

SELF AUDIT FOR LAWYER TRUST ACCOUNTING

A checklist to reduce risks and meet fiduciary obligations

established by the Supreme Court of Missouri's Rules of Professional Conduct.

IOLTA ACCOUNTS

- 1(a). I have an interest bearing IOLTA Trust Account at a financial institution deemed eligible by the by the Missouri Lawyer Trust Account Foundation. *Rule 4-1.145(a)(5).*
- 1(b). I have reported and updated my bank and account number on my Annual Enrollment statement with the Missouri Supreme Court. *Rule 4-1.15(h).*
- 1(c). 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).*
- 1(d). My trust account is in a financial institution located in the same state as my law office. *Rule 4-1.15(h)(4).*
- 1(e). I have checked to make sure the financial institution where I am holding trust accounts has been approved by the Advisory Committee by checking the list maintained at <http://molegalethics.org/iolta-approved-financial-institutions/>. *Rule 4-1.145(a)(2).*

RECEIPTS & DEPOSITS

- 2(a). All receipts are deposited daily and intact into my trust account. I make no “split deposits.” *Rule 4-1.15(a)(4) and Comment 4.*
- 2(b). I immediately notify my clients (or third parties) when I receive funds on their behalf. *Rule 4-1.15(d).*
- 2(c). For every receipt into my trust account, my simultaneous records include:
 - A. Payor Identity
 - B. Reason for Payment & Reason for Holding Funds
 - C. Receipt Date
 - D. Receipt to Payor
 - E. Deposit Receipt (bank record)
 - F. Client Identity
 - G. Copy of Check*Rule 4-1.15(a)(4) and Rule 4-1.15(d).*
- 2(d). I deposit all court costs and client expenses received on behalf of my clients into my client trust account. *Rule 4-1.15(a).*
- 2(e). I deposit all settlement proceeds into my client trust account. *Rule 4-1.15(a).*
- 2(f). I deposit all real estate conveyance funds into my trust account. *Rule 4-1.15(a).*

- 2(g). I deposit all advance fees and flat fees in excess of \$2,000 into my trust account upon receipt; I do not withdraw fees until earned; and, 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(c) and Rule 4-1.15 Comments 5 & 6.*
- 2(h). I deposit and hold all client or third party funds in my trust account. *Rule 4-1.15(a).*
- 2(i) I deposit my own funds in my trust account for the sole purpose of paying bank service charges. And, 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.

DISBURSEMENTS

- 3. For every payment from my trust account, my simultaneous records include:
 - A. Client Identity
 - B. Payor Identity
 - C. Payment Date
 - D. Reason for Payment - with client reference
 - E. Copy of Check

F. Related Records

- (i) settlement sheet
- (ii) correspondence to client regarding payment
- (iii) correspondence to payee regarding payment

G. I never take cash withdrawals or allow checks for “Cash” or “Bearer.”

Rule 4-1.15(a)(5).

4(a) Before any disbursements are made from my trust account, I confirm that:

A. 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.*

B. I have talked with my banker and I understand the difference between “good funds”, “cleared funds” and “available funds”.
Rule 4-1.15, Comment 5.

C. 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 ten days is normally reasonable.

D. I have verified the balance in the trust account.

4(b) I have a written understanding with my bank that no chargebacks for credit card transactions will be assessed against my trust account. *Rule 4-1.15.*

RECORD KEEPING

5. At any time, I have the following trust account records completed and up-to-date:
- (1) a receipt and disbursement journal for my trust account containing a record of all deposits to and all 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 each separate trust 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 persons or entities to whom such funds were disbursed
 - (3) fee agreements, engagement letters, retainer agreements and compensation agreements with clients
 - (4) accountings to clients or third persons showing the disbursement of funds to them or on their behalf
 - (5) bills for legal fees and expenses rendered to clients
 - (6) records showing disbursements on behalf of clients

- (7) 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
- (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) reconciliations of the client trust accounts
- (10) those portions of client files that are reasonably related to client trust account transactions
- (11) records of credit card transactions with clients to the extent permitted by law and the payment card industry data security standard.
- (12) receipts for cash received.

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

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

ROUTINE PRACTICES

- 7(a). As soon as my routine bank statements are received, I 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*.
- 7(b). If, during reconciliation, any of the comparisons don't match, then I continue researching until I have discovered the problem.

8. In managing my trust account, I delegate nothing. Or, if I delegate specific 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.*
- And, I have implemented those recommended steps.
 - And, I personally conduct frequent and regular reconciliations, being the first person in my office to open bank statements;
 - And, while I understand that I may delegate certain tasks, I may not delegate responsibility.
 - And, 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).*
- And, 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.
9. I understand that I may not contract with clients to take non-refundable fees, because all fees are subject to review for reasonableness and all

advance fees in excess of \$2,000.00 must be in a trust account until earned.

Formal Opinion 128.

- 10. Upon request by any payee, I promptly provide a full accounting. *Rule 4-1.15(d).*
- 11(a). 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.*
- 11(b). As to funds received or held that are related to disputed funds, I promptly distribute all undisputed portions to appropriate payees. *Rule 4-1.15(e); Comment 7.*
- 12. I never use my client trust account to pay personal or professional expenses. I understand that such use of my trust account could place my clients' funds at risk of seizure by my creditors. *Rule 4-1.15.*
- 13. 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.*

SECURITY

- 14(a). 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).
- 14(b). 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). Recommended to prevent mistakes and protect account from misuse.*
- 14(c). I use a different color for trust accounting checks and checkbook covers than for other accounts. *Recommended to prevent mistakes.*
- 15. 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:
 - 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.
 - Checks clearing out of sequence.
 - Records of 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.
- 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.

(Recommended to reduce the possibility or severity of mistakes and misuse by authorized and unauthorized actors.)

*(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).

- 16. 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.

(Recommended to reduce the possibility or severity of mistakes and misuse by authorized and unauthorized actors.)

Rule 4-1.15, Comment 2.

In re Farris, 472 S.W.3d 549 (Mo. banc 2015).

- 17. I have trained my staff, and retrained them this year, on firm policies and procedures for handling funds and maintaining financial records.

(Recommended to reduce the possibility or severity of mistakes and misuse by authorized and unauthorized actors.)

Rule 4-1.15, Comment 2 and Rule 4-5.3.

- 18. I 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.

- 19. I require dual control before each trust account transaction may be completed. (*Recommended to reduce the possibility or severity of mistakes and misuse by authorized and unauthorized actors.*)

ACKNOWLEDGEMENTS

- 20. I have read Rules 4-1.145, 4-1.15, and 4-1.155 this year. If I had questions or concerns about my ethical obligations under those rules, I sought advice from the Legal Ethics Counsel, www.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, www.moiolta.org.
- 21. I have 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).
- 22. I understand that money held for clients and third parties belongs to them and not me.
- 23(a). 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.*

- 23(b). 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.*
- 24. I have recently reviewed the regulations related to FDIC coverage of funds held in trust accounts. www.fdic.gov.
- 25. I recognize that I may not hold client funds to coerce clients into any position. *Rule 4-1.15: Comment 7.*
- 26. I have reviewed *Rule 4-1.15 and Comment 8* for guidance when my client and a third party dispute disposition of funds held by me.
- 27. I understand that even though an advanced flat fee that will be promptly paid and which does not exceed \$2,000 may be placed directly into the office operating account, if the attorney-client relationship is terminated prior to the advanced flat fee being earned then any unearned portion of the advanced fee shall be refunded. *Rule 4-1.15 Comment 20. //*