Vermont Rules of Professional Conduct
Rule 1.15A – Trust Accounting System

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This unofficial version was last updated on ***November 14, 2022****.*

Kennedy's Highlights

(NOT a substitute for full research of the rule & opinions/decisions on it)

Rule 1.15A was last amended in 2022

- paragraph (b) was added.
- language was added to paragraphs c and d to clarify scope of trust account audits.
- Comments 1, 2, and 3 were added.
- In the text of the rule below, he 2022 additions are underlined, while deletions are ~~struck through~~.
- The changes took effect on 11/14/22.

Blog posts related to trust accounting are here.

Rule 1.15A. Trust Accounting System.

(a) Every lawyer or law firm holding funds of clients or third persons in connection with a representation as defined in Rule 1.15(a)(2) shall hold such funds in one or more accounts in a financial institution or, in appropriate circumstances, a pooled interest-bearing trust account pursuant to Rule 1.15B. An account in which funds are held that are in the lawyer's possession as a result of a representation in a lawyer-client relationship shall be clearly identified as a ''trust'' account or shall be identified as a fiduciary account, such as an estate, trust, or escrow account, to distinguish such funds from the lawyer's own funds. An account in which funds are held that are in the lawyer's possession as a result of a fiduciary relationship that arises in the course of a lawyer-client relationship or as a result of a court appointment shall be clearly identified as a ''fiduciary'' account. The lawyer shall take all steps necessary to inform the financial institution of the purpose and identity of all accounts maintained as required in this rule. The lawyer or law firm shall maintain an accounting system for all such accounts that shall include, at a minimum, the following features:

(1) a system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements;

(2) a record for each client or person for whom property is held, which shall show all receipts and disbursements and carry a running account balance;

(3) records documenting timely notice to each client or person of all receipts and disbursements from the account or accounts; and

(4) records documenting timely reconciliation of all accounts maintained as required by this rule and a single source for identification of all accounts maintained as required in this rule. "Timely reconciliation" means, at a minimum, monthly reconciliation of such accounts.

(b) With respect to pooled interest-bearing trust accounts required by paragraph (a):

(1) only a lawyer admitted to practice law in Vermont, or a person under the direct supervision of the lawyer, shall be an authorized signatory on the account or be authorized to make transfers and disbursements from the account;
(2) records of deposits shall be sufficiently detailed to identify each item;
(3) withdrawals and disbursements shall be made only by
(i) check payable to a named payee and not to cash; or,
(ii) authorized electronic transfer from the pooled interest-bearing trust account.

(~~b~~ c)A lawyer or law firm shall submit to a confidential compliance review of financial records, including pooled interesting-bearing trust accounts, trust accounts, and fiduciary accounts, by the Professional Responsibility Program's Disciplinary Counsel. The information derived from such compliance reviews shall not be disclosed by anyone in such a way as to violate the evidentiary, statutory, or constitutional privileges of a lawyer, law firm, client, or other person, or any obligation of confidentiality imposed by these rules, except in accordance with Administrative Order No. 9. A copy of any final report shall be provided to the lawyer or law firm.
(~~c~~ d) The Supreme Court may at any time order an audit of financial records, including pooled interesting-bearing trust accounts, trust accounts, and fiduciary accounts, of a lawyer or law firm and take such other action as it deems necessary to protect the public.

(~~d~~ e) For purposes of this rule and Rule 1.15B, ''financial institution'' includes banks, savings and loans associations, credit unions, savings banks and any other businesses or persons that accept and hold funds held by lawyers or law firms as required in this rule.

Comment

[1] Paragraphs (a) and (b) enumerate minimal accounting controls for client trust accounts.

[2] Paragraph (b)(1) enunciates the requirement that only a lawyer admitted to the practice of law in Vermont or a person who is under the direct supervision of the lawyer shall be the authorized signatory or authorize electronic transfers from a pooled interest-bearing trust account, an account more commonly referred to as an "IOLTA account" or a "client trust account." While it is permissible to grant nonlawyer access to such accounts, the access should be limited and closely monitored by the lawyer. The lawyer has a nondelegable duty to protect and preserve the funds in pooled interest-bearing trust accounts and can be disciplined for failure to supervise subordinates who misappropriate client funds. See V.R.Pr.C. 5.1 and 5.3.

[3] Paragraph (b)(3) delineates the only approved methods of withdrawing or transferring funds from a pooled interest-bearing trust account. By the plain terms, cash withdrawals by debit card are not approved. Authorized electronic transfers are limited to (1) money required for payment to a client or third person on behalf of a client; (2) expenses properly incurred on behalf of a client, such as filing fees or payment to third persons for services rendered in connection with the representation; (3) money transferred to the lawyer for fees that are earned in connection with the representation and are not in dispute; or (4) money transferred from one client trust account to another client trust account.

Board's Note—2022 Amendment

Subdivision (b) is new. It is intended to provide additional protection to clients and third persons for whom lawyers hold funds in trust.

Subdivisions (c), (d), and (e) are re-lettered to conform to the addition of paragraph (b).

The amendments to new paragraphs (c) and (d) are intended to clarify that it is not solely a lawyer or law firm's pooled interest-bearing trust accounts, more commonly referred to as "IOLTA accounts" or "client trust accounts," that are subject to compliance reviews and audits.

New comments [1] to [3] are added to explain the limited appropriate uses of client trust accounts.

Reporter's Notes—2016 Amendment

Rule 1.15A(a) is amended to make clear that funds held by a lawyer in a "fiduciary account" as further defined by the amendment may be held in an IOLTA account created pursuant to Rule 1.15B "in appropriate circumstances"—that is, when the funds meet the standard of Rule 1.15B(a)(1) that they "are not reasonably expected to earn net interest or dividends" as defined in Rule 1.15B(a)(2)(i). The amendment benefits both the lawyer through saving management costs and the beneficiaries of the interest distributed to the Vermont Bar Foundation pursuant to Rule 1.15B(b)-(c).

Rule 1.15A(a)(4) is amended to require a lawyer to maintain records documenting at least monthly reconciliation of all accounts maintained pursuant to Rule 1.15A. The rule is intended to establish a bright-line meaning for "timely reconciliation."

Reporter's Notes — 2009 Amendment

V.R.P.C. 1.15A-1.15C as originally adopted had no equivalent in the Model Rules. They were adopted ''in order to include mandatory IOLTA, random auditing, the financial support for random auditing, and reporting of overdrafts.'' Reporter's Notes to V.R.P.C. 1.15 (1999). No Vermont Comments were prepared. The present amendments are designed to clarify and strengthen these rules by eliminating Rule 1.15C and incorporating its provisions as appropriate in Rules 1.15A and 1.15B. The amendments also bring the rules in line with current practice and the terminology and format of the Rules of Professional Conduct.

Rule 1.15A(a) is amended to make clear that the obligation imposed by Rules 1.15A and 1.15B incorporates the definition of ''in connection with a representation'' in new Rule 1.15(a)(2) as its basis. The amended rule incorporates provisions of former Rule 1.15C(a) requiring that funds be held in a ''financial institution'' as defined in new Rule 1.15A(d), but Rule 1.15B(a) makes clear that the institution must be approved by the Professional Responsibility Board only if it holds a pooled interest-bearing account. Amended Rule 1.15A(a) adapts the language of Rule 1.15(a)(2) to further make clear that a ''trust account'' is an account in which funds directly arising from a
representation are held and that a ''fiduciary account'' is an account in which funds held pursuant to a fiduciary relationship are held. The requirement that the financial institution be notified as to the identity of the accounts is taken from former Rule 1.15C.

Rules 1.15A(a)(1)-(4) are amended for consistency with this broader practice and to eliminate specific references to accounting systems that may be obsolete.

Rule 1.15A(b) is amended to substitute for audit of trust and fiduciary accounts by an outside accountant a confidential compliance review of these and other financial records by the Disciplinary Counsel appointed pursuant to Administrative Order 9, Rule 3. The results of this review are to remain confidential unless they become part of the record in a disciplinary proceeding and subject to disclosure pursuant to Administrative Order 9, Rule 12A or B.

Rule 1.15A(c) is amended for consistency with language changes in other provisions of the rule.

Rule 1.15A(d), taken from former Rule 1.15C(f), is made applicable to both Rules 1.15A and B. Broadened language is intended to make clear that the term includes entities in which funds may be held for investment pursuant to client instructions or fiduciary obligations as well as banks and other traditional depositories.

ANNOTATIONS

1. Sanctions. Two concurrent six-month suspensions were proper for an attorney who failed to cooperate with the disciplinary system, failed to communicate with her client and to return his papers, and practiced law where doing so violated the regulation of the legal profession. Furthermore, when respondent sought reinstatement, she would have to provide a detailed explanation of her lack of participation over the course of these proceedings. In re Hongisto, 2010 VT 51, 188 Vt. 533, 988, A.2d 1065 (mem.).