

RECORDS FOR OTHER PEOPLE'S MONEY

by
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As a result of amendments to Mass. R. Prof. C. 1.15, new requirements for keeping records of money that lawyers hold for clients or others take effect on January 1, 2004. Massachusetts has now joined eighteen other states with similar provisions detailing the obligations inherent in the lawyer's duty to keep accurate and detailed records of money he or she holds for clients and others in the course of a representation. The accounting and record keeping that the amendments require are nothing more than what any client or third person would expect from a professional who holds his or her money.

Every lawyer in Massachusetts who holds money for clients or others should evaluate the system that the lawyer uses to keep records. Many lawyers will find that they already conform to the requirements of the amended rule or just need to make minor adjustments to their existing systems and practices. A few will need to make major changes, and some will also decide that it is better to start fresh with a new IOLTA and accounting system before January 1.

Some of the important changes are:

- Lawyers are required to mail or deliver written itemized bills to clients at or before the time that the lawyer withdraws funds from a trust account to pay herself for services, showing the services provided and the amount of funds the lawyer continues to hold for the client after withdrawal of the fee.
- Lawyers are prohibited from making withdrawals from trust accounts by ATM or checks payable to "Cash" and are required to use only prenumbered checks.
- Records that lawyers are required to make and keep of the receipt and disposition of funds held for clients or others are described in detail.
- Lawyers must perform a "three-way" reconciliation of the account at least every sixty days.

The accounting and record keeping obligations imposed by Mass. R. Prof. C., Rule 1.15 extend beyond the client to third parties who have an interest in the disposition of the funds. The rule applies to all clients' funds accounts, including IOLTA, trust, estate and escrow accounts. In addition, the rule pertains to any funds being held by a lawyer in connection with a representation even if the lawyer is holding those funds in another capacity, such as a trustee or conservator for a family member or other person. There is an exception to the Operational Requirements for Trust Accounts set out in Rule 1.15(e) and (f) for property or funds being held as a custodian for a minor family member of the lawyer without compensation to the lawyer.

Rule 1.15 requires two basic kinds of records: (1) records created by the bank that show what went into and out of the lawyer's client trust bank accounts; and (2) records created by the lawyer to explain the transactions reflected in the bank documents.

Bank Created Records. Rule 1.15 (f) requires retention by the lawyer of all documents recording transactions that the bank returns to the lawyer. This may include such documents as client trust bank account statements, cancelled checks and records of electronic transactions. Banks no longer automatically provide cancelled checks to customers, but lawyers will want to make sure their bank provides either the originals or photo images of cancelled checks.

A basic system might involve keeping a separate binder (or folder) for each client trust bank account. Each folder should have one section for bank statements, one section for originals or photo images of cancelled checks and records of electronic and other transactions, one section for copies of deposit slips and one section for checkbook stubs or records, computer-generated equivalents or copies of checks created by "one-write" methods as the checks are written. Deposit slips and checkbook stubs or records provide a complete audit trail. In this system, each document is filed in date order in the appropriate section of the binder for the account they refer to. Note that binders for a pooled account will have cancelled checks pertaining to all of the clients whose funds are in the pooled account.

Records to be Made and Kept by Lawyers. Rule 1.15 (f) (1) (A) requires lawyers to record the name and address of the bank or other depository, the account number, the account title, the opening and closing dates, and the type of account (whether it is an IOLTA account or a separate client fund account for the client). For each account, there are three types of accounting records that must be kept by the lawyer. They are the ledgers for each client matter, a ledger for bank fees and charges, and a check register.

A Ledger for Each Client Matter. Rule 1.15 (f) (1) (C) requires keeping individual client records for each separate matter in which the lawyer holds funds for the client. This client ledger must give the name of the client, detail all money received and paid out on behalf of the client or third party, and show the client's balance following every receipt or payment. This means that a lawyer who represents a lender or creditor on multiple matters must keep a separate client ledger for each matter in which the lawyer holds money for the client.

Maintaining a client ledger is like keeping a separate checkbook for each client matter, regardless of whether or not the client's money is being held in the IOLTA account or a separate trust account. Every receipt and payment of money for a client must be recorded in the ledger for that client matter. For every receipt, list the date, amount and source of the money. For every payment, list the date, the amount, the check number, the payee and the purpose of the payment. After each receipt or payment is recorded, the new balance held for the client must be recorded.

Ledger for Bank Fees and Charges. Rule 1.15 (f)(1)(D) requires lawyers to record every bank charge against the client trust fund account in the check register and permits the lawyer to keep his or her money in the account to pay these charges and fees. Lawyers should keep a bank fees and charges ledger the same way that client ledgers are kept, as part of a check register system. Record every deposit of the lawyer's funds, every charge the bank makes against the account, and the running balance in both the client ledger and the check register.

Check Register. Rule 1.15 (f) (1) (B) requires a check register in chronological order with the date and amount of all deposits; the date, check or transaction number, amount and payee of all disbursements, whether by check, electronic transfer, or other means; the date and amount of every credit or debit and the identity of the client matter and the current balance in the account. Maintaining a check register is very similar to keeping a client ledger. For pooled accounts, keeping the check register is the only way to know how much money is in the account at any given time and is essential for performing required reconciliations. If maintained and used properly, this journal will help prevent bounced checks (unless there is a bank error).

"Three-way" Reconciliation. Rule 1.15 (f)(1)(E) requires lawyers to keep records of

reconciliation (balancing) of the client ledgers, bank charges ledger, check register and bank statements. The "three-way" reconciliation requires the lawyer to add all of the individual client ledgers and the ledger for bank charges and compare the total of the ledgers to the balance in the check register. Both amounts should be the same. If they are not, the basic records - the bank statements, the client ledgers, the bank charges ledger and the check register - need to be checked for mistakes and corrected. When both amounts are the same the lawyer goes on to reconcile this amount against the bank statement in the usual manner that any checkbook would be balanced. Rule 1.15 requires that client trust account records be reconciled at least every sixty days and that a written record that shows the records were reconciled be kept. It is recommended, however, that you reconcile these accounts on a monthly basis or more frequently if the account is particularly active such as a high volume conveyancing account.

Keeping Records by Computer The amendments do not direct lawyers to keep the required records using a computer. It is fine for lawyers to continue to keep records manually as long as they include all of the required information and an appropriate record is made that the "three-way" reconciliation was performed in a timely manner. However, many of the required records and activities are now routinely handled in many law offices by computerized accounting systems. Many systems have the capability of performing a complete "three-way" reconciliation and generating the required records of the reconciliation. There are several relatively inexpensive software applications that are widely available that can accomplish this. Thus, for example, a few keystrokes, or mouse clicks, can generate the client and bank ledgers, the check register, and the record of the "three-way" reconciliation.

A lawyer using a computerized accounting system must maintain the check register, client ledgers, bank charges ledger and reconciliation reports in a form that can be reproduced and printed in hard copy. Because computer data can be lost through electrical storms, fire, power or equipment failure, software malfunction and human error, electronic records must be regularly backed up by an appropriate storage device. Rule 1.15(f)(1)(G) Whether by computer or manually, Rule 1.15 (f) requires keeping trust accounting records for six years after the termination of the representation and the funds are paid out.

The ability to precisely document the complete history and disposition of all client funds is the central requirement when accounting for trust funds. Rule 1.15 does not mandate any particular client trust accounting system, but it spells out the required components.

Before January 1, 2004, bar counsel will participate in more than a dozen trainings sponsored by MCLE and bar associations. These programs are being conducted throughout the state. For a schedule of these programs and other information on this subject, go to the website of the Office of Bar Counsel, www.mass.gov/obcbbo. The IOLTA Committee has published a very useful booklet on the nuts and bolts of trust accounting, "Managing Clients' Funds and Avoiding Ethical Problems", by Jayne B. Tyrrell, Esq. and Stephen M. Casey. It is available at the IOLTA Committee's website www.maiolta.org or call them at 617-723-9093. It may take some effort in the next few months to review systems and change practices, but the result will be better service to clients and better protection of client funds.

Please direct all questions to webmaster@massbbo.org.

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