

Rule 221. Funds of clients and third persons. Mandatory overdraft notification.

- (a) For purposes of this rule, the following definitions apply:
- (1) **Eligible Institution.** An Eligible Institution is a Financial Institution which has been approved as a depository of Trust Accounts pursuant to section (h), *infra*.
 - (2) **Financial Institution.** A Financial Institution is an entity which is authorized by federal or state law and licensed to do business in the Commonwealth of Pennsylvania as one of the following: a bank, bank and trust company, trust company, credit union, savings bank, savings and loan association or foreign banking corporation, the deposits of which are insured by an agency of the federal government, or as an investment adviser registered under the Investment Advisers Act of 1940 or with the Pennsylvania Securities Commission, an investment company registered under the Investment Company Act of 1940, or a broker dealer registered under the Securities Exchange Act of 1934.
 - (3) **Fiduciary Funds.** Fiduciary Funds are Rule 1.15 Funds which an attorney holds as a Fiduciary, as defined in Rule 1.15(a)(2) of the Pennsylvania Rules of Professional Conduct. Fiduciary Funds may be either Qualified Funds or Non-Qualified Funds.
 - (4) **Rule 1.15 Funds.** Rule 1.15 Funds are funds which an attorney receives from a client or third person in connection with a client-lawyer relationship, or as an escrow agent, settlement agent or representative payee, or as a Fiduciary, or receives as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the attorney's status as such. When the term "property" appears with "Rule 1.15 Funds," it means property of a client or third person which the attorney receives in any of the foregoing capacities.
 - (5) **Trust Account.** A Trust Account is an account in an Eligible Institution in which an attorney holds Rule 1.15 Funds A Trust Account must be maintained either as an IOLTA Account or as a Non-IOLTA Account, as defined in Rule 1.15(a)(5) and (7) of the Pennsylvania Rules of Professional Conduct.
- (b) An attorney shall maintain a Trust Account with respect to his/her practice in this Commonwealth only in an Eligible Institution approved by the Supreme Court of Pennsylvania for the maintenance of such accounts. Subject to the provisions set forth herein, the Disciplinary Board shall establish regulations governing approval and termination of approval for Eligible Institutions, shall make appropriate recommendations to the Supreme Court of Pennsylvania concerning approval and termination, and shall periodically publish a list of Eligible Institutions.
- (c) All Fiduciary Funds shall be placed in a Trust Account (which, if the Fiduciary Funds are also Qualified Funds as defined in Rule 1.15(a)(9) of the Pennsylvania Rules of

Professional Conduct, must be an IOLTA Account) or in another investment or account which is authorized by the law applicable to the entrustment or the terms of the instrument governing the Fiduciary Funds.

- (d) The responsibility for identifying an account as a Trust Account shall be that of the attorney in whose name the account is held.
- (e) An attorney shall maintain and preserve for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later, the writing required by Pa.R.P.C. 1.5 (relating to the requirement of a writing communicating the basis or rate of the fee), the records identified in Pa.R.P.C. 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter), and the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held:
 - (1) all transaction records provided to the attorney by the Financial Institution, such as periodic statements, canceled checks in whatever form, deposited items and records of electronic transactions; and
 - (2) check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction; provided, however, that where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.
 - (3) A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed. On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing. A lawyer shall preserve for a period of five years copies of all records and computations sufficient to prove compliance with this requirement.
- (f) The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available. If records are kept only in electronic form, then such records shall be backed up, on a separate electronic storage device, at least at the end of any day on which entries have been entered into the records.

- (g) The records required to be maintained by Pa.R.P.C. 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel in a timely manner upon request or demand by either agency made pursuant to these Enforcement Rules, the Rules of the Board, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena.
- (1) Upon a request by Disciplinary Counsel under this subdivision (g), which request may take the form of a letter to the respondent-attorney briefly stating the basis for the request and identifying the type and scope of the records sought to be produced, a respondent-attorney must produce the records within ten business days after personal service of the letter on the respondent-attorney or after the delivery of a copy of the letter to an employee, agent or other responsible person at the office of the respondent-attorney as determined by the address furnished by the respondent-attorney in the last registration statement filed by the respondent-attorney pursuant to Enforcement Rule 219(d), but if the latter method of service is unavailable, within ten business days after the date of mailing a copy of the letter to the last registered address or addresses set forth on the statement.
 - (2) When Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made under an applicable provision of the Disciplinary Board Rules or by subpoena under Enforcement Rule 213(a), the respondent-attorney must produce the records and must do so within the time frame established by those rules.
 - (3) Failure to produce Pa.R.P.C. 1.15 records in response to a request or demand for such records may result in the initiation of proceedings pursuant to Enforcement Rule 208(f)(1) or (f)(5) (relating to emergency temporary suspension orders and related relief), the latter of which specifically permits Disciplinary Counsel to commence a proceeding for the temporary suspension of a respondent-attorney who fails to maintain or produce Pa.R.P.C. 1.15 records after receipt of a request or demand authorized by subdivision (g) of this Rule or any provision of the Disciplinary Board Rules. If at any time a hearing is held before the Board pursuant to Enforcement Rule 208(f) as a result of a respondent-attorney's alleged failure to maintain or produce Pa.R.P.C. 1.15 records, a lawyer-Member of the Board shall be designated to preside over the hearing.

Note: If Disciplinary Counsel files a petition for temporary suspension, the respondent-attorney will have an opportunity to raise at that time any claim of impropriety pertaining to the request or demand for records.

- (h) An Eligible Institution shall be approved as a depository for Trust Accounts of attorneys if it shall be in compliance with applicable provisions of Rule 1.15 of the Pennsylvania Rules of Professional Conduct and the Regulations of the IOLTA Board and shall file with the Disciplinary Board an agreement (in a form provided by the Board) to make

a prompt report to the Lawyers Fund for Client Security Board whenever any check or similar instrument is presented against a Trust Account when such account contains insufficient funds to pay the instrument, regardless of

- (1) whether the instrument is honored, or
 - (2) whether funds are subsequently deposited that cover the overdraft or the dishonored instrument is made good.
- (i) For purposes of this rule:
- (1) A Trust Account shall not be deemed to contain insufficient funds to pay a check or similar instrument solely because it contains insufficient collected funds to pay the instrument, and no report shall be required in the case of an instrument presented against uncollected or partially uncollected funds. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.
 - (2) Funds deposited in an account prior to the close of business on the calendar date of presentation of an instrument shall be considered to be in the account at the close of business on that date notwithstanding the treatment of such funds by the Eligible Institution, for other purposes, as being received at the opening of the next banking day pursuant to 13 Pa.C.S. §4108(b) (relating to items or deposits received after cutoff hour).
 - (3) A check or draft against a Trust Account shall be deemed to be presented at the close of business on the date of presentation.
- (j) No report need be made when the Eligible Institution determines that the instrument presented against insufficient funds had been issued in reliance on a deposited instrument that was ultimately dishonored. This provision shall not be deemed an endorsement of the practice of drawing checks against uncollected funds.
- (k) A failure on the part of an Eligible Institution to make a report called for by this rule may be cause for termination of approval by the Supreme Court, but such failure shall not, absent gross negligence, give rise to a cause of action, by any person who is proximately caused harm thereby.
- (l) Eligible Institutions shall be immune from suit for the filing of any reports required by this rule or believed in good faith to be required by this rule.
- (m) An Eligible Institution shall be free to impose a reasonable service charge upon the attorney in whose name the account is held for the filing of the report required by this rule.
- (n) A report filed pursuant to this rule shall not, in and of itself, be considered a disciplinary complaint.

- (o) A designated representative of the Lawyers Fund for Client Security Board shall conduct a preliminary inquiry and shall, where appropriate, refer the matter to the Office of Disciplinary Counsel for further investigation. Neither a report filed with the Lawyers Fund for Client Security Board pursuant to this rule nor a referral of such report to the Office of Disciplinary Counsel shall, in and of itself, be considered a disciplinary complaint.

- (p) Reports required to be made under this rule shall be made to the Lawyers Fund for Client Security Board within five business days of the presentation of the instrument.