

Rule 43. Trust Accounts

(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer. Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer or law firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. Funds to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account, but only in an amount reasonably estimated to be necessary for that purpose may be deposited therein.
2. Funds to pay merchant fees or credit card transaction charges or to offset debits for credit card chargebacks, but only in an amount reasonably estimated to be necessary for those purposes may be deposited therein.
3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.
4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the lawyer shall comply with ER 1.15(e).

(b) Trust Account Requirements.

1. Standards of Performance.

- A. Due professional care must be exercised in the performance of the lawyer's duties under this rule.
- B. Employees and others assisting the attorneys in the performance of such duties must be competent and properly trained and supervised.
- C. Internal controls within the lawyer's office must be adequate under the circumstances to safeguard funds or other property held in trust.

2. Trust Account Records.

- A. Every active member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities and other property. The lawyer shall preserve these records for a period of five years after termination of the representation.
- B. A lawyer shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

- (i) the date, amount and payor of each receipt of funds;
- (ii) the date, amount and payee of each disbursement; and
- (iii) any unexpended balance.

C. A lawyer shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

3. *Deposits from Credit Card Transactions.* A lawyer or law firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

B. within three business days of receipt of notice or actual knowledge that a chargeback has been made, the lawyer deposits into the trust account his or her own funds in an amount equal to the amount of the chargeback that exceeds the client's credit card funds remaining in the trust account, and any fees or charges associated with the chargeback; and

C. the trust account contains sufficient funds of the lawyer or law firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. *Disbursement Against Uncollected Funds.* A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled by the issuer's bank, and credited without recourse to the lawyer's trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

- (i) when the deposit is made by certified check or cashier's check;
- (ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;
- (iii) when the deposit is made by a check issued by the United States, the State of Arizona, or any agency or political subdivision of the State of Arizona; or
- (iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Arizona.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

5. Methods of Disbursement. All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

(c) Certificate of Compliance. Every active member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

I have read Rule 43, Rules of the Supreme Court, and ER 1.15, Arizona Rules of Professional Conduct, and certify that I am in compliance with the provisions thereof, or am exempt from such provisions as therein provided.

Dated: _____

Signature: _____

Type or print name: _____

As an alternative to filing a written certificate, the board may allow certification to be filed electronically in a method and form as approved by the board.

(d) Trust Account Examination; Random Examination.

1. *Authority.* The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a

possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.

2. *Scope of Examination.* The state bar may verify all funds, securities and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other form of maintaining trust funds, securities or property, together with deposit slips, cancelled checks, and all other records pertaining to transactions concerning trust funds, securities and property.

3. *Rebuttable Presumption.* If a lawyer fails to maintain trust account records required by this rule or ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. *Limited Exception for Out-of-State Members.* All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer whose law office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. *Trust Account Examination and Verification Expenses.* A member whose trust account has been examined or verified pursuant to this rule shall not be responsible for the costs and expenses related to the examination or verification, unless such costs and expenses are imposed pursuant to an order of diversion as set forth in [Rule 55](#)(a) or in conjunction with imposition of a disciplinary sanction as set forth in [Rule 54](#)(b) or [Rule 60](#)(b).

(e) Confidentiality. The provisions of [Rule 70](#)(b) of these rules shall apply to records acquired during examinations conducted pursuant to this rule. In those instances where the state bar conducts a random examination of a member's trust account(s) that does not result in a disciplinary charge, all information received as a result of that examination shall be kept strictly confidential and shall not be released to any person(s).

(f) Establishment of Trust Accounts; State Bar Oversight.

1. A lawyer or law firm receiving funds belonging in whole or in part to a client or third person in connection with a representation must hold the funds in one of the following types of accounts:

A. a pooled interest-bearing or dividend-earning trust account ("IOLTA account") on which the interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education ("Foundation");

B. a separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

C. a pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer or the law firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

2. In determining which type of account provided for in section (f)(1) to use, a lawyer or law firm shall take into consideration the following factors:

- A. the amount of funds to be deposited;
- B. the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- C. the rates of interest or yield at financial institutions where the funds are to be deposited;
- D. the cost of establishing and administering a separate non-IOLTA account for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;
- E. the capability of financial institutions to calculate and pay income to individual clients; and
- F. any other circumstances that affect the ability of the client's funds to earn a net return for the client.

Funds should be deposited in an IOLTA account as provided for in section (f)(1)(A) if the interest does not cover the cost of opening and maintaining a separate interest-bearing or dividend-earning account. The State Bar shall not pursue a disciplinary matter against any lawyer or law firm solely based on the good-faith determination of the appropriate account in which to deposit or invest client funds.

3. A lawyer or law firm must maintain any client trust account provided for in section (f)(1) only at a regulated financial institution, which is either (i) a financial institution authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers and is insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws or (ii) any open-ended investment company registered with the Securities and Exchange Commission that is authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers. A regulated financial institution must agree to comply with the requirements of section (f)(4) below and agree to pay IOLTA interest to the Foundation. The lawyer or law firm must ensure that:

- A. withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation, and
- B. the deposited funds are invested in the higher earning return of:
 - i. an interest-bearing checking account;
 - ii. a money-market deposit account with or tied to checking;
 - iii. a sweep account, which is a money-market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or
 - iv. an open-end money-market fund solely invested in or fully collateralized by U.S. Government Securities.

A daily financial institution repurchase agreement may be established only with a regulated institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and at the time

of the investment must have total assets of at least \$250,000,000. "U.S. Government Securities" refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

C. All service charges to the account are reasonable, related to the cost of maintaining the account, and computed in accordance with the financial institution's standard accounting practices.

D. The financial institution sends notification immediately to the State Bar chief bar counsel of any properly payable instrument that is presented for payment against a client trust account containing insufficient funds, uncollectible funds, or a negative available balance, regardless of whether the financial institution honors the instrument. All occurrences shall be reported to the State Bar regardless of the cause.

If a financial institution ceases to operate as a regulated financial institution and has no successor operating as a regulated financial institution, a lawyer or law firm that maintains an account listed under section (f)(1) at that financial institution must, upon receiving notice of the financial institution's change in status, promptly notify any clients whose funds may be affected by the change in status, promptly transfer, to the extent possible, any client trust account funds from that financial institution into another account provided for in section (f)(1), and promptly deposit into the other account provided for in section (f)(1) any insurance, collateral, or proceeds resulting from the financial institution's change in status.

4. In addition to the requirements of section (f)(3), a lawyer or law firm may only maintain an IOLTA account as provided for in section (f)(1)(A) at an authorized regulated financial institution. To be designated as authorized, a regulated financial institution must sign a participation certification before the fiscal year beginning July 1, with the State Bar as representative of its members, and the Foundation as a third-party beneficiary and administrator of the interest or dividends.

A. The participation certification must:

- i. define a reasonable charge for managing IOLTA accounts, which may include fees for reporting and recordkeeping;
- ii. direct that interest or dividends, net of any reasonable service charges or fees, be remitted at least quarterly to the Foundation;
- iii. provide that the financial institution transmit, with each remittance to the Foundation, a statement, as directed by the Foundation, showing information including the name of the lawyer or law firm on whose account the remittance is sent, the period for the remittance submitted, the account number, the account status, the rate of interest applied or the dividends earned, and the charges imposed against the interest remitted;
- iv. provide that the financial institution transmit a report on each separate account, similar to the report required by section (f)(4)(a)(iii), to the lawyer or law firm opening said trust account;
- v. direct that if the financial institution receives a subpoena duces tecum requesting documents pertaining to a lawyer's IOLTA account with the financial institution, the financial institution shall provide the documents specified in the subpoena duces tecum;
- vi. provide that the terms apply to all branches of the regulated financial institution holding Arizona IOLTA accounts;

vii. provide that the financial institution be allowed to charge a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule;

viii. provide that the participation certification may not be cancelled by the regulated financial institution except upon 30 days' advance written notice to the State Bar and the Foundation;

ix. provide that the participation certification may not be cancelled or revoked except upon 30 days' advance written notice to the regulated financial institution;

x. provide for an annual approval period; and

xi. provide that any participation certification continues in existence during any time the authorized regulated financial institution is attempting to become reauthorized.

B. If an authorized regulated financial institution does not sign the participation certification for the fiscal year beginning July 1 during which the regulated financial institution wishes to be re-authorized:

i. The matter will be referred to a mediator selected by the Court.

ii. The mediator will have 60 days to meet with the parties and attempt to reach a settlement.

iii. If after 60 days with mediation the parties do not reach a participation certification as provided for in section (f)(4)(A) above, the State Bar shall:

(a) notify the Supreme Court that the financial institution has failed to sign a participation certification for the following fiscal year;

(b) notify members who maintain trust accounts at that regulated financial institution that the regulated financial institution has failed to sign a participation certification for the following fiscal year; and

(c) notify other members that the regulated financial institution is not in compliance and that no new trust accounts may be opened at that financial institution for the following fiscal year.

iv. Upon receiving the State Bar's request provided for in section (f)(4)(B)(iii)(a), the Court may issue an order de-authorizing a previously authorized regulated financial institution that is seeking to become reauthorized.

C. The State Bar and the Foundation shall ensure the maintenance of a website listing of authorized regulated financial institutions' status.

5. If the State Bar and the Foundation become aware of information indicating that an authorized regulated financial institution has not complied with the duties provided for in section (f), the State Bar shall notify the regulated financial institution of its failure to comply and that it has 90 days to cure its noncompliance.

A. If, after 45 days, the noncompliance has not been cured, then the State Bar shall:

i. notify members who maintain trust accounts at that regulated financial institution that the regulated financial institution had been given 90 days to cure its noncompliance and to date it has not complied;

ii. notify other members that the regulated financial institution is not in compliance and that no new trust accounts may be opened at that financial institution;

iii. notify the Supreme Court that the financial institution is in noncompliance and had been given 90 days to cure its noncompliance.

B. If the financial institution cures its noncompliance, the State Bar shall promptly notify its members and the Supreme Court.

C. If the financial institution fails to cure the noncompliance, the State Bar shall file with the Court a request for termination of authorized status of that financial institution.

D. The Court may issue an order terminating the authorized status of the financial institution and instructing the State Bar to:

i. assure removal of the institution from the list of authorized financial institutions, and

ii. notify all members of the removal.

E. Upon receiving the notice provided for in section (f)(5)(D):

i. Members who maintain trust accounts at the de-authorized financial institution shall:

(a) have 90 days to transfer their accounts to an authorized financial institution, and

(b) by the end of 90 days, notify the State Bar that their trust accounts have been transferred and provide pertinent account information.

ii. Members who continue to maintain trust accounts at the de-authorized financial institution more than 90 days after notice or who fail to tell the State Bar that they have done so shall be referred to the State Bar Lawyer Regulation Office.

6. Interest or dividends generated on accounts specified in section (f)(1)(A) shall be paid by the financial institution or investment company to the Foundation. The Foundation shall use the interest or dividends solely to:

A. support programs designed to assist in the delivery of legal services to the poor and law-related education programs designed to teach young people, educators and other adults about the law, the legal process and the legal system;

B. fund studies or programs designed to improve the administration of justice;

C. maintain a reasonable reserve; and

D. pay the actual costs of administering this rule and the activities set forth above.

7. In addition to other obligations under section (f) of this rule, all lawyers admitted to practice in this state shall:

A. as a condition thereof, consent to the reporting and production requirements set forth in this rule, and

B. provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain.

(g) [Reserved].

(h) Suspension of Member. Any active member who fails to comply with requirements of this rule shall be suspended summarily by order of the board upon notice by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

(i) Reinstatement of Member. A lawyer who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

(j) Applicability of Rule. Every lawyer admitted to practice law in Arizona shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.