce clients into any position. *Rule 4-1.15: Comment 7.*
- I reviewed *Rule 4-1.15 and Comment 8* for guidance when my client and a third-party dispute disposition of funds held by me.
- I understand that money held for clients and third parties, including fees paid in advance, belongs to them and not me.