Issues Subcommittee on Trust Accounting

North Carolina State Bar

October 2026

Report to the State Bar Council

Background

In January 2026, State Bar President Katherine Frye announced the creation of a new subcommittee of the State Bar Council's Issues Committee tasked with revising and modernizing the Rules of Professional Conduct governing trust accounting. Since the adoption of Rule 1.15 in 1997, these rules have undergone minor periodic revisions and one major revision in 2016 that added numerous procedural requirements to deter and detect theft of funds from lawyer trust accounts; the rule, however, has not been comprehensively reviewed. Matching the State Bar's renewed educational efforts for lawyers on the subject of handling entrusted funds through the Trust Account Compliance Program and impacted by feedback from the profession, the Ethics and Grievance Committees, and the banking and bookkeeping industry, the subcommittee sought to update and streamline procedural requirements for lawyers when interacting with and safeguarding entrusted funds and ensure the rules are relevant in today's marketplace, all while prioritizing the protection of the public.

Subcommittee Roster

State Bar Councilors:

- **Matt Smith**, Chair (Immediate Past President of the North Carolina State Bar)
- **Judge Julie Bell** (District 10/ Wake County)
- **Stacy Cordes** (District 26/ Mecklenburg County)
- **Scott Hart** (District 4/ Carteret, Craven, and Pamlico Counties)
- **Greg Jones** (District 27/ Rowan County)
- **Craig Lynch** (District 26/ Mecklenburg County)
- **Merri Oxley** (District 41/ McDowell, and Rutherford Counties)
- **Davis Poisson** (District 21/ Anson, Richmond, and Scotland Counties)
- **Damon Seils** (Public Member)

Advisory Members:

- **Deanna Brocker** (Lawyer; The Brocker Law Firm, P.A.)
- **Julie Dudley** (Bookkeeper; Silver Pearl Inc.)
- **Alan Schneide**r (Lawyer; Cheshire, Parker, Schnieder & Abrams, PLLC)
- **Liz Smithman** (Senior Vice President, Deposit Operations & Manager; Fidelity Bank)

Subcommittee Goals

- ✓ Ensure Rule 1.15 protects the public by giving clear, manageable standards for interacting with and safeguarding entrusted funds and property.
- ✓ Modernize and streamline Rule 1.15 to ensure that the rules are relevant to the consumer marketplace, consistent with the current banking standards, and practical for all sizes and types of law firms.

Subcommittee Meetings

MEETING DATE	TOPICS DISCUSSED
1/21/2026	Raleigh, January Quarterly Meeting • Subcommittee created and tasked with revising the Trust Accounting Rules
4/7/2026	Zoom • Reviewed current version of Rule 1.15, provided research and materials, and discussed the history of the trust accounting rules • Discussed goals of the subcommittee • Reviewed ABA chart of trust account rules by state
4/22/2026	Raleigh, April Quarterly Meeting • Rule 1.15-4 • Rules 1.15-3(a)-(e)
6/10/2026	Zoom • Rules 1.15-3(f)-(j) • Rules 1.15-2(a)-(e)
7/8/2026	Zoom • Rules 1.15-2(f)-(r)
7/22/2026	Beaufort, July Quarterly Meeting • Rules 1.15-2(p), (r) , and (s) • Rules 1.15-3(d) and (e)(4) • Rule 1.15-4(a) • Rule 1.15-1
8/27/2026	Zoom • Rule 1.15-1 • Revisited Rules 1.15-2(a), (h), (j), and (n) • Revisited Rule 1.15-3(b), (c)(2), and (d)
9/24/2026	Zoom • Revisited Rule 1.15-3(c) • Comments to Rule 1.15

Summary of Proposed Amendments

The subcommittee streamlined, updated, and clarified language throughout all subparts to Rule 1.15. Clean and track-changes copies of the proposed amendments to Rule 1.15 are included with this report in Appendices A and B, respectively.

Rule 1.15-1 Definitions

The substance of the most definitions remains largely unchanged, and the proposed amendments reorganize the remaining definitions by category. The subcommittee prioritized functionality and clarity in reorganizing the definitions because, as noted by subcommittee members, the definitions clarify the requirements of the substantive rules.

The proposed reorganization of definitions is as follows:

- (a) Accounts
  - (1) Trust account
  - (2) General trust account
  - (3) Dedicated trust account
  - (4) Fiduciary account
- (b) Ledgers
  - (1) Administrative ledger
  - (2) Client ledger
  - (3) General ledger
- (c) Funds and Property
  - (1) Entrusted property
  - (2) Fiduciary funds
  - (3) Funds
  - (4) Trust funds or Entrusted funds
- (d) Services
  - (1) Legal Services
  - (2) Professional Fiduciary Services
- (e) Item
- (f) Bank or Financial Institution

The following definitions were deleted: Client, Demand Deposit, Electronic Transfer, and Subsidiary Ledger.

Rule 1.15-2 General Rules

New Rule	Summary of Changes
(a) Safeguarding Trust and Fiduciary Funds and Other Entrusted Property.	Condensed subsections (a)-(d) into new subsection addressing a lawyer's obligations to safeguard entrusted property.
(b) Location of Accounts.	Previously subsection (e). No substantive change.
(c) Bank Directive.	Previously subsection (f). New language clarifies it is it the lawyer's responsibility to ensure the financial institution will honor the directive.
(d) Commingling Prohibited.	Previously subsection (g). New language clarifies that, with limited exceptions, entrusted funds must be placed in a trust or fiduciary account, and a lawyer's funds must be kept separately.
(e) Mixed Funds Deposited Intact.	Previously subsection (h). Instructions regarding disputed funds removed and relocated.
(f) General Prohibitions.	Condensed subsections (j)-(l). Each covered prohibited uses and transactions involving trust and fiduciary accounts. The list general prohibitions now includes: (1) Cash withdrawals (2) Use of a debit card (3) Pledging funds for benefit of lawyer or other third person (4) Disbursing funds to pay fees or costs other than to lawyer.
(g) Misuse of Entrusted Property.	Previously subsection (l). New language emphasizes entrusted property is not to be used for the benefit of anyone other than the legal or beneficial owner of the property.
(h) Communications Regarding Entrusted Funds.	Previously subsection (m). New language incorporates select requirements from Rule 1.15-3(f).

(i) Delivery of Entrusted Property.	Previously subsection (n). New language clarifies a lawyer is to promptly deliver funds to clients or third parties to which they are currently entitled.
(j) Disputed Funds.	New subsection addressing disputed funds.
(k) Duty to Resolve Discrepancies.	Previously Rule 1.15-3(e)(4). Same content relocated to Rule 1.15-2.
(l) Duty to Report.	Previously subsection (p). Modified timeline in requirement to report error resulting in unintentional or inadvertent use of entrusted property: the inadvertent use of entrusted property must be reported unless the error is rectified within sixty days of the discovery of the error.
(m) Interest on Deposited Funds.	Previously subsection (q). Removed reference to "taxes"
(n) Unclaimed Property.	Previously subsection (r). Retitled and updated language to "unclaimed property" to match applicable law.
(o) Check Signing and Electronic Transfer Authority.	Previously subsection (s). New language clarifies applicability to fiduciary accounts.
Removed Subsections	(i) "Items Payable to Lawyer." Rule is redundant. (o) "Property Received as Security." Rule is redundant.

Rule 1.15-3 Records and Accountings

New Rule	Summary of Changes
(a) Check Format.	Removed requirement of "business-size" checks.

(b) Minimum Records for Accounts at Financial Institutions.	Condensed repetitive subsections (b) and (c). New subsection (b) governs minimums records and information for trust and fiduciary accounts. Required records for trust and fiduciary accounts include: (1) Records for funds deposited. (A) Items drawn. (B) Instructions to disburse and transfer. (2) Records for funds disbursed. (3) Statements and other documents. (4) General ledger. (5) Administrative ledger. (6) Client ledger. Digital images must be legible reproductions of the front and back of original items; there is no number per page or size requirement.
(c) Reconciliations of Trust Accounts.	Previously subsection (d). Lawyers are required to perform monthly three-way reconciliations. Reconciliations must be performed for all trust accounts. (1) Monthly Reconciliations. (A) General ledger balance. (B) Adjusted bank balance. (C) For general trust accounts, positive administrative and client ledger balances. (2) Report Retention. Rule clarifies what documents must be maintained for the six-year minimum record keeping period.
(d) Monthly Reviews.	Previously subsection (e). Lawyers must perform a reasonable review of disbursements from their trust and fiduciary accounts.
(e) Accountings for Fiduciary Property.	Previously subsection (g). Lawyers are required to comply with applicable law regarding accountings fiduciary property.

(f) Minimum Record Keeping Period.	Previously subjections (h) and (i). Lawyers must maintain records for six calendar years and may maintain those records electronically.
(g) Audit by State Bar.	Previously subsection (j). No change.
Removed subsections	(f) Accountings for Trust Funds. Rule is redundant.

Rule 1.15-4 Trust Account Management in a Multi-Member Firm

Rule 1.15-4 was eliminated entirely. The subcommittee believes the content of Rule 1.15-4 is a best practice that lawyers may employ in their firms if desired. The content of this subpart will be relocated to the Revised Trust Account Handbook.

Comment to Rule 1.15 and all Subparts

New #	Old #	Summary of Changes
[1]	[1]	No change.
--	[2]	Removed. Restatement of proposed Rule 1.15-2(a).
[2]	[3]	Removed part of the comment restating proposed Rule 1.15-2(a). Maintain content re: duty to invest.
[3]	[4]	Removed part of the comment restating proposed Rules 1.15-2(f)(3) and 1.15-2(g) [lawyer shall not use or pledge entrusted property].
[4]	[5]	Added language to make comment consistent with proposed Rule 1.15-2(a) language re: "reasonable measures to safeguard" other entrusted property.
[5]	[6]	Removed part of the comment restating proposed Rule 1.15-1(d)(2) definition of professional fiduciary services. Added language to clarify that a lawyer may provide professional fiduciary services to a client in a professional or personal capacity, regardless of compensation.
--	[7]	Removed. Restatement of proposed Rule 1.15-2(a).

[6]	[8]	Removed reference to compensation as it is included in New [5]. Amended to clarify that the requirements of Rule 1.15 do not apply to property received in connection with a lawyer serving in his/her personal capacity as a fiduciary.
--	[9]	Removed.
[7]	[10]	No change.
[8]	[11]	No change.
[9]	[12]	Removed language re: how to treat availability retainer and advance fee retainer (see 2008 FEO 10).
[10]	[13]	Amended to remove ambiguity and ensure consistency with proposed Rules 1.15-2(a) and 1.15-3(b)(1) [deposit records].
[11]	[14]	Updated heading for consistency: Abandoned -> Unclaimed Property.
[12]	[15]	No change.
[13]	[16]	Added language consistent with new Rule 1.15-(j) [disputed funds], including specific references to interpleader actions, deposit of disputed funds with the clerk, and liens against PI settlements.
[14]	[17]	Added sentence to clarify the Rule 1.15-3(b) requirement that a lawyer must maintain certain records, not their bank or financial institution.
[15]	[18]	Removed restatement of new Rule 1.15-3(f) [electronic records]. Added language to clarify requirement to promptly complete monthly reconciliations and reviews, not in batches.
[16]	[19]	Updated/clarified language re: ACH system and electronic debits.
[17]	[20]	Updated/clarified language re: ACH system and electronic debits.
--	[21]-[23]	Removed.
[18]	[24]	Removed language to ensure consistency with the updated requirements of proposed Rule 1.15-3(c) [reconciliations].
[19]	--	Comment added to clarify what a “reasonable review of disbursements” requires; dependent upon factors including practice type, practice size and structure, volume of transactions within a lawyer’s account, etc.

--	[25]	Removed.
[20]	[26]	Language updated to encourage lawyers to review the TA Handbook for additional fraud prevention recommendations, without providing a list of other additional measures.
[21]	[27]	Amended to ensure consistency with proposed Rule 1.15-2(l) [duty to report].
[22]	--	Comment clarifies the duty to report does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question.
--	[28]-[31]	Removed.

Appendices

- Appendix A – Clean Copy of Proposed Amendments to Rule 1.15
- Appendix B – Track-changes Copy of Proposed Amendments to Rule 1.15

CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.15-1 DEFINITIONS

For purposes of this Rule 1.15, the following definitions apply:

(a) Accounts

(1) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of entrusted funds.

(2) "General trust account" denotes any trust account other than a dedicated trust account.

(3) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.

(4) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.

(b) Ledgers

(1) "Administrative ledger" denotes a register maintained for lawyer or firm funds deposited into a general or dedicated trust account or fiduciary account that lists, in chronological order, every deposit into and each disbursement from the account of such funds, and shows the current balance of funds after each such transaction.

(2) "Client ledger" denotes a register, maintained for each client (person or entity) whose funds are deposited into a trust account that lists, in chronological order, every deposit into and each disbursement from the trust account for the client, and shows the current balance of the client's funds after each such transaction.

(3) "General ledger" denotes a register, maintained for each general and dedicated trust account and each fiduciary account, that lists in chronological order every deposit into and each disbursement from the account, and shows the current balance of funds after each such transaction.

(c) Funds and Property

(1) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.

(2) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.

(3) "Funds" denotes any form of money.

(4) "Trust funds" or "Entrusted Funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.

(d) Services

(1) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.

(2) "Professional fiduciary services" denotes services rendered by a lawyer in the lawyer's professional capacity as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.

(e) "Item" denotes any means or method by which funds are deposited into and disbursed from an account; for example: a check, substitute check, remotely created check, draft, automated clearinghouse (ACH) transfer, electronic transfer, or wire transfer.

(f) "Bank" or "Financial Institution" denotes a bank, savings and loan association, credit union chartered under North Carolina or federal law, or brokerage firm.

History Note: *Authority G.S. 84-23;*
Approved by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: May 4, 2000; March 1, 2003; March 6, 2008; October 8, 2009; August 23, 2012; June 9, 2016; April 5, 2018;
Amendments Approved by the Supreme Court March 1, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.

27 NCAC 02 RULE 1.15-2 GENERAL RULES

(a) Safeguarding Trust and Fiduciary Funds and Other Entrusted Property. All trust and fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in a general trust account, a dedicated trust account, or a fiduciary account as defined in Rule 1.15-1. A lawyer may also hold other entrusted property provided that the lawyer ensures that the property is identified as property of the person or entity for whom it is to be held and takes reasonable measures to safeguard the property. General trust accounts are to be administered in accordance with the Rules of Professional Conduct and the provisions of 27 NCAC Chapter 1, Subchapter D, Sections .1300.

(b) Location of Accounts. All trust accounts shall be maintained at a bank in North Carolina or a bank with branch offices in North Carolina except that, with the written consent of the client, a dedicated trust account may be maintained at a bank that does not have offices in North Carolina or at a financial institution other than a bank in or outside of North Carolina. A lawyer may maintain a fiduciary account at any bank or other financial institution in or outside of North Carolina selected by the lawyer in the exercise of the lawyer's fiduciary responsibility.

(c) Bank Directive. Every lawyer maintaining a trust account or fiduciary account shall file with the financial institution a written directive requiring the financial institution to report to the North Carolina State Bar if an instrument drawn on the account is presented for payment against insufficient funds and ensure the financial institution will honor the directive.

(d) Commingling Prohibited. A trust or fiduciary account may only hold entrusted property. No funds belonging to the lawyer shall be deposited or maintained in a trust account or fiduciary account except funds sufficient to open or maintain an account, or pay any bank or merchant service charges, or mixed funds as outlined in this Rule.

(e) Mixed Funds Deposited Intact. When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer shall withdraw the amounts to which the lawyer is or becomes entitled.

(f) General Prohibitions. A lawyer shall not:

(1) Withdraw cash or write an item payable to cash from a trust or fiduciary account;

(2) Use a debit card to withdraw funds from a trust account or fiduciary account;

(3) Pledge entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of the entrusted property; and

(4) Disburse funds from a trust or fiduciary account for payment of legal fees or costs to any recipient other than the lawyer or the law firm that provided the services.

(g) Misuse of Entrusted Property. A lawyer shall not use any entrusted property for the lawyer's personal benefit or for the benefit of any person other than the legal or beneficial owner of that property.

(h) Communications Regarding Entrusted Funds. A lawyer shall promptly notify the client upon receipt of any entrusted property belonging in whole or in part to the client. Upon the final disbursement of the trust funds and at such other times as may be reasonably requested by the client, a lawyer shall also render to the client a written accounting of the receipts and disbursements of all trust funds.

(i) Delivery of Entrusted Property. A lawyer shall promptly pay or deliver to the client or to a third party any entrusted property to which the client or third party is currently entitled except disputed funds as addressed in this Rule or as otherwise permitted by law.

(j) Disputed Funds. Disputed funds must remain in the trust account until they can be appropriately disbursed. If the lawyer's entitlement to entrusted property is disputed, the disputed amount(s) shall remain in the trust account or fiduciary account until the dispute is resolved. A lawyer should promptly seek to resolve all other disputes concerning the proper recipient of entrusted funds consistent with the lawyer's professional responsibility under these Rules and as otherwise permitted by law.

(k) Duty to Resolve Discrepancies. The lawyer shall take the necessary steps to investigate, identify, and promptly resolve any discrepancies discovered during the monthly reconciliation and reviews required by Rule 1.15-3.

(l) Duty to Report. A lawyer who discovers or reasonably believes that entrusted property has been subject to intentional theft or fraud shall immediately report the event(s) to the North Carolina State Bar. When an error results in an unintentional and inadvertent use of entrusted property, the event must be promptly reported to the State Bar unless the error is rectified within sixty days following the discovery of the error. This Rule requires disclosure of information otherwise protected by Rule 1.6.

(m) Interest on Deposited Funds. Under no circumstances shall the lawyer be entitled to any interest earned on funds deposited in a trust account or fiduciary account. Except as authorized by Rule .1316 of subchapter 1D of the Rules and Regulations of the North Carolina State Bar, any interest earned on a trust account or fiduciary account, less any amounts deducted for bank service charges, shall belong to the client or other person or entity entitled to the corresponding principal amount.

(n) Unclaimed Property. If entrusted property is unclaimed, the lawyer shall make due inquiry of the lawyer's personnel, records, and other sources of information in an effort to determine the identity and location of the owner of the property. If that effort is successful, the entrusted property shall be promptly transferred to the person or entity to whom it belongs. If the effort is unsuccessful and the provisions of G.S. 116B-53 are satisfied, the property shall be deemed unclaimed, and the lawyer shall comply with the requirements of Chapter 116B of the General Statutes concerning the escheat of unclaimed property.

(o) Check Signing and Electronic Transfer Authority.

(1) Every trust or fiduciary account check must be signed by a lawyer, or by an employee who is not responsible for performing reconciliations and who is supervised by a lawyer.

(2) Every electronic transfer from a trust or fiduciary account must be initiated by a lawyer, or by an employee who is not responsible for performing reconciliations and who is supervised by a lawyer.

(3) Before exercising signature or electronic transfer authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature or transfer authority.

(4) Trust or fiduciary account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures other than "digital signatures" as defined in 21 CFR 11.3(b)(5).

History Note: *Authority G.S. 84-23;*
Approved by the Supreme Court: July 24, 1997;
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Amendments Approved by the Supreme Court March 1, 2023 and re-entered into the Supreme Court's minutes March 20, 2024;
Amendments Approved by the Supreme Court: August 20, 2025.

27 NCAC 02 RULE 1.15-3 RECORDS AND ACCOUNTINGS

(a) Check Format. All general trust accounts, dedicated trust accounts, and fiduciary accounts must use checks that contain an Auxiliary On-Us field in the MICR line of the check.

(b) Minimum Records for Accounts at Financial Institutions. A lawyer must maintain the following minimum records and information for trust accounts and fiduciary accounts:

(1) All records listing the source and date of receipt of any funds deposited in the account including, but not limited to, receipts, deposit slips, and wire and electronic transfer confirmations, and, in the case of a general trust account, all records also listing the name of the client or other person to whom the funds belong;

(2) All records listing the recipient, amount, and date of disbursement of any funds disbursed from the account including, but not limited to:

(A) All cleared checks or other items drawn on the account, or digital images thereof furnished by the financial institution, provided that digital images must be legible reproductions of the front and back of the original items; and

(B) All instructions or authorizations to disburse funds from the account, including electronic transfers or debits, and all written or electronic records of any such disbursement.

For a general trust account, such records must also show the information identifying the client(s) from whose balance(s) the item is drawn;

(3) All statements and other documents received from the financial institution with respect to the trust or fiduciary account, including, but not limited to notices of return or dishonor of any item drawn on the account against insufficient funds;

(4) A general ledger as defined in Rule 1.15-1;

(5) An administrative ledger as defined in Rule 1.15-1; and

(6) For a general trust account, a client ledger as defined in Rule 1.15-1 for each person or entity from whom and for whom entrusted funds are received.

(c) Reconciliations of Trust Accounts.

(1) Monthly Reconciliations. On a monthly basis, a lawyer shall conduct a reconciliation of all trust accounts each time a statement from the financial institution is provided or available. Each reconciliation report shall show the following balances and verify that they are identical:

(A) The balance that appears in the general ledger as of the date of the ending balance on the bank statement;

(B) The adjusted bank balance, determined by adding outstanding deposits and other credits to the bank statement ending balance and subtracting outstanding checks and other debits from the bank statement ending balance; and

(C) For general trust accounts, the total of all positive administrative and client ledger balances in the trust account as of the date of the ending balance on the bank statement.

(2) Report Retention. The lawyer shall review, sign, date, and retain a copy of the reconciliation report for six years in accordance with the minimum record keeping period required by this Rule. Each reconciliation report shall include a copy of the bank statement, general ledger, a list of all positive administrative and client ledger balances relevant to the report, and lists of the outstanding deposits and outstanding checks relevant to the report.

(d) Monthly Reviews. On a monthly basis, a lawyer shall review the bank statement and perform a reasonable review of disbursements from each trust or fiduciary account as reflected in the bank statement, including all cleared checks and electronic transfers of funds.

(e) Accountings for Fiduciary Property. Inventories and accountings of fiduciary funds and other entrusted property received in connection with professional fiduciary services shall be rendered to judicial officials or other persons as required by law.

(f) Minimum Record Keeping Period. A lawyer shall maintain complete and accurate records of all entrusted property received by the lawyer as required by this Rule for at least the six year period immediately preceding the most recent calendar year end; the records may be maintained by electronic, photographic, or other media, provided that print copies can be produced and the records are readily accessible to the lawyer.

(g) Audit by State Bar. The financial records required by this Rule shall be subject to audit for cause and to random audit by the North Carolina State Bar; and such records shall be produced for inspection and copying in North Carolina upon request by the State Bar.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 6, 2004; March 6, 2008; June 9, 2016; April 5, 2018;
Amendments Approved by the Supreme Court March 1, 2023 and re-entered into the Supreme Court's minutes March 20, 2024.

27 NCAC 02 RULE 1.15 COMMENT TO RULE 1.15 AND ALL SUBPARTS

[1] The purpose of a lawyer's trust account or fiduciary account is to segregate the funds belonging to others from those belonging to the lawyer. Money received by a lawyer while providing legal services or otherwise serving as a fiduciary should never be used for personal purposes. Failure to place the funds of others in a trust or fiduciary account can subject the funds to claims of the lawyer's creditors or place the funds in the lawyer's estate in the event of the lawyer's death or disability.

Client Property

[2] Client funds must be deposited in a general trust account if there is no duty to invest on behalf of the client. Generally speaking, if a reasonably prudent person would conclude that the funds in question, either because they are nominal in amount or are to be held for a short time, could probably not earn sufficient interest to justify the cost of investing, the funds should be deposited in the general trust account. In determining whether there is a duty to invest, a lawyer shall exercise his or her professional judgment in good faith and shall consider the following:

a) The amount of the 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 dedicated accounts for the client's benefit, including the 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, lawyers, or law firms to calculate and pay income to individual clients;

f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

When regularly reviewing the trust accounts, the lawyer shall determine whether changed circumstances require further action with respect to the funds of any client. The determination of whether a client's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment.

[3] A law firm with offices in another state may send a North Carolina client's funds to a firm office in another state for centralized processing provided, however, the funds are promptly deposited into a trust account with a bank that has branch offices in North Carolina, and further provided, the funds are transported and held in a safe place until deposited into the trust account. If this procedure is followed, client consent to the transfer of the funds to an out-of-state office of the firm is not required.

[4] A lawyer who receives an instrument belonging wholly to a client or a third party may deliver the instrument to the appropriate recipient without first depositing the instrument in the lawyer's trust account, provided the lawyer reasonably safeguards the instrument in accordance with these Rules.

Property from Professional Fiduciary Service

[5] The phrase "professional fiduciary service," as used in this rule, is service by a lawyer in any one of the various fiduciary roles undertaken by a lawyer that is not, of itself, the practice of law, but is frequently undertaken in conjunction with the practice of law. A lawyer may serve as a fiduciary in either a professional or a personal capacity. A lawyer provides professional fiduciary services when the lawyer is retained by a client, whether it be an individual or an estate, to provide the services in conjunction with the practice of law. A lawyer may provide a professional fiduciary service, and thus is subject to this Rule, regardless of whether they are compensated by the client.

[6] This rule does not apply to property received in connection with a lawyer's service in their personal capacity as a fiduciary such as a trustee or personal representative of an estate. However, the lawyer's conduct may be governed by the law applicable to fiduciary obligations in general, including a fiduciary's obligation to keep the principal's funds or property separate from the fiduciary's personal funds or property, to avoid self-dealing, and to account for the funds or property accurately and promptly.

[7] This rule also does not apply when a lawyer is handling money for a business or for a religious, civic, or charitable organization as an officer, employee, or other official regardless of whether the lawyer is compensated for this service. Handling funds while serving in one of these roles does not constitute "professional fiduciary service," and such service is not "customary to the practice of law."

Burden of Proof

[8] When a lawyer is entrusted with property belonging to others and does not comply with these rules, the burden of proof is on the lawyer to establish the capacity in which the lawyer holds the funds and to demonstrate why these rules should not apply.

Prepaid Legal Fees

[9] Whether a fee that is prepaid by the client should be placed in the trust account depends upon the fee arrangement with the client.

[10] Client or third-party funds may pass through, or are originated by, intermediaries before deposit to a trust or fiduciary account. A lawyer may use an intermediary to receive funds. Such intermediaries include banks, credit card processors, litigation funding entities, and online marketing platforms. A lawyer has an obligation to make a reasonable investigation into the reliability, stability, and viability of an intermediary. Entrusted funds, if collected by an intermediary, must be promptly transferred to the lawyer's designated trust or fiduciary account to minimize the risk of loss while the funds are in the possession of another, and to enable the collection of interest on the funds for the IOLTA program or the client as appropriate. See 27 N.C.A.C. 1B, Sect. .1300. If the transfer of funds from an intermediary does not identify the client associated with the funds, a lawyer shall make a record contemporaneous with the transfer identifying the client whose funds are associated with the transfer.

Unclaimed Property

[11] Should a lawyer need technical assistance concerning the escheat of property to the State of North Carolina, the lawyer should contact the escheat officer at the Office of the North Carolina State Treasurer in Raleigh, North Carolina.

Disputed Funds

[12] A lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as the State Bar's program for fee dispute resolution. See Rule 1.5(f). The undisputed portion of the funds shall be promptly distributed.

[13] Third parties may have lawful claims against specific funds or other property in a lawyer's custody. A lawyer should promptly seek to resolve disputes concerning the proper recipient of entrusted funds and may do so as permitted by law. Resolutions permitted by law include, but are limited to, disputed funds in connection with an interpleader action under Rule 22 of the North Carolina Rules of Civil Procedures or in connection with disputed funds deposited with the clerk of court under NCGS 93A-12. Additionally, a lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, such as when a creditor has a lien on funds recovered in the client’s personal injury action.

Responsibility for Records and Accountings

[14] It is the lawyer's responsibility to ensure that complete and accurate records of the receipt and disbursement of entrusted property are maintained in accordance with this rule. The records must be retained in the lawyer’s possession; relying on access to their bank’s records is not sufficient. The required record retention period of six years set forth in this rule does not preclude the State Bar from seeking records for a period prior to the retention period and, if obtained, from pursuing a disciplinary action based thereon if such action is not prohibited by law or other rules of the State Bar.

[15] The monthly reconciliations and reviews required by this Rule should be completed promptly after receiving the bank statement for the previous month. Monthly reconciliations and reviews should be done on a monthly basis and should not be completed in batches.

[16] Many businesses are now converting paper checks to electronic debits to decrease costs and increase operating efficiencies. When a check is converted, the check is taken either at the point-of-sale or through the mail for payment, the account information is captured from the check, and an electronic transaction is created for payment through the Automated Clearing House (ACH) system. The original physical check is typically destroyed by the converting entity. Typically, when a paper check drawn on a trust account is converted to an electronic debit, the bank will not receive the physical check or a check image. The transaction will appear on the lawyer's trust account bank statement as an electronic debit with limited information about the payment (e.g., dollar amount, date processed, originator of the electronic debit).

[17] To prevent conversion of a paper check to an electronic debit without authorization, a lawyer is required to use checks with an "Auxiliary On-Us field." A check will not be eligible for conversion to electronic debit if it contains an Auxiliary On-Us field, which is an additional field that appears in the left-most position of the MICR (magnetic ink character recognition) line. The lawyer should confirm with their financial institution that the Auxiliary On-Us field is included on their trust account checks. Including an Auxiliary On-Us field on the check may require using checks that are longer than six inches. As with the other information in the MICR line of a check, the routing, account and payment numbers, the financial institution issuing the check determines the content of the Auxiliary On-Us field.

Fraud Prevention Measures

[18] The mandatory monthly reviews and oversight measures in this Rule facilitate early detection of internal theft and early detection and correction of errors. They are minimum fraud prevention measures necessary for the protection of funds on deposit in a firm trust or fiduciary account from theft by any person with access to the account. Internal theft from trust accounts by insiders at a law firm can only be timely detected if the records of the firm's trust accounts are routinely reviewed.

[19] A review of disbursements required by this Rule contemplates that a lawyer will review the cleared check images, electronic transfers, and wire transfers from the lawyer's trust account each month. The scope of this review should be reasonable, taking into consideration the lawyer's practice in order to achieve the goal of detecting theft or other misuse of funds. For example, a lawyer whose practice does not generate significant activity in the trust account must at least read through the deposits and disbursements reflected in the bank statement to identify any abnormalities, such as unexpected whole-number disbursements. Alternatively, a lawyer whose practice generates a great deal of trust account activity cannot reasonably identify abnormalities by only reading through a bank statement. Instead, that lawyer should consider reviewing random samples of transactions compiled by someone who is not tasked with any responsibilities related to the trust account to ensure funds are handled properly.

[20] Additional recommendations on fraud prevention measures can be found in the North Carolina State Bar Trust Account Handbook.

Duty to Report Misappropriation or Misapplication

[21] A lawyer is required by Rule 1.15-2 to report to the North Carolina State Bar if the lawyer discovers or reasonably believes that entrusted property, including trust funds, has been subject to intentional theft or fraud. The rule also requires the reporting of an error resulting in the unintentional and inadvertent use of entrusted property, such as the inadvertent use of one client's funds on deposit in a general trust account to pay the obligations of another client,

unless the error is rectified within sixty days following discovery of the error. A lawyer is required to report the conduct of lawyers and non-lawyers as well as the lawyer's own conduct. A report is required regardless of whether information leading to the discovery of the misappropriation or misapplication would otherwise be protected by Rule 1.6. If disclosure of confidential client information is necessary to comply with this rule, the lawyer's disclosure should be limited to the information that is necessary to enable the State Bar to investigate. See Rule 1.6, cmt. [15].

[22] The duty to report in accordance with this Rule does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

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CHAPTER 02 - RULES OF PROFESSIONAL CONDUCT OF THE NORTH CAROLINA STATE BAR

SECTION .0100 - CLIENT-LAWYER RELATIONSHIP

27 NCAC 02 RULE 1.15-1 DEFINITIONS

For purposes of this Rule 1.15, the following definitions apply:

~~(a) "Administrative ledger" denotes a written or computerized register, maintained for lawyer or firm funds deposited into a general or dedicated trust account or fiduciary account pursuant to Rule 1.15-2(g)(1) that lists, in chronological order, every deposit into and each disbursement from the trust account or fiduciary account of such funds, and shows the current balance of funds after each such transaction.~~

~~(b) "Bank" denotes a bank savings and loan association, or credit union chartered under North Carolina or federal law.~~

~~(c) "Client" denotes a person, firm, or other entity for whom a lawyer performs, or is engaged to perform, any legal services.~~

~~(d) "Client ledger" denotes a written or computerized register, maintained for each client (person or entity) whose funds are deposited into a trust account that lists, in chronological order, every deposit into and each disbursement from the trust account for the client, and shows the current balance of funds after each such transaction.~~

~~(e) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.~~

~~(f) "Demand deposit" denotes any account from which deposited funds can be withdrawn at any time without notice to the depository institution.~~

~~(g) "Electronic transfer" denotes a paperless transfer of funds.~~

~~(h) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.~~

~~(i) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.~~

~~(j) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.~~

~~(k) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders, or sales drafts, and receipts from electronic fund transfers.~~

~~(l) "General ledger" denotes a written or computerized register, maintained for each general and dedicated trust account and each fiduciary account, that lists in chronological order every deposit into and each disbursement from the account, and shows the current balance of funds after each such transaction.~~

~~(m) "General trust account" denotes any trust account other than a dedicated trust account.~~

~~(n) "Item" denotes any means or method by which funds are credited to or debited from an account; for example: a check, substitute check, remotely created check, draft, withdrawal order, automated clearinghouse (ACH) or electronic~~

~~transfer, electronic or wire funds transfer, electronic image of an item and/or information in electronic form describing an item, or instructions given in person or by telephone, mail, or computer.~~

~~(o) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.~~

~~(p) "Professional fiduciary services" denotes compensated services (other than legal services) rendered by a lawyer as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.~~

~~(q) "Subsidiary ledger" denotes a client ledger or administrative ledger.~~

~~(r) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of trust funds.~~

~~(s) "Trust funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.~~

(a) Accounts

(1) "Trust account" denotes an account, designated as such, maintained by a lawyer for the deposit of entrusted funds.

(2) "General trust account" denotes any trust account other than a dedicated trust account.

(3) "Dedicated trust account" denotes a trust account that is maintained for the sole benefit of a single client or with respect to a single transaction or series of integrated transactions.

(4) "Fiduciary account" denotes an account, designated as such, maintained by a lawyer solely for the deposit of fiduciary funds or other entrusted property of a particular person or entity.

(b) Ledgers

(1) "Administrative ledger" denotes a register maintained for lawyer or firm funds deposited into a general or dedicated trust account or fiduciary account that lists, in chronological order, every deposit into and each disbursement from the account of such funds, and shows the current balance of funds after each such transaction.

(2) "Client ledger" denotes a register, maintained for each client (person or entity) whose funds are deposited into a trust account that lists, in chronological order, every deposit into and each disbursement from the trust account for the client, and shows the current balance of the client's funds after each such transaction.

(3) "General ledger" denotes a register, maintained for each general and dedicated trust account and each fiduciary account, that lists in chronological order every deposit into and each disbursement from the account, and shows the current balance of funds after each such transaction.

(c) Funds and Property

(1) "Entrusted property" denotes trust funds, fiduciary funds and other property belonging to someone other than the lawyer which is in the lawyer's possession or control in connection with the performance of legal services or professional fiduciary services.

(2) "Fiduciary funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of professional fiduciary services.

(3) "Funds" denotes any form of money.

(4) "Trust funds" or "Entrusted Funds" denotes funds belonging to someone other than the lawyer that are received by or placed under the control of the lawyer in connection with the performance of legal services.

(d) Services

(1) "Legal services" denotes services (other than professional fiduciary services) rendered by a lawyer in a client-lawyer relationship.

(2) "Professional fiduciary services" denotes services rendered by a lawyer in the lawyer's professional capacity as a trustee, guardian, personal representative of an estate, attorney-in-fact, or escrow agent, or in any other fiduciary role customary to the practice of law.

(e) "Item" denotes any means or method by which funds are deposited into and disbursed from an account; for example: a check, substitute check, remotely created check, draft, automated clearinghouse (ACH) transfer, electronic transfer, or wire transfer.

(f) "Bank" or "Financial Institution" denotes a bank, savings and loan association, credit union chartered under North Carolina or federal law, or brokerage firm.

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27 NCAC 02 RULE 1.15-2 GENERAL RULES

~~(a) Entrusted Property. All entrusted property shall be identified, held, and maintained separate from the property of the lawyer, and shall be deposited, disbursed, and distributed only in accordance with this Rule 1.15.~~

(a~~b~~) ~~Deposit of~~ Safeguarding Trust and Fiduciary Funds and Other Entrusted Property. All trust and fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in ~~either~~ a general trust account, ~~or~~ a dedicated trust account, or a fiduciary account as defined in Rule 1.15-1 ~~of the lawyer. Trust funds placed in a general account are those which, in the lawyer's good faith judgment, are nominal or short-term.~~ A lawyer may also hold other entrusted property provided that the lawyer ensures that the property is identified as property of the person or entity for whom it is to be held and takes reasonable measures to safeguard the property. General trust accounts are to be administered in accordance with the Rules of Professional Conduct and the provisions of 27 NCAC Chapter 1, Subchapter D, Sections .1300.

~~(c) Deposit of Fiduciary Funds. All fiduciary funds received by or placed under the control of a lawyer shall be promptly deposited in a fiduciary account or a general trust account of the lawyer.~~

~~(d) Safekeeping of Other Entrusted Property. A lawyer may also hold entrusted property other than fiduciary funds (such as securities) in a fiduciary account. All entrusted property received by a lawyer that is not deposited in a trust~~

~~account or fiduciary account (such as a stock certificate) shall be promptly identified, labeled as property of the person or entity for whom it is to be held, and placed in a safe deposit box or other suitable place of safekeeping. The lawyer shall disclose the location of the property to the client or other person for whom it is held. Any safe deposit box or other place of safekeeping shall be located in this state, unless the lawyer has been otherwise authorized in writing by the client or other person for whom it is held.~~

(b~~e~~) Location of Accounts. All trust accounts shall be maintained at a bank in North Carolina or a bank with branch offices in North Carolina except that, with the written consent of the client, a dedicated trust account may be maintained at a bank that does not have offices in North Carolina or at a financial institution other than a bank in or outside of North Carolina. A lawyer may maintain a fiduciary account at any bank or other financial institution in or outside of North Carolina selected by the lawyer in the exercise of the lawyer's fiduciary responsibility.

(c~~f~~) Bank Directive. Every lawyer maintaining a trust account or fiduciary account ~~with demand deposit at a bank or other financial institution~~ shall file with the ~~bank or other~~ financial institution a written directive requiring the ~~bank or other~~ financial institution to report to ~~the executive director of~~ the North Carolina State Bar if ~~when~~ an instrument drawn on the account is presented for payment against insufficient funds and ensure the financial institution will honor the directive. ~~No trust account or fiduciary account shall be maintained in a bank or other financial institution that does not agree to make such reports.~~

(d~~g~~) ~~Funds in Accounts~~ Commingling Prohibited. A trust or fiduciary account may only hold entrusted property. ~~Third party funds that are not received by or placed under the control of the lawyer in connection with the performance of legal services or professional fiduciary services may not be deposited or maintained in a trust or fiduciary account. Additionally, n~~No funds belonging to the lawyer shall be deposited or maintained in a trust account or fiduciary account ~~of the lawyer~~ except~~:~~ funds sufficient to open or maintain an account, or pay any bank or merchant service charges, or mixed funds as outlined in this Rule.

~~(1) funds sufficient to open or maintain an account, pay any bank service charges, or pay any tax levied on the account; or~~

~~(2) funds belonging in part to a client or other third party and in part currently or conditionally to the lawyer.~~

(e~~h~~) Mixed Funds Deposited Intact. When funds belonging to the lawyer are received in combination with funds belonging to the client or other persons, all of the funds shall be deposited intact. The amounts currently or conditionally belonging to the lawyer shall be identified on the deposit slip or other record. After the deposit has been finally credited to the account, the lawyer shall withdraw the amounts to which the lawyer is or becomes entitled. ~~If the lawyer's entitlement is disputed, the disputed amounts shall remain in the trust account or fiduciary account until the dispute is resolved.~~

~~(i) Items Payable to Lawyer. Any item drawn on a trust account or fiduciary account for the payment of the lawyer's fees or expenses shall be made payable to the lawyer and shall indicate on the item by client name, file number, or other identifying information the client from whose balance the item is drawn. Any item that does not include this information may not be used to withdraw funds from a trust account or a fiduciary account for payment of the lawyer's fees or expenses.~~

~~(j) No Bearer Items. No item shall be drawn on a trust account or fiduciary account made payable to cash or bearer and no cash shall be withdrawn from a trust account or fiduciary account by any means.~~

~~(k) Debit Cards Prohibited. Use of a debit card to withdraw funds from a general or dedicated trust account or a fiduciary account is prohibited.~~

~~(l) No Benefit to Lawyer or Third Party. A lawyer shall not use or pledge any entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of that property.~~

(f) General Prohibitions. A lawyer shall not:

(1) Withdraw cash or write an item payable to cash from a trust or fiduciary account;

(2) Use a debit card to withdraw funds from a trust account or fiduciary account;

(3) Pledge entrusted property to obtain credit or other personal benefit for the lawyer or any person other than the legal or beneficial owner of the entrusted property; and

(4) Disburse funds from a trust or fiduciary account for payment of legal fees or costs to any recipient other than the lawyer or the law firm that provided the services.

(g) Misuse of Entrusted Property. A lawyer shall not use any entrusted property for the lawyer's personal benefit or for the benefit of any person other than the legal or beneficial owner of that property.

(h~~m~~) ~~Notification of Receipt~~ Communications Regarding Entrusted Funds. A lawyer shall promptly notify ~~his or her~~ the client upon ~~of the~~ receipt of any entrusted property belonging in whole or in part to the client. Upon the final disbursement of the trust funds and at such other times as may be reasonably requested by the client, a lawyer shall also render to the client a written accounting of the receipts and disbursements of all trust funds.

(i~~n~~) Delivery of Entrusted ~~Client~~ Property. A lawyer shall promptly pay or deliver to the client~~,~~ or to a third party ~~persons as directed by the client,~~ any entrusted property ~~belonging to the client and~~ to which the client or third party is currently entitled except disputed funds as addressed in this Rule or as otherwise permitted by law.

~~(o) Property Received as Security. Any entrusted property or document of title delivered to a lawyer as security for the payment of a fee or other obligation to the lawyer shall be held in trust in accordance with this Rule 1.15 and shall be clearly identified as property held as security and not as a completed transfer of beneficial ownership to the lawyer. This provision does not apply to property received by a lawyer on account of fees or other amounts owed to the lawyer at the time of receipt; however, such transfers are subject to the rules governing legal fees or business transactions between a lawyer and client.~~

(j) Disputed Funds. Disputed funds must remain in the trust account until they can be appropriately disbursed. If the lawyer's entitlement to entrusted property is disputed, the disputed amount(s) shall remain in the trust account or fiduciary account until the dispute is resolved. A lawyer should promptly seek to resolve all other disputes concerning the proper recipient of entrusted funds consistent with the lawyer's professional responsibility under these Rules and as otherwise permitted by law.

(k) Duty to Resolve Discrepancies. The lawyer shall take the necessary steps to investigate, identify, and promptly resolve any discrepancies discovered during the monthly reconciliation and reviews required by Rule 1.15-3.

(l~~p~~) Duty to Report ~~Misappropriation~~. A lawyer who discovers or reasonably believes that entrusted property has been subject to intentional theft or fraud ~~misappropriated or misapplied~~ shall immediately report the event(s) ~~promptly~~

~~inform~~ to the North Carolina State Bar~~'s Trust Account Compliance Department. Discovery of intentional theft or fraud must be reported to the Trust Account Compliance Department immediately.~~ When an ~~accounting or bank~~ error results in an unintentional and inadvertent use of entrusted property~~one client's trust funds to pay the obligations of another client~~, the event must be promptly reported to the State Bar unless the error ~~misapplication~~ is ~~discovered and~~ rectified within sixty days following the discovery of the error~~on or before the next quarterly reconciliation required by Rule 1.15-3(d)(1)~~. This Rule requires disclosure of information otherwise protected by Rule 1.6 ~~if necessary to report the misappropriation or misapplication~~.

(m~~e~~) Interest on Deposited Funds. Under no circumstances shall the lawyer be entitled to any interest earned on funds deposited in a trust account or fiduciary account. Except as authorized by Rule .1316 of subchapter 1D of the Rules and Regulations of the North Carolina State Bar, any interest earned on a trust account or fiduciary account, less any amounts deducted for bank service charges ~~and taxes~~, shall belong to the client or other person or entity entitled to the corresponding principal amount.

(n~~r~~) ~~Abandoned~~ Unclaimed Property. If entrusted property is unclaimed, the lawyer shall make due inquiry of ~~his or her~~ the lawyer's personnel, records, and other sources of information in an effort to determine the identity and location of the owner of the property. If that effort is successful, the entrusted property shall be promptly transferred to the person or entity to whom it belongs. If the effort is unsuccessful and the provisions of G.S. 116B-53 are satisfied, the property shall be deemed unclaimed ~~abandoned~~, and the lawyer shall comply with the requirements of Chapter 116B of the General Statutes concerning the escheat of unclaimed ~~abandoned~~ property.

(o~~s~~) Check Signing and Electronic Transfer Authority.

(1) Every trust or fiduciary account check must be signed by a lawyer, or by an employee who is not responsible for performing ~~monthly or quarterly~~ reconciliations and who is supervised by a lawyer.

(2) Every electronic transfer from a trust or fiduciary account must be initiated by a lawyer, or by an employee who is not responsible for performing ~~monthly or quarterly~~ reconciliations and who is supervised by a lawyer.

(3) ~~Prior to~~ Before exercising signature or electronic transfer authority, a lawyer or supervised employee shall take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. The CLE course must be taken at least once for every law firm at which the lawyer or the supervised employee is given signature or transfer authority.

(4) Trust or fiduciary account checks may not be signed using signature stamps, preprinted signature lines on checks, or electronic signatures other than "digital signatures" as defined in 21 CFR 11.3(b)(5).

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27 NCAC 02 RULE 1.15-3 RECORDS AND ACCOUNTINGS

(a) Check Format. All general trust accounts, dedicated trust accounts, and fiduciary accounts must use ~~business-size~~ checks that contain an Auxiliary On-Us field in the MICR line of the check.

(b) Minimum Records for Accounts at ~~Banks~~ Financial Institutions. A lawyer must maintain the following ~~The~~ minimum records and information ~~required~~ for ~~general~~ trust accounts~~, dedicated trust accounts,~~ and fiduciary accounts ~~maintained at a bank shall consist of the following~~:

(1) ~~a~~All records listing the source and date of receipt of any funds deposited in the account including, but not limited to, ~~bank~~ receipts, deposit slips, and wire and electronic transfer confirmations, and, in the case of a general trust account, all records also listing the name of the client or other person to whom the funds belong;

(2) All records listing the recipient, amount, and date of disbursement of any funds disbursed from the account including, but not limited to:

(A) ~~a~~All ~~canceled~~ cleared checks or other items drawn on the account, or digital images thereof furnished by the ~~bank~~financial institution, ~~showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the client name, file number, or other identifying information of the client from whose balance each item is drawn,~~ provided~~,~~ that~~:~~

~~(A)~~ digital images must be legible reproductions of the front and back of the original items ~~with no more than six images per page and no images smaller than 1-3/16 x 3 inches~~; and

(B) ~~and~~ all instructions or authorizations to disburse funds from the account, including electronic transfers or debits, and all written or electronic records of any such disbursement.

For a general trust account, such records must also show the information identifying the client(s) from whose balance(s) the item is drawn;

~~(B) the bank must maintain, for at least six years, the capacity to reproduce electronically additional or enlarged images of the original items or records related thereto upon request within a reasonable time.~~

~~(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits), or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also showing the name of the client or other person to whom the funds belong;~~

(43) ~~a~~All ~~bank~~ statements and other documents received from the ~~bank~~ financial institution with respect to the trust or fiduciary account, including, but not limited to notices of return or dishonor of any item drawn on the account against insufficient funds;

(4) A general ledger as defined in Rule 1.15-1;

(5) An administrative ledger as defined in Rule 1.15-1; and

(~~5~~6) ~~in the case of~~ for a general trust account, a client ledger as defined in Rule 1.15-1 ~~containing a record of receipts and disbursements~~ for each person or entity from whom and for whom entrusted funds are received. ~~and showing the current balance of funds held in the trust account for each such person or entity; and~~

~~(6) any other records required by law to be maintained for the trust account.~~

~~(c) Minimum Records for Accounts at Other Financial Institutions. The minimum records required for dedicated trust accounts and fiduciary accounts at financial institutions other than a bank shall consist of the following:~~

~~(1) all records listing the source and date of receipt of all funds deposited in the account including, but not limited to, depository receipts, deposit slips, and wire and electronic transfer confirmations;~~

~~(2) a copy of all checks or other items drawn on the account, or digital images thereof furnished by the depository, showing the amount, date, and recipient of the disbursement, provided, that the images satisfy the requirements set forth in Rule 1.15-3(b)(2);~~

~~(3) all instructions or authorizations to transfer, disburse, or withdraw funds from the account (including electronic transfers or debits) or a written or electronic record of any such transfer, disbursement, or withdrawal showing the amount, date, and recipient of the transfer or disbursement;~~

~~(4) all statements and other documents received from the depository with respect to the account, including, but not limited to notices of return or dishonor of any item drawn on the account for insufficient funds; and~~

~~(5) any other records required by law to be maintained for the account.~~

(~~d~~c) Reconciliations of ~~General~~ Trust Accounts.

~~(1) Monthly Reconciliations. Each month, the balance of the trust account as shown on the lawyer's records shall be reconciled with the current bank statement balance for the trust account.~~

(~~2~~1) ~~Quarterly~~ Monthly Reconciliations. ~~For each general trust account, a reconciliation report shall be prepared at least quarterly.~~ On a monthly basis, a lawyer shall conduct a reconciliation of all trust accounts each time a statement from the financial institution is provided or available. Each reconciliation report shall show ~~all of~~ the following balances and verify that they are identical:

(A) The balance that appears in the general ledger as of the ~~reporting~~ date of the ending balance on the bank statement;

~~(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and~~

(~~C~~B) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ~~ending balance in the monthly~~ bank statement ending balance and subtracting outstanding checks and other ~~deductions~~ debits from the ~~balance in the monthly~~ bank statement ending balance; and~~.~~

(C) For general trust accounts, the total of all positive administrative and client ledger balances in the trust account as of the date of the ending balance on the bank statement.

(~~3~~2) Report Retention. The lawyer shall review, sign, date, and retain a copy of the reconciliations report~~of the general trust account for a period of six years in accordance with Rule 1.15-3(h)~~ for six years in accordance with the minimum record keeping period required by this Rule. Each reconciliation report shall include a copy of the bank statement, general ledger, a list of all positive administrative and client ledger balances relevant to the report, and lists of the outstanding deposits and outstanding checks relevant to the report.

(~~e~~d) Monthly Reviews. On a monthly basis, a lawyer shall review the bank statement and perform a reasonable review of disbursements from each trust or fiduciary account as reflected in the bank statement, including all cleared checks and electronic transfers of funds.

~~(1) Each month, for each general trust account, dedicated trust account, and fiduciary account, the lawyer shall review the bank statement and cancelled checks for the month covered by the bank statement.~~

~~(2) Each quarter, for each general trust account and dedicated trust account, the lawyer shall review the statement of costs and receipts, client ledger, and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions reviewed must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.~~

~~(3) Each quarter, for each fiduciary account, the lawyer shall engage in a review as described in Rule 1.15-3(e)(2); however, if the lawyer manages more than ten fiduciary accounts, the lawyer may perform reviews on a random sample of at least ten fiduciary accounts in lieu of performing reviews on all such accounts.~~

~~(4) The lawyer shall take the necessary steps to investigate, identify, and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews.~~

~~(5) A report of each monthly and quarterly review, including a description of the review, the transactions sampled, and any remedial action taken, shall be prepared. The lawyer shall sign, date, and retain a copy of the report and associated documentation for a period of six years in accordance with Rule 1.15-3(h).~~

~~(f) Accountings for Trust Funds. The lawyer shall render to the client a written accounting of the receipts and disbursements of all trust funds (i) upon the complete disbursement of the trust funds, (ii) at such other times as may be reasonably requested by the client, and (iii) at least annually if the funds are retained for a period of more than one year.~~

(~~g~~e) Accountings for Fiduciary Property. Inventories and accountings of fiduciary funds and other entrusted property received in connection with professional fiduciary services shall be rendered to judicial officials or other persons as

required by law. ~~If an annual or more frequent accounting is not required by law, a written accounting of all transactions concerning the fiduciary funds and other entrusted property shall be rendered to the beneficial owners, or their representatives, at least annually and upon the termination of the lawyer's professional fiduciary services.~~

(~~h~~f) Minimum Record Keeping Period. A lawyer shall maintain~~, in accordance with this Rule 1.15,~~ complete and accurate records of all entrusted property received by the lawyer as required by this Rule~~, which records shall be maintained~~ for at least the six year period immediately preceding the ~~lawyer's~~ most recent ~~fiscal~~ calendar year end; the records may be maintained by electronic, photographic, or other media, provided that print copies can be produced and the records are readily accessible to the lawyer.

~~(i) Retention of Records in Electronic Format. Records required by Rule 1.15-3 may be created, updated, and maintained electronically, provided:~~

~~(1) the records otherwise comply with Rule 1.15-3, to wit: electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a "digital signature" as defined in 21 CFR 11.3(b)(5);~~

~~(2) printed and electronic copies of the records in industry-standard formats can be made on demand; and~~

~~(3) the records are regularly backed up by an appropriate storage device.~~

(~~j~~g) Audit by State Bar. The financial records required by this Rule ~~1.15~~ shall be subject to audit for cause and to random audit by the North Carolina State Bar; and such records shall be produced for inspection and copying in North Carolina upon request by the State Bar.

History Note: *Authority G.S. 84-23;*
Adopted by the Supreme Court: July 24, 1997;
Amendments Approved by the Supreme Court: March 1, 2003; October 6, 2004; March 6, 2008; June 9, 2016; April 5, 2018;
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~~**27 NCAC 02 RULE 1.15-4 TRUST ACCOUNT MANAGEMENT IN A MULTI-MEMBER FIRM**~~

~~(a) Trust Account Oversight Officer (TAOO). Lawyers in a law firm of two or more lawyers may designate a partner in the firm to serve as the trust account oversight officer (TAOO) for any general trust account into which more than one firm lawyer deposits trust funds. The TAOO and the partners of the firm, or those with comparable managerial authority (managing lawyers), shall agree in writing that the TAOO will oversee the administration of any such trust account in conformity with the requirements of Rule 1.15, including, specifically, the requirements of this Rule 1.15-4. More than one partner may be designated as a TAOO for a law firm.~~

~~(b) Limitations on Delegation. Designation of a TAOO does not relieve any lawyer in the law firm of responsibility for the following:~~

(1) oversight of the administration of any dedicated trust account or fiduciary account that is associated with a legal matter for which the lawyer is primary legal counsel or with the lawyer's performance of professional fiduciary services; and

(2) review of the disbursement sheets or statements of costs and receipts, client ledgers, and trust account balances for those legal matters for which the lawyer is primary legal counsel.

(c) Training of the TAOO.

(1) Within the six months prior to beginning service as a TAOO, a lawyer shall,

(A) read all subparts and comments to Rule 1.15, all formal ethics opinions of the North Carolina State Bar interpreting Rule 1.15, and the North Carolina State Bar Trust Account Handbook;

(B) complete one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a lawyer to serve as a TAOO;

(C) complete two hours of training (live, online, or self guided) presented by a qualified educational provider on one or more of the following topics: (i) financial fraud, (ii) safeguarding funds from embezzlement, (iii) risk assessment and management for bank accounts, (iv) information security and online banking, or (v) accounting basics; and

(D) become familiar with the law firm's accounting system for trust accounts.

(2) During each year of service as a TAOO, the designated lawyer shall attend one hour of accredited continuing legal education (CLE) on trust account management approved by the State Bar for the purpose of training a TAOO or one hour of training, presented by a qualified educational provider, on one or more of the subjects listed in paragraph (c)(1)(C).

(d) Designation and Annual Certification. The written agreement designating a lawyer as the TAOO described in paragraph (a) shall contain the following:

(1) A statement by the TAOO that the TAOO agrees to oversee the operation of the firm's general trust accounts in compliance with the requirements of all subparts of Rule 1.15, specifically including the mandatory oversight measures in paragraph (e) of this rule;

(2) Identification of the trust accounts that the TAOO will oversee;

(3) An acknowledgement that the TAOO has completed the training described in paragraph (c)(1) and a description of that training;

(4) A statement certifying that the TAOO understands the law firm's accounting system for trust accounts; and

(5) An acknowledgement that the lawyers in the firm remain professionally responsible for the operation of the firm's trust accounts in compliance with Rule 1.15.

Each year on the anniversary of the execution of the agreement, the TAOO and the managing lawyers shall execute a statement confirming the continuing designation of the lawyer as the TAOO, certifying compliance with the requirements of this rule, describing the training undertaken by the TAOO as required by paragraph (c)(2), and reciting

~~the statements required by subparagraphs (d)(1), (2), (4), and (5). During the lawyer's tenure as TAOO and for six years thereafter, the agreement and all subsequent annual statements shall be maintained with the trust account records (see Rule 1.15-3(g)).~~

~~(e) Mandatory Oversight Measures. In addition to any other record keeping or accounting requirement set forth in Rule 1.15-2 and Rule 1.15-3, the firm shall adopt a written policy detailing the firm's trust account management procedures which shall annually be reviewed, updated, and signed by the TAOO and the managing lawyers. Each version of the policy shall be retained for the minimum record keeping period set forth in Rule 1.15-3(g).~~

~~*History Note: Authority G.S. 84-23;*~~
~~*Eff. June 9, 2016.*~~

27 NCAC 02 RULE 1.15 COMMENT TO RULE 1.15 AND ALL SUBPARTS

[1] The purpose of a lawyer's trust account or fiduciary account is to segregate the funds belonging to others from those belonging to the lawyer. Money received by a lawyer while providing legal services or otherwise serving as a fiduciary should never be used for personal purposes. Failure to place the funds of others in a trust or fiduciary account can subject the funds to claims of the lawyer's creditors or place the funds in the lawyer's estate in the event of the lawyer's death or disability.

~~Property Subject to these Rules~~

~~[2] Any property belonging to a client or other person or entity that is received by or placed under the control of a lawyer in connection with the lawyer's furnishing of legal services or professional fiduciary services must be handled and maintained in accordance with this Rule 1.15. The minimum records to be maintained for accounts in banks differ from the minimum records to be maintained for accounts in other financial institutions (where permitted), to accommodate brokerage accounts and other accounts with differing reporting practices.~~

Client Property

[~~3~~2] ~~Every lawyer who receives funds belonging to a client must maintain a trust account. The general rule is that every receipt of money from a client or for a client, which will be used or delivered on the client's behalf, is held in trust and should be placed in the trust account. All client money received by a lawyer, except that to which the lawyer is immediately entitled, must be deposited in a trust account, including funds for payment of future fees and expenses. Client funds must be promptly deposited into the trust account.~~ Client funds must be deposited in a general trust account if there is no duty to invest on behalf of the client. Generally speaking, if a reasonably prudent person would conclude that the funds in question, either because they are nominal in amount or are to be held for a short time, could probably not earn sufficient interest to justify the cost of investing, the funds should be deposited in the general trust account. In determining whether there is a duty to invest, a lawyer shall exercise his or her professional judgment in good faith and shall consider the following:

a) The amount of the 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 dedicated accounts for the client's benefit, including the 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, lawyers, or law firms to calculate and pay income to individual clients;

f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

When regularly reviewing the trust accounts, the lawyer shall determine whether changed circumstances require further action with respect to the funds of any client. The determination of whether a client's funds are nominal or short-term shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good faith exercise of such judgment.

[43] A law firm with offices in another state may send a North Carolina client's funds to a firm office in another state for centralized processing provided, however, the funds are promptly deposited into a trust account with a bank that has branch offices in North Carolina, and further provided, the funds are transported and held in a safe place until deposited into the trust account. If this procedure is followed, client consent to the transfer of the funds to an out-of-state office of the firm is not required. ~~However, all such client funds are subject to the requirements of these rules. Funds delivered to the lawyer by the client for payment of future fees or expenses should never be used by the lawyer for personal purposes or subjected to the potential claims of the lawyer's creditors.~~

[54] ~~This rule does not prohibit a~~ A lawyer who receives an instrument belonging wholly to a client or a third party ~~from~~ may deliver~~ing~~ the instrument to the appropriate recipient without first depositing the instrument in the lawyer's trust account, provided the lawyer reasonably safeguards the instrument in accordance with these Rules.

Property from Professional Fiduciary Service

[65] The phrase "professional fiduciary service," as used in this rule, is service by a lawyer in any one of the various fiduciary roles undertaken by a lawyer that is not, of itself, the practice of law, but is frequently undertaken in conjunction with the practice of law. ~~This includes service as a trustee, guardian, personal representative of an estate, attorney-in-fact, and escrow agent, as well as service in other fiduciary roles "customary to the practice of law."~~ A lawyer may serve as a fiduciary in either a professional or a personal capacity. A lawyer provides professional fiduciary services when the lawyer is retained by a client, whether it be an individual or an estate, to provide the services in conjunction with the practice of law. A lawyer may provide a professional fiduciary service, and thus is subject to this Rule, regardless of whether they are compensated by the client.

~~[7] Property held by a lawyer performing a professional fiduciary service must also be segregated from the lawyer's personal property, properly labeled, and maintained in accordance with the applicable provisions of this rule.~~

[86] ~~When property is entrusted to a lawyer in connection with a lawyer's representation of a client, this rule applies whether or not the lawyer is compensated for the representation. However, the~~ This rule does not apply to property received in connection with a lawyer's ~~uncompensated~~ service in their personal capacity as a fiduciary such as a trustee or personal representative of an estate. ~~(Of course~~However, the lawyer's conduct may be governed by the law applicable to fiduciary obligations in general, including a fiduciary's obligation to keep the principal's funds or property separate from the fiduciary's personal funds or property, to avoid self-dealing, and to account for the funds or property accurately and promptly~~)~~.

~~[9] Compensation distinguishes professional fiduciary service from a fiduciary role that a lawyer undertakes as a family responsibility, as a courtesy to friends, or for charitable, religious or civic purposes. As used in this rule, "compensated services" means services for which the lawyer obtains or expects to obtain money or any other valuable consideration. The term does not refer to or include reimbursement for actual out-of-pocket expenses.~~

~~Property Excluded from Coverage of Rules~~

[~~10~~7] This rule also does not apply when a lawyer is handling money for a business or for a religious, civic, or charitable organization as an officer, employee, or other official regardless of whether the lawyer is compensated for this service. Handling funds while serving in one of these roles does not constitute "professional fiduciary service," and such service is not "customary to the practice of law."

Burden of Proof

[~~11~~8] When a lawyer is entrusted with property belonging to others and does not comply with these rules, the burden of proof is on the lawyer to establish the capacity in which the lawyer holds the funds and to demonstrate why these rules should not apply.

Prepaid Legal Fees

[~~12~~9] Whether a fee that is prepaid by the client should be placed in the trust account depends upon the fee arrangement with the client. ~~A retainer fee in its truest sense is a payment by the client for the reservation of the exclusive services of the lawyer, which is not used to pay for the legal services provided by the lawyer and, by agreement of the parties, is nonrefundable upon discharge of the lawyer. It is a payment to which the lawyer is immediately entitled and, therefore, should not be placed in the trust account. A "retainer," which is actually a deposit by the client of an advance payment of a fee to be billed on an hourly or some other basis, is not a payment to which the lawyer is immediately entitled. This is really a security deposit and should be placed in the trust account. As the lawyer earns the fee or bills against the deposit, the funds should be withdrawn from the account. Rule 1.16(d) requires the refund to the client of any part of a fee that is not earned by the lawyer at the time that the representation is terminated.~~

[~~13~~10] Client or third-party funds ~~on occasion~~ may pass through, or are originated by, intermediaries before deposit to a trust or fiduciary account. A lawyer may use an intermediary to receive funds. Such intermediaries include banks, credit card processors, litigation funding entities, and online marketing platforms. ~~A lawyer may use an intermediary to collect a fee. However, the lawyer may not participate in or facilitate the collection of a fee by an intermediary that is unreliable or untrustworthy. Therefore, the~~ A lawyer has an obligation to make a reasonable investigation into the reliability, stability, and viability of an intermediary ~~to determine whether reasonable measures are being taken to segregate and safeguard client funds against loss or theft and, should such funds be lost, that the intermediary has the resources to compensate the client. Absent other indicia of fraud (such as the use of non-industry standard methods for collection of credit card information), a lawyer's diligence obligation is satisfied if the intermediary collects client funds using a credit or debit card. Unearned fees~~ Entrusted funds, if collected by an intermediary, must be promptly transferred to the lawyer's designated trust or fiduciary account ~~within a reasonable period of time so as~~ to minimize the risk of loss while the funds are in the possession of another, and to enable the collection of interest on the funds for the IOLTA program or the client as appropriate. See 27 N.C.A.C. 1B, Sect. .1300. If the transfer of funds from an

intermediary does not identify the client associated with the funds, a lawyer shall make a record contemporaneous with the transfer identifying the client whose funds are associated with the transfer.

~~Abandoned~~ Unclaimed Property

[~~14~~11] Should a lawyer need technical assistance concerning the escheat of property to the State of North Carolina, the lawyer should contact the escheat officer at the Office of the North Carolina State Treasurer in Raleigh, North Carolina.

Disputed Funds

[~~15~~12] A lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as the State Bar's program for fee dispute resolution. See Rule 1.5(f). The undisputed portion of the funds shall be promptly distributed.

[~~16~~13] Third parties may have lawful claims against specific funds or other property in a lawyer's custody~~,~~. A lawyer should promptly seek to resolve disputes concerning the proper recipient of entrusted funds and may do so as permitted by law. Resolutions permitted by law include, but are limited to, disputed funds in connection with an interpleader action under Rule 22 of the North Carolina Rules of Civil Procedures or in connection with disputed funds deposited with the clerk of court under NCGS 93A-12. Additionally, a lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, such as when a ~~client's~~ creditor ~~who~~ has a lien on funds recovered in the client's ~~a~~ personal injury action. ~~A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claim is resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.~~

Responsibility for Records and Accountings

[~~17~~14] It is the lawyer's responsibility to ~~assure~~ ensure that complete and accurate records of the receipt and disbursement of entrusted property are maintained in accordance with this rule. The records must be retained in the lawyer's possession; relying on access to their bank's records is not sufficient. The required record retention period of six years set forth in this rule does not preclude the State Bar from seeking records for a period prior to the retention period and, if obtained, from pursuing a disciplinary action based thereon if such action is not prohibited by law or other rules of the State Bar.

[~~18~~15] ~~The rules permit the retention of records in electronic form. A storage device is appropriate for backing up electronic records if it reasonably assures that the records will be recoverable despite the failure or destruction of the original storage device on which the records are stored. For a discussion of storage methods not solely under the control of the lawyer, see 2011 FEO 6.~~ The monthly reconciliations and reviews required by this Rule should be completed promptly after receiving the bank statement for the previous month. Monthly reconciliations and reviews should be done on a monthly basis and should not be completed in batches.

[~~19~~16] Many businesses are now converting paper checks to ~~automated clearinghouse (ACH)~~ electronic debits to decrease costs and increase operating efficiencies. When a check is converted, the check is taken either at the point-of-sale or through the mail for payment, the account information is captured from the check, and an electronic transaction is created for payment through the Automated Clearing House (ACH) system. The original physical check is typically destroyed by the converting entity ~~(although an image of the check may be stored for a certain period of time)~~. Typically, ~~If~~ when a paper check drawn on a trust account is converted to ~~ACH~~ an electronic debit, the ~~lawyer~~ bank will not receive ~~either~~ the physical check or a check image. The transaction will appear on the lawyer's trust account bank statement as an ~~ACH~~ electronic debit with limited information about the payment (e.g., dollar amount, date processed, originator of the ~~ACH~~ electronic debit).

[~~20~~17] To prevent conversion of a paper check to ~~ACH~~ an electronic debit without authorization, a lawyer is required to use checks with an "Auxiliary On-Us field." A check will not be eligible for conversion to ~~ACH~~ electronic debit if it contains an Auxiliary On-Us field, which is an additional field that appears in the left-most position of the MICR (magnetic ink character recognition) line. ~~on a business size check~~. The lawyer should confirm with ~~the lawyer's~~ their financial institution that the Auxiliary On-Us field is included on ~~the lawyer's~~ their trust account checks. Including an Auxiliary On-Us field on the check ~~will~~ may require using checks that are longer than six inches. As with the other information in the MICR line of a check, the routing, account and payment numbers, the financial institution issuing the check determines the content of the Auxiliary On-Us field.

~~[21] Authorized ACH debits that are electronic transfers of funds (in which no checks are involved) are allowed provided the lawyer maintains a record of the transaction as required by Rule 1.15-3(b)(3) and (c)(3). The record, whether consisting of the instructions or authorization to debit the account, a record or receipt from the register of deeds or a financial institution, or the lawyer's independent record of the transaction, must show the amount, date, and recipient of the transfer or disbursement, and, in the case of a general trust account, also show the name of the client or other person to whom the funds belong.~~

~~[22] The lawyer is responsible for keeping a client, or any other person to whom the lawyer is accountable, advised of the status of entrusted property held by the lawyer. In addition, the lawyer must take steps to discover any unauthorized transactions involving trust funds as soon as possible. Therefore, it is essential that the lawyer regularly reconcile a general trust account. This means that, at least once a month, the lawyer must reconcile the current bank statement balance with the balance shown for the entire account in the lawyer's records, such as a check register or its equivalent, as of the date of the bank statement. At least once a quarter, the lawyer must reconcile the individual client balances shown on the lawyer's ledger with the current bank statement balance. Monthly reconciliation will help to uncover unauthorized ACH transactions promptly. The current bank balance is the balance obtained when subtracting outstanding checks and other withdrawals from the bank statement balance and adding outstanding deposits to the bank statement balance. With regard to trust funds held in any trust account, there is also an affirmative duty to produce a written accounting for the client and to deliver it to the client, either at the conclusion of the transaction or periodically if funds are held for an appreciable period. Such accountings must be made at least annually or at more frequent intervals if reasonably requested by the client.~~

~~Bank Notice of Overdrafts~~

~~[23] A properly maintained trust account should not have any items presented against insufficient funds. However, even the best-maintained accounts are subject to inadvertent errors by the bank or the lawyer, which may be easily explained. The reporting requirement should not be burdensome and may help avoid a more serious problem.~~

Fraud Prevention Measures

[~~24~~18] The mandatory monthly ~~and quarterly~~ reviews and oversight measures in this Rule ~~1.15-3(i)~~ facilitate early detection of internal theft and early detection and correction of errors. They are minimum fraud prevention measures necessary for the protection of funds on deposit in a firm trust or fiduciary account from theft by any person with access to the account. Internal theft from trust accounts by insiders at a law firm can only be timely detected if the records of the firm's trust accounts are routinely reviewed. ~~For this reason, Rule 1.15-3(i)(1) requires monthly reviews of the bank statements and cancelled checks for all general, dedicated, and fiduciary accounts. In addition, Rule 1.15-3(i)(2) requires quarterly reviews of a random sample of three transactions for each trust account, dedicated trust account, and fiduciary account including examination of the statement of costs and receipts, client ledger, and cancelled checks for the transactions. Review of these documents will enable the lawyer to verify that the disbursements were made properly. Although not required by the rule, a larger sample than three transactions is advisable to increase the likelihood that internal theft will be detected.~~

[19] A review of disbursements required by this Rule contemplates that a lawyer will review the cleared check images, electronic transfers, and wire transfers from the lawyer's trust account each month. The scope of this review should be reasonable, taking into consideration the lawyer's practice in order to achieve the goal of detecting theft or other misuse of funds. For example, a lawyer whose practice does not generate significant activity in the trust account must at least read through the deposits and disbursements reflected in the bank statement to identify any abnormalities, such as unexpected whole-number disbursements. Alternatively, a lawyer whose practice generates a great deal of trust account activity cannot reasonably identify abnormalities by only reading through a bank statement. Instead, that lawyer should consider reviewing random samples of transactions compiled by someone who is not tasked with any responsibilities related to the trust account to ensure funds are handled properly.

~~[25] Another internal control to prevent fraud is found in Rule 1.15-2(s) which addresses the signature authority for trust account checks. The provision prohibits an employee who is responsible for performing the monthly or quarterly reconciliations for a trust account from being a signatory on a check for that account. Dividing the check signing and reconciliation responsibilities makes it more difficult for one employee to hide fraudulent transactions. Similarly, signature stamps, preprinted signature lines on checks, and electronic signatures are prohibited to prevent their use for fraudulent purposes.~~

[~~26~~20] ~~In addition to the~~ Additional recommendations on fraud prevention measures can be found in the North Carolina State Bar Trust Account Handbook. ~~(see the chapter on Safeguarding Funds from Embezzlement), the following fraud prevention measures are recommended:~~

~~(1) Enrolling the trust account in an automated fraud detection program;~~

~~(2) Implementation of security measures to prevent fraudulent wire transfers of funds;~~

~~(3) Actively maintaining end-user security at the law firm through safety practices such as strong password policies and procedures, the use of encryption and security software, and periodic consultation with an information technology security professional to advise firm employees; and~~

~~(4) Insuring that all staff members who assist with the management of the trust account receive training on and abide by the security measures adopted by the firm.~~

~~Lawyers should frequently evaluate whether additional fraud control measures are necessary and appropriate.~~

Duty to Report Misappropriation or Misapplication

[~~27~~21] A lawyer is required by Rule 1.15-2~~(p)~~ to report to ~~the Trust Account Compliance Department of~~ the North Carolina State Bar if the lawyer ~~knows~~ discovers or reasonably believes that entrusted property, including trust funds, has been ~~misappropriated or misapplied~~ subject to intentional theft or fraud. The rule also requires the reporting of an error resulting in the unintentional ~~misapplication of trust funds~~ and inadvertent use of entrusted property, such as the inadvertent use of one client's funds on deposit in a general trust account to pay the obligations of another client, unless the ~~lawyer discovers and rectifies the error on or before the next scheduled quarterly reconciliation~~. error is rectified within sixty days following discovery of the error. A lawyer is required to report the conduct of lawyers and non-lawyers as well as the lawyer's own conduct. A report is required regardless of whether information leading to the discovery of the misappropriation or misapplication would otherwise be protected by Rule 1.6. If disclosure of confidential client information is necessary to comply with this rule, the lawyer's disclosure should be limited to the information that is necessary to enable the State Bar to investigate. See Rule 1.6, cmt. [15].

[22] The duty to report in accordance with this Rule does not apply to a lawyer retained to represent a lawyer whose professional conduct is in question. Such a situation is governed by the Rules applicable to the client-lawyer relationship.

~~Designation of a Trust Account Oversight Officer~~

~~[28] In a firm with two or more lawyers, personal oversight of all of the activities in the general trust accounts by all of the lawyers in the firm is often impractical. Nevertheless, any lawyer in the firm who deposits into a general trust account funds entrusted to the lawyer by or on behalf of a client is professionally responsible for the administration of the trust account in compliance with Rule 1.15 regardless of whether the lawyer directly participates in the administration of the trust account. Moreover, Rule 5.1 requires all lawyers with managerial or supervisory authority over the other lawyers in a firm to make reasonable efforts to ensure that the other lawyers conform to the Rules of Professional Conduct. Rule 1.15-4 provides a procedure for delegation of the oversight of the routine administration of a general trust account to a firm partner, shareholder, or member (see Rule 1.0(h)) in a manner that is professionally responsible. By identifying, training, and documenting the appointment of a trust account oversight officer (TAOO) for the law firm, the lawyers in a multiple-lawyer firm may responsibly delegate the routine administration of the firm's general trust accounts to a qualified lawyer. Delegation consistent with the requirements of Rule 1.15-4 is evidence of a lawyer's good faith effort to comply with Rule 5.1.~~

~~[29] Nevertheless, designation of a TAOO does not insulate from professional discipline a lawyer who personally engaged in dishonest or fraudulent conduct. Moreover, a lawyer having actual or constructive knowledge of dishonest or fraudulent conduct or the mismanagement of a trust account in violation of the Rules of Professional Conduct by~~

~~any firm lawyer or employee remains subject to professional discipline if the lawyer fails to promptly take reasonable remedial action to avoid the consequences of such conduct including reporting the conduct as required by Rule 1.15-2(p) or Rule 8.3. See also Rule 5.1 and Rule 5.3.~~

~~Limitations on Delegation to TAOO~~

~~[30] Despite the designation of a TAOO pursuant to Rule 1.15-4, each lawyer in the firm remains professionally responsible for the trust account activity associated with the legal matters for which the lawyer provides representation. Therefore, for each legal matter for which the lawyer is primary counsel, the lawyer must review and approve any disbursement sheet or settlement statement, trust account entry in the client ledger, and trust account balance associated with the matter. Similarly, a lawyer who establishes a dedicated trust account or fiduciary account in connection with the representation of a client is professionally responsible for the administration of the dedicated trust account or fiduciary account in compliance with Rule 1.15.~~

~~Training for Service as a TAOO~~

~~[31] A qualified provider of the educational training programs for a TAOO described in Rule 1.15-4(c)(1)(C) need not be an accredited sponsor of continuing legal education programs (see 27 NCAC 1D, Rule .1520), but must be knowledgeable and reputable in the specific field and must offer educational materials as part of its usual course of business. Training may be completed via live presentations, online courses, or self-guided study. Self-guided study may consist of reading articles, presentation materials, or websites that have been created for the purpose of education in the areas of financial fraud, safeguarding funds from embezzlement, risk management for bank accounts, information security and on-line banking, or basic accounting.~~

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