

Lawyer Trust Accounts

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Missouri Rule 4-1.15

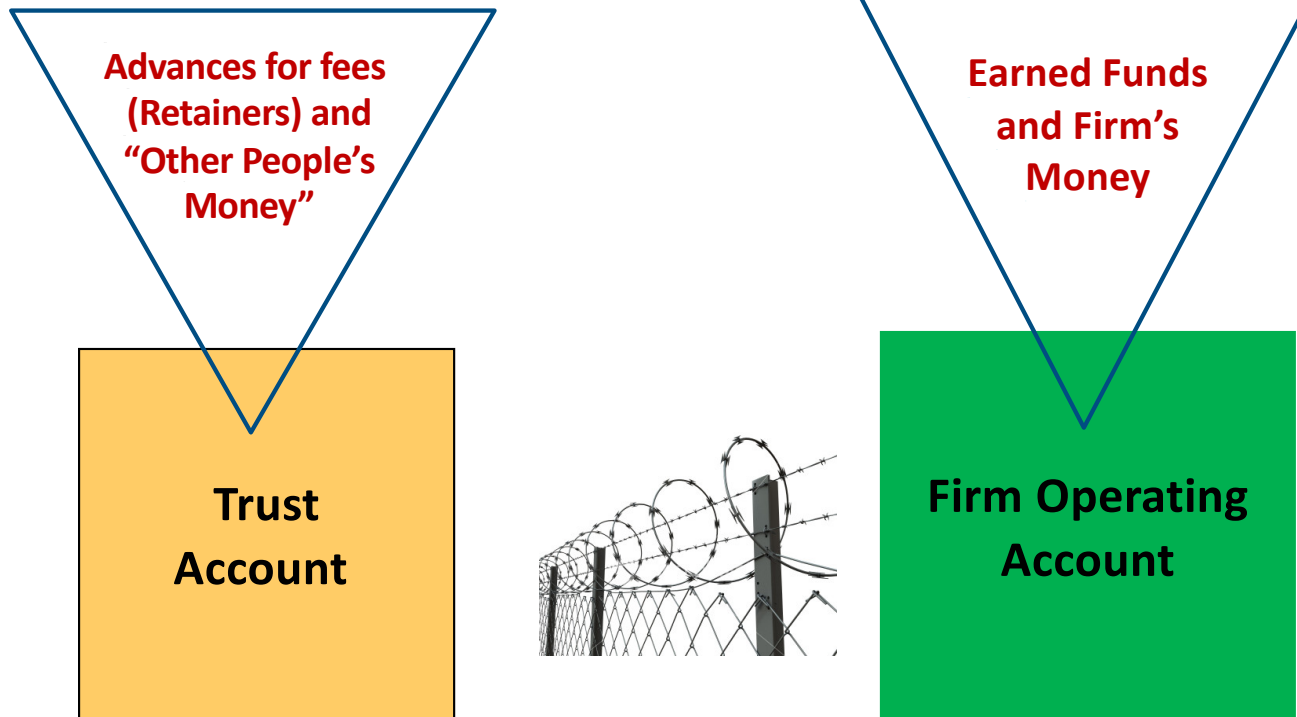
- A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
- Client or third party funds shall be kept in a separate account designated as a "Client Trust Account" or words of similar import maintained in the state where the lawyer's office is situated or elsewhere if the client or third person consents.

Possible Violations

- **Misappropriation** – funds “taken” for something other than proper purposes
- **Commingling** – funds of lawyer and third parties allowed to “commingle” in account
- **Record-keeping** – failure to maintain proper records

Into Which Account?

Trust or Operating?



Trust v. Operating (Firm)

- Only the lawyer's money – **OPERATING ACCOUNT**
- Anyone other than the firm has an (ownership) interest in any portion of the funds – **TRUST ACCOUNT**
 - Mixed fund (lawyer's and other's) go in the Trust account

Kansas Handbook – What funds are trust funds?

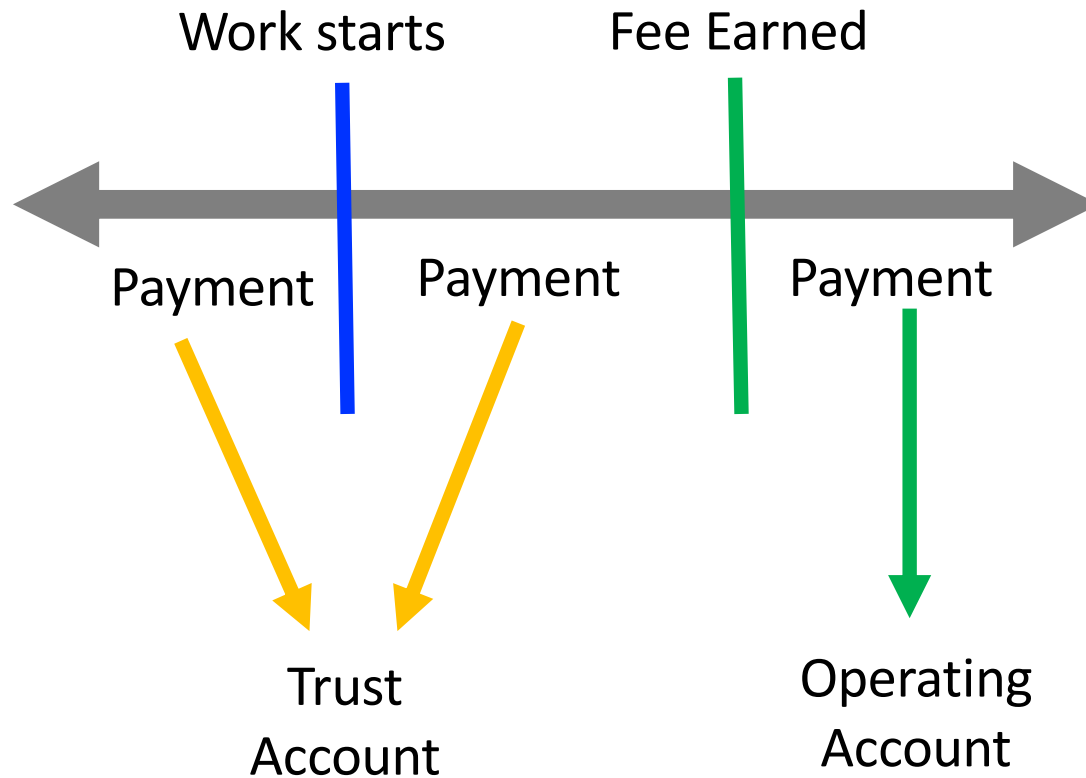
- All funds received by a lawyer in connection with a representation in which a client or a third person has an interest are trust funds and should be deposited in a trust account. KRPC 1.15(a).
- Among the funds that are to be treated as trust funds are:
 - advances for fees received from clients (until they are actually earned by the lawyer)
 - funds of others that are being held for disbursement at a later time
 - personal injury awards
 - support payments
 - real estate conveyancing funds and
 - litigation settlements.

It is the lawyer's responsibility to exercise good judgment in determining what funds belong in the trust account.

Particular Issues

- Payment of fees – have the fees been earned?
 - Yes – Operating
 - No – Trust (or \$2000 MO exception)
- Funds to pay client expenses – have the expenses been paid?
 - Yes – Operating
 - No – Trust
- Funds held for client/third party – trust

Basic Rule on Handling Funds Paid for Legal Services



Fixed/Flat Fees

- Paid after work is done – Operating
- Paid before work is done – Trust (MO/KS)
 - Missouri Exception – where total fixed fee is \$2000 or less, an advance payment can go in the operating account with client permission
 - Illinois – all fixed fees paid in advance go in the operating account

Kansas Handbook

- A lawyer may charge a flat fee to a client for a specific task to be undertaken. When the flat fee is paid to the lawyer, it must be deposited into the lawyer's trust account and the fee cannot be withdrawn until it is earned.
- Since a flat fee is not earned until completion of the task, the entire flat fee must remain in the lawyer's trust account until that task is completed unless the lawyer and client otherwise agree to partial withdrawals based upon the amount earned for completion of specified subtasks. KRPC 1.15(a)
- In either event, a lawyer has a professional obligation to refund unearned legal fees to a client whenever the lawyer completes or withdraws from a representation or the client discharges the lawyer.

Illinois Rule 1.15(c)

- A lawyer shall 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 incurred. **Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited in the lawyer's general account or other account belonging to the lawyer.** An advance payment retainer may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer.

Missouri Exception to Ordinary Rule on Handling Funds – Fixed Fee Up to \$2,000

A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that **an advanced flat fee which does not exceed \$2,000 is exempted from this requirement** and may be deposited into another account.

Rule 4-1.15(c) (effective January 1, 2019)

“Intact” Funds – Rule 4-1.15(a)(4)

- “Receipts shall be **deposited intact** and records of deposit shall be sufficiently detailed to identify each item.”

Trust Deposit – Recorded in Account

Lawyer trust account receipts journal

Month of _____ 20 _____

Trust bank account no: _____

Page no: _____

Date	Receipt no.	Source/Client/Case no.	Explanation	Deposit amount	Running total

Trust Deposit – Recorded for Client (Client Ledger)

Lawyer individual trust account ledger

Name of client of third party: _____

Legal matter or adverse party: _____

File or case number: _____

Date	Description of transaction	Check no.	Funds paid	Funds received	Balance

Reason for Client Ledgers

Funds in Trust

Client A's
Funds

Only A's
funds can
be used for
Client A

Practice Management – Track Client Balances

00874-Washington University School of Law
Introduction to Law Firm Practice 2020

Dashboard Activities Calendar Communications Notes Documents Tasks Bills Transactions Clio Connect

▼ Financial

Work in progress ⓘ \$0.00 Unbilled \$0.00 Draft \$0.00 Quick bill	Outstanding balance \$0.00 View bills	Matter trust funds \$0.00 New request
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Time ⓘ \$0.00 64.50h [Add time](#) **Expenses** \$0.00 [Add expense](#)

▼ Details Financial

Matter description	Introduction to Law Firm Practice 2020
Responsible attorney	Michael Downey
Originating attorney	Michael Downey
Practice area	Risk Management - Training
Client reference number	—
Location	—

▼ Custom Fields

Custom Fields let you configure Clio to meet your firm's unique needs. Create Custom Fields to store useful details and quickly find information when you need it.

[Learn more about Custom Fields](#)

Transactions by Client-Matter

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Introduction to Law Firm Practice 2020

Dashboard Activities Calendar Communica

Transactions

Operating Account -- P... MM/DD/YY

Actions Date Source/Recipi

No results found 50 result

New transaction

Amount Required **Date** Required

0.00 02/11/2020

This field is required.

Account Required

US Bank IOLTA Account

Client

Washington University School of Law

Matter

00874-Washington University School of Law

Source/Recipient

Currency **Exchange rate**

Choose a currency

Type **Check or reference no.**

Description

Record transaction Cancel

Maintain Client and Account Ledgers

US Bank IOLTA Account Edit Delete

▸ **Details**

Transactions Disburse funds Transfer funds New transaction

MM/DD/YYYY - MM/DD/YYYY Columns ▾

Actions	Date ▾	Source/Recipient	Reference	Client	Matter	Funds out	Funds in	Running balance
Edit ▾	02/03/2020	[REDACTED]	-	[REDACTED]	00902 [REDACTED]	-	\$1,500.00	\$49,158.64
Edit ▾	01/16/2020	Transferred to: Operatin...	174	[REDACTED]	00893 [REDACTED]	\$1,500.00	-	\$47,658.64
Edit ▾	01/16/2020	Transferred to: Operatin...	174	[REDACTED]	00894 [REDACTED]	\$1,500.00	-	\$49,158.64
Edit ▾	01/14/2020	Transferred to: Operatin...	173	[REDACTED]	00818 [REDACTED]	\$5,937.21	-	\$50,658.64

Kansas Handbook – Need Client Ledgers

The lawyer should establish and maintain a system that ensures the lawyer can document:

- the amount of funds within the trust account at all times
- the amounts within the trust account belonging to each subaccount (client or third party)
- how each transaction was processed

Kansas Handbook – Trust Account Checkbook

Utilizing the checkbook register or stub, a lawyer can easily maintain an accurate record of the running balance within the trust account by maintaining a chronological journal of the receipt and disbursement activity. Each deposit transaction should show:

- the date
- source of funds or name of person with an interest in the account, if different
- a brief explanation
- amount of deposit
- balance on hand in trust account

Kansas Handbook – Trust Account Receipts Journal

A receipts journal is a chronological listing of all funds received. This journal contains the same information required to be maintained in the checkbook register or stub for a receipt-deposit transaction plus a running total of receipts. This would include:

- the date
- source of funds or name of person with an interest in the account, if different
- a brief explanation including client file or case number
- amount received
- a running total of receipts

Kansas Handbook – Client Ledger

- Each individual client or third person’s account could be maintained as a separate page in the lawyer’s individual trust account ledger. This ledger documents the chronological activity for each person’s account. Entries on this sheet are posted from the activity originating in the checkbook register with the balances kept up to date so an accurate accounting of all trust funds can be provided immediately upon request of the client or the third party by simply making a copy of the ledger sheet and providing it to the client or third party.
- At a minimum, each individual trust account ledger sheet should reflect:
 - the date funds were received or dispersed
 - a description of each transaction, including to whom the funds were received from or paid to
 - check number,
 - amount of funds received or paid out
 - balance of account at end of transaction
- **Under no circumstances should the lawyer ever disburse more funds than received in a matter, nor at the end of representation should there be any monies left on the individual trust account ledger.**

Credit Cards

- Payments after earned
 - Funds to into operating account
 - All fees and “charge backs” (canceled payments) come out of operating account
- Payment **in advance** (before earned)
 - Funds go into **trust account**
 - What about fees and “charge backs” (canceled payments)?
 - Lawyer specific processing: can set to come out of operating account
 - Non-lawyer specific: have to manage another way. My advice: **TOO DANGEROUS, DON'T DO IT**

Which Type of Trust Account?

Choosing a Trust Account

Will it earn “significant” interest?

No – IOLTA Account

Yes – Non-IOLTA Account

IOLTA Account

- “Pooled” funds of multiple clients
- Used when interest is not expected to be “significant”
- Interest paid to IOLTA Foundation/Legal Aid

Non-IOLTA Trust Account

- Usually for a single client
- Interest expected to be “significant”
- Interest paid to client

Rule 4-1.15(a)(1)

- “Every client trust account shall be either an IOLTA account, non-IOLTA trust account, or exempt trust account.”
- “A client trust account, whether IOLTA, non-IOLTA, or exempt **must be in an approved institution.**”

IOLTA v. Non-IOLTA?

- IOLTA – interest will not be significant = interest to IOLTA Foundation/Legal Aid (not taking)
- Non-IOLTA – interest would be "more than insignificant" = interest to client
- NOTE – Trust account interest never goes to the attorney

Interest “Significant”? – Rule 4-1.155(a)(3)

[I]n **determining** whether client or third person funds should be **deposited in an IOLTA account or non-IOLTA trust account**, a lawyer shall take into consideration the following factors.

- (A) the **amount of interest** that the funds would earn during the period they are expected to be deposited;
- (B) the **cost** of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person;
- (C) the **capability of financial institutions** or lawyers or law firms **to calculate and pay interest** to individual clients or third persons;
- (D) **any other circumstance** that affects the ability of the client or third person funds to earn income in excess of the costs incurred to secure such income for the client or third person;

Determination of Account – “good faith” judgment of lawyer

- Rule 4-1.155(a)(4): “[T]he determination of whether the funds of a client or third person can earn income in excess of costs as provided in Rule 4-1.155(c)(3) shall **rest in the sound judgment of the lawyer or law firm**, and **no lawyer shall be charged with an ethical impropriety or breach of professional conduct** based on the good faith exercise of such judgment;”

Kansas Handbook – Non-IOLTA Accounts

- When the amount of trust funds of an individual person and the length of time those trust funds are to be kept indicate that the interest earned would substantially exceed the administrative costs and bank charges, the lawyer should **invest the funds in an interest bearing [trust] account for the benefit of the client.**
- The definition of “substantially exceed” depends on the circumstances of each case: the larger the amount of funds, the shorter the period of time needed to justify the establishment of separate accounts for the funds and vice versa.
- A lawyer may consult the client or third party before investing and follow their instructions as to investing the funds.

Rule 4-1.155(a) – Earnings Not to Lawyer

IOLTA accounts shall be maintained in compliance with the following provisions:

(1) no earnings from such account shall be made available to the lawyer or law firm, and the lawyer or law firm shall have no right or claim to such earnings;

How Long Must Funds Held In Trust?

Timing of Disbursement – Rule 4-1.15(d)

- Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person.
- Except as provided in Rules 4-1.145 or 4-1.155 or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Questions Before Disbursing

- Are the funds “good” (actually in the account – not merely available)
 - MO presumption – wait 10 days (business? Calendar?)
- Are the funds **subject to dispute**?
- If good and not subject to dispute, **may disburse** if fees “earned,” expenses “incurred,” or otherwise ready for disbursement

Are Funds Good?

No disbursement shall be made based upon a deposit:

- (A) if the lawyer has reasonable cause to believe the **funds have not actually been collected** by the financial institution in which the trust account is held; **and**
- (B) until a reasonable period of time has passed for the **funds to be actually collected** by the financial institution in which the trust account is held.

Good Funds?

- **Check = Fancy IOU Note**
- Client gives Lawyer \$3,000 Client Bank check as advance payment on fees
- Lawyer places \$3,000 check in IOLTA account at Main Street Bank on February 1
- Main Street Bank “credits” Lawyer’s IOLTA the \$3,000 – funds available on or about February 2 but not received (good) yet
- Main Street Bank sends check (IOU) to Client Bank to collect funds
- (Hopefully) Client Bank pays Main Street Bank the \$3,000 IOU sometime on February 2, but before Valentine’s day
- Main Street Bank receives the \$3,000 upon payment – funds are now “good” (in account)

Common Scam

- Client engages Lawyer to collect funds
- Lawyer receives cashier's check for funds and deposits in Trust Account
- Client begs and pleads for Lawyer to wire funds (less Lawyer's fee) promptly to Client when available
- Funds never become good
 - Bank withdraws improperly credited funds from Trust account
 - Lawyer is now on the hook for payment . . . And other clients' funds may be missing

Deposit Method Impacts “Good”

Method of Payment	Actual Receipt of Funds (“Good”)	Risk of Unilateral Cancellation or Withdrawal	Amount received
Cash	Immediate	None	Amount paid
Check	Minimum of several days and up to two weeks,* presuming no attempt to “stop payment”	None (after funds are received)	Amount paid
Credit Card	Several days	Considerable – often for six months (or more)	Amount paid less fees
Electronic Fund Transfer	Immediate	None	Amount paid

Funds Subject to Dispute

- Disburse all undisputed funds
- Hold all funds until dispute is resolved
 - If dispute is not resolved, interplead funds

Hold Funds Subject to Dispute – Rule 4-1.15(e)

“When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the lawyer shall keep the property separate until the dispute is resolved.

“The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

“Lawyers shall cooperate as necessary to enable distribution of funds that are not in dispute.”

When Are Trust Funds Disbursed

Disbursement Only for Proper Purposes

- Paying client
- Paying client expenses
- “Sweeping” out earned fees and incurred expenses for the attorney

Missouri Opinion 2020-14

QUESTION: Once Attorney has earned a fee or paid an expense such that funds in the trust account belong to Attorney, may Attorney pay personal or firm expenses directly from the trust account?

Opinion 2020-14 – Answer

No. A trust account is not to be used to pay a lawyer’s personal or business expenses. *See In re Coleman*, 295 S.W.3d 857, 866 (Mo. banc 2009); *see also In re Ehler*, 319 S.W.3d 442, 450-451 (Mo. banc 2010).

Once funds are “good funds” per Rule 4-1.15(a)(6) and Comment [5], **any funds belonging to Attorney should be transferred reasonably promptly from the trust account to Attorney’s personal or business account.** Rule 4-1.15(a) and (c) and Comment [6].

Only then may Attorney use the funds for personal or business expenses. *In re Coleman*, 295 S.W.3d at 866.

Disbursement to Clients

- Disbursed when good
- Held only if lien (until lien is resolved)

Missouri Opinion 2020-15

QUESTION: Attorney deposited a settlement check in the trust account. When should Attorney distribute the client's portion and Attorney's fees from the settlement?

Opinion 2020-15 – Answer

Rule 4-1.15(a)(6) **prohibits Attorney from disbursing funds deposited in the trust account** if Attorney has reasonable cause to believe the **funds have not actually been collected by the financial institution** and **until a reasonable period of time has passed for the financial institution to collect the funds.**

Comment [5] provides guidance that “good funds” should be distinguished from funds from a deposit that has “cleared.” What constitutes a reasonable period of time may vary depending, **but ten days after the date the deposit is recorded is presumed to be reasonable**, unless Attorney has notice of a reason to wait longer on a specific deposit. **A shorter period of time may be reasonable in some circumstances.** If Attorney has information that causes doubt about the collection of the deposit, Attorney should delay disbursement and take additional measures to ensure collection. Rule 4-1.15, Comment [5].

Once Attorney has reason to believe the funds have been collected by the financial institution, Attorney should disburse the funds promptly to the client. Rule 4-1.15(d). As to disbursement of Attorney’s fees, Comment [6] provides it should occur “reasonably promptly” after the settlement funds in the trust account become “good funds,” the client has been billed, and the client has had an opportunity to dispute the disbursement or otherwise has agreed to the disbursement. See Rule 4-1.15, Comment [6]. Disbursing Attorney’s portion of the funds within a period of one month shall be presumed to be reasonably promptly. Rule 4-1.15, Comment [6].

Disbursing Trust Funds to LAWYER

Disbursed when “**earned**” – if funds are in account (good)

- *Earned per agreement with client*

Disputed funds “held” until resolutions

Missouri Opinion 2020-22

QUESTION: Attorney received notice that Client is disputing a credit card payment for legal fees. If Attorney wishes to dispute the chargeback, Attorney is required to provide documentation of legal services rendered to Client. What information may Attorney provide?

Opinion 2020-22 – Answer

Information relating to the representation of Client, including information about legal services provided and fees charged, may not be disclosed without the informed consent of Client. *See* Rule 4-1.6; *see also* Informal Opinion 2015-09.

Rule 4-1.6(b)(3) permits a lawyer to reveal confidential information to the extent reasonably necessary to establish a claim or defense in a controversy between the lawyer and client, such as an action against a former client to collect a fee. However, a credit card chargeback dispute is not such a controversy. *See* Rule 4- 1.6, Comment [9].

To dispute the chargeback, Attorney is permitted to provide an affidavit or statement that professional services were provided to Client. Attorney also may state that professional obligations prevent Attorney from providing additional information.

Attorney should ensure that chargebacks for disputed credit card payments cannot be processed as transfers out of the trust account. Informal Opinion 2014-05; *see* Rule 4-1.15(b)(3). To address the fee dispute, Rule 4-1.5(f) requires Attorney to conscientiously consider participating in the appropriate fee dispute resolution program.

Disbursing Trust Funds to OTHERS (Third Parties)

Disbursed when funds are in account (good) and no dispute over distribution

- *Any funds not subject to dispute should be disbursed*

Funds for liens

- Disburse if client agrees (to the extent of the agreement)
- Hold to resolution if client disputes

Missouri Opinion 2020-16

QUESTION: What action should Attorney take when Attorney has notice of an apparently valid lien against settlement funds in Attorney's trust account and Client directs Attorney not to pay the lienholder from the settlement funds?

Opinion 2020-16 – Answer

Attorney should

- promptly distribute any funds in which the interests are not in dispute;
- hold the disputed funds in trust;
- refrain from distributing the disputed funds until the dispute between Client and the lienholder is resolved; and
- if necessary, file an action to have a court resolve the dispute.

Rule 4-1.15(e) and Comment [8]; see Informal Opinions 970075 and 20000023.

When Resolving Liens

- Lawyer settles \$100K case for Client
- After funds become good, Lawyer
 - Pays Lawyer fees – say \$30K
 - Withholds amount to pay lien – say \$20K
 - Pays Client other funds – \$50K
- Later Lawyer resolves lien for \$15K
 - Lawyer pays lienholder \$15K
 - Lawyer needs to disburse \$5K to Client

How Are Trust Funds Disbursed?

Methods of Disbursement

- Check with named payee
- Electronic transfer to named payee
- **Not permitted**
 - Cash
 - Counter checks
 - Cash-back transactions from deposits
 - ATM card withdrawals
 - Debit card transactions

Persons Authorized to Disburse

- Rule 4-1.15(a)(3): “Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a client trust account”

Missouri Opinion 2020-19

QUESTION: May a nonlawyer be a signatory on Attorney's trust account or authorize electronic transfers from the trust account?

Opinion 2020-19 – Answer

Only a lawyer admitted to practice in Missouri or a person under the lawyer's direct supervision is permitted to be an authorized signatory or to authorize electronic transfers from the trust account. Rule 4-1.15(a)(3).

Comment [2] provides guidance that if nonlawyer access to the trust account is granted, it should be "limited and closely monitored by the lawyer." Comment [2] provides additional guidance that a Missouri lawyer has a "non-delegable duty to protect and preserve the funds in a client trust account and can be disciplined for failure to supervise subordinates who misappropriate client funds. See Rules 4-5.1 and 4-5.3." See also *In re Farris*, 472 S.W.3d 549, 561 (Mo. banc 2015).

Attorney should establish proper trust account policies and properly train and supervise nonlawyers and subordinate lawyers in the firm to ensure reasonable measures are being taken to ensure the trust account is being handled in a way that is compatible with Attorney's professional obligations. See Rules 4-5.1 and 4-5.3.

Proper Way to Disburse Fees

- “Sweep” all fees earned on matter from trust account
- Promptly record disbursement
- Ideally provide notice/get consent before “sweeping” funds

Kansas – Trust Account Disbursements Journal

- A disbursements journal is a chronological listing of every disbursement made from the trust account.
- This journal contains the same information required to be kept in the checkbook register or stub
- plus a running total of disbursements. A disbursements journal should include:
 - the check number
 - the date
 - Payee
 - brief explanation of purpose of the transaction amount of the check
 - a running total of disbursements
- The use of . . . two journals (receipts and disbursements) provides the double entry accounting system that builds integrity and reliability into the accounting system because everything must stay in balance as proven by the reconciliations discussed later.

Record of Disbursements

Lawyer trust account disbursements journal Month of _____ 20 ____

Trust bank account no: _____ Page no: _____

Date	Check no.	Payee	Explanation	Amount of check	Running total

Trust Deposit – Recorded for Client (Client Ledger)

Lawyer individual trust account ledger

Name of client of third party: _____

Legal matter or adverse party: _____

File or case number: _____

Date	Description of transaction	Check no.	Funds paid	Funds received	Balance

Problems Locating or Identifying Payee

Missouri Opinion 2020-17

QUESTION: Attorney is holding in the trust account funds to distribute to Client, but Client cannot be located for distribution. What should Attorney do with Client's funds?

Opinion 2020-17 – Answer

ANSWER: Attorney should continue to make reasonable efforts to locate Client so the funds can be distributed.

If the efforts are unsuccessful after a reasonable period of time, **Attorney should hold the funds in an IOLTA or non-IOLTA trust account** per Rules 4-1.15 and 4-1.155 and follow the requirements of Missouri's Uniform Disposition of Unclaimed Property Act. Formal Opinion 118; Informal Opinion 20000129.

Missouri Opinion 2020-18

QUESTION: Attorney is holding funds in the trust account, but Attorney is unable to determine to whom the funds belong. What should Attorney do with the funds?

Opinion 2020-18 – Answer

ANSWER: Attorney should **continue to make reasonable efforts to identify the client or third person** to whom the funds belong so the funds can be distributed.

If the efforts are unsuccessful after a reasonable period of time, Attorney should hold the funds in an IOLTA or non-IOLTA trust account per Rules 4-1.15 and 4-1.155 and follow the requirements of Missouri's Uniform Disposition of Unclaimed Property Act. Formal Opinion 118; Informal Opinion 2011-01.

Reconciliations

Reconciliation – Rule 4-1.15(a)(7)

- “A **reconciliation** of the account shall **be performed reasonably promptly** each time an official statement from the financial institution is provided or available.”

“Three-Way” Reconciliation

1. Trust account ledger reconciles (equals)
2. Sum of all client ledgers reconciles (equals)
3. Bank statement reconciles (equals)

Maintain record of reconciliations

Trust Account Records

Records Must Be Kept 6 Years

Complete records of client trust accounts shall be maintained and preserved for a period of **at least six years after** the later of:

- (1) **termination** of the representation, or
- (2) the date of the **last disbursement of funds**.

Kansas requires 5 years

Illinois requires 7 years

How Maintained – Rule 4-1.15(f)

- “Client trust account records **may be maintained by electronic**, photographic, or other media provided that they otherwise comply with Rules 4-1.145 to 4-1.155 and that printed copies can be produced.”
- “These records shall be readily accessible to the lawyer.”

Required Trust Account Documentation (Missouri)

- (1) receipt and disbursement journals
- (2) client-specific ledgers
- (3) fee agreements and similar documents
- (4) accounting statements showing disbursements made
- (5) bills and expenses sent to clients
- (6) disbursement records
- (7) check-book registers and bank statements or the equivalents
- (8) electronic transfer records
- (9) account reconciliations
- (10) credit-card transaction information

Preservation of Records

Paper or electronic form

Must be kept X years from (1) final disbursement or (2) end of representation

Missouri – 6 years

Kansas – 5 years

Illinois – 7 years

Other Trust Accounting Issues

“Buffer” of Lawyer Funds Not Allowed

- Rule 4-1.15(b): “A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose.”

Opinion 2020-13

QUESTION: May Attorney maintain in the trust account funds belonging to Attorney or Attorney’s law firm to be used as a “cushion” to protect client funds in the event of a mistake or fraudulent transaction regarding the trust account?

Opinion 2020-13 - Answer

No. Rule 4-1.15(b) allows a lawyer to “deposit the lawyer’s own funds in a client trust account for the sole purpose of paying financial institution service charges on that account, but only in an amount necessary for that purpose.” Comment [6] to Rule 4-4.15 provides guidance that accurate records must be kept as to which part of the funds belong to Attorney.

Attorney would be engaging in prohibited **commingling of funds** if Attorney were to allow funds belonging to the law firm or to Attorney to be maintained in the trust account for any other purpose. *See In re Coleman*, 295 S.W.3d 857, 866 (Mo. banc 2009). Funds in the trust account belonging to Attorney must be disbursed to Attorney reasonably promptly after the fee is earned or the expense paid, in accordance with the guidance in Rule 4-1.15, Comment [6].

\$2,000 Fixed Fee Exception

Exception for Advanced Flat Fees

- Are the funds **anything other than a “flat fee”** being paid **in advance**?
 - Example – advance on hourly work
- If a “flat fee,” will the **“flat fee” exceed \$2,000?**
- If yes to either, then deposit [in trust account](#)

Missouri Informal Opinion 2018-15: Part 1

Attorney charges Client \$2,500 in advance for representation in a matter. May Attorney deposit any portion of the \$2,500 directly **in the operating account** before fees are earned or expenses incurred?

Missouri Informal Opinion 2018-15:

Answer 1

- Rule 4- 1.15(c) requires a lawyer to deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, except that an advanced flat fee which does not exceed \$2,000 may be deposited into an account other than a client trust account.
- **Unless Attorney has clearly communicated with the client**, preferably in writing, that **\$2,000 or less of the advanced payment constitutes the flat fee covering the entire matter**, the **advanced payment of \$2,500 must be deposited in the trust account**, to be withdrawn only as fees are earned or expenses incurred. *See also* Rule 4-1.5(b).
- **If Attorney has communicated with the client, preferably in writing, that \$2,000 or less of the advanced payment constitutes the advanced flat fee covering the entire matter, Attorney may deposit in the operating account the advanced flat fee.**
- The advanced payment of expenses must be deposited in the trust account, to be withdrawn only as expenses are incurred.
- **All fee and expense payments are subject to refund to the extent the attorney-client relationship is terminated prior to the advanced flat fee being earned or expenses incurred.** Rule 4-1.15, Comment [20]; Rule 4-1.5; Rule 4-1.16(d).

Missouri Informal Opinion 2018-15

Part 2

May Attorney deposit an advanced flat fee of \$2,000 or less in the client trust account, to be withdrawn as fees are earned?

Missouri Informal Opinion 2018-15: Answer 2

Yes. The exemption in Rule 4-1.15(c), allowing deposit in another account of advanced flat fees that do not exceed \$2,000, **is permissive rather than mandatory.**

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Part 3

Attorney charges Client a flat fee of \$6,000 for representation in a matter. Attorney charges the fee in **three advanced payment installments** throughout the representation. **May Attorney deposit each advanced fee installment** of \$2,000 in the operating account, per the exemption in Rule 4-1.15(c)?

Missouri Informal Opinion 2018-15: Answer 3

- **No.** Only **an advanced flat fee which does not exceed \$2,000** is exempted from the general rule that all unearned fees must be deposited in the trust account, to be withdrawn only as fees are earned. Rule 4-1.15(c).
- Installments of any amount toward an advanced flat fee of more than \$2,000 must be deposited in the client trust account, to be withdrawn only as fees are earned. Rule 4-1.15(c).

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Part 4

- Attorney charges Client \$1,100 in advance for representation in a matter.
- The advanced payment constitutes **the flat fee, and it also will be used for expenses** Attorney anticipates expending on behalf of Client.
- The representation agreement **does not designate what portion of the \$1,100 constitutes the flat fee and what portion will be used for the payment of expenses.**
- **May Attorney deposit the \$1,100 directly in the operating account** before the fees are earned or expenses incurred?

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Answer 4

- **No.** Because Attorney **has not communicated to the client, preferably in writing, what portion of the advanced payment constitutes the advanced flat fee** for the representation, no amount constituting an unearned fee or expense not yet incurred may be deposited in the operating account per Rule 4-1.15(c). *See also* Rule 4-1.5(b) and Rule 4-1.4.

Questions

- Client pays \$3,000 flat fee in advance
 - Exceeds \$2,000: deposit in trust account
- Client pays \$3,000 flat fee after work is completed
 - Normal rule applies: earned fee goes in operating account

Kansas – Suggestions to Safeguard Trust Funds

The security of a trust account can be measured by the interest and attention the attorney devotes to the operation of the account. The following safeguards are suggested:

- Do not sign checks to be disbursed or deposited in haste.
- Use pre-numbered checks and periodically examine the sequential order of blank, void, and canceled checks and question any unexplained break in numbers. For this reason, it is suggested voided checks be retained. Keeping blank checks under someone's control during the day, securing them at night, and insuring the checks are all accounted for when someone resigns or is terminated can help reduce theft.
- When the client indicates she has paid in cash, ask if a receipt was provided. The receipt book can be examined periodically to determine if any copies of the receipts have been removed or voided, which should be questioned.
- Posting, depositing and disbursing trust account funds should be done by different personnel in the office. If this is not possible due to limited staff, an attorney may want to reconcile the trust account periodically or have an independent party do so. Do not sign blank checks and do not make a check out to cash or bearer. Check to see if the client's file contains documentation supporting disbursements.
- Ensure deposits are made in a timely manner, daily if possible. Control who opens bank statements and periodically review correspondence regarding the trust account.
- Estate accounting should be verified. Old or inactive estates become prime targets for embezzlement.
- Require supporting documentation of accounting reports and reconciliations (bank statements, canceled checks, deposit slips, correspondence, etc.).

Kansas – Suggestions to Safeguard Trust Funds

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- . . .
- Check periodically to determine if only designated personnel in the office have had access to office mail.
- Prohibit (or at least restrict) removal of trust account records from the office.
- Question lifestyle changes of individuals with access to the trust account (increase of social activities/travel, new wardrobe, new car, etc.)
- Examine signature(s) on trust account checks to prevent forgery attempts.
- Never transmit money without written communication. A voucher or other documentation for receipt and instruction should be prepared by the attorney instructing the person performing the bookkeeping function to deposit the funds into the trust fund account on behalf of the person or entity named in the voucher or receipt. Written communication avoids later arguments regarding deposit instructions and provides a needed audit trail.
- A determination as to the proper person(s) to sign trust checks is probably best left for each firm to decide. Generally, the person who prepares the checks should not have sole signatory authority.

Kansas – Suggestions to Safeguard Trust Funds (Continued)

- Prudent internal control dictates that access to the trust account checkbook is limited to authorized signatories and that two signatures are required if practical on all trust account checks. Regardless, no individual should sign a check unless presented with written documentation that the disbursement is proper, along with notice that the original receipted funds have cleared the banking process and are available for disbursement. The lawyer individual trust account ledger should reflect the availability of the trust funds. Disbursement procedures should be clearly stated in established rules for the firm.

Thank you



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