PENNSYLVANIA BAR ASSOCIATION

Your Other Partner

Handling Entrusted Funds

Ellen Freedman, CLM

Law Practice Management Coordinator

Pennsylvania Bar Association

HANDLING ENTRUSTED FUNDS

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1) Enter the URL in your browser. You will go to the download page on Hightail. You will see the image of the handout Cover Page on the left. Directly above that area on the far right, you will see 5 Options in Circles. 2) Click the 4th button with the down-facing arrow for **Download All**. 3) The document will appear to open on the screen. Put your cursor anywhere to once again Select the Download Option on the right. 4) Windows Explorer will open your dialog box. Navigate to the exact folder in which you want to save the document, and then select **SAVE**.]

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ELLEN FREEDMAN, CLM

Ellen serves as the Law Practice Management Coordinator for the Pennsylvania Bar Association. In that capacity she assists PBA's members with management issues and decisions on the business side of their practice, including areas like technology, financial management and profitability, human resources, marketing, risk management, setting up a practice and so forth. PBA members are encouraged to contact Ellen through the 800 "Hot Line" at PBA headquarters, (800-932-0311 x2228) or through email (lawpractice@pabar.org).

Ellen is founder and President of Freedman Consulting, which assists PA law firms with a full range of issues and projects on the business side of the practice. More information about Ellen and her law practice management services may be obtained at http:www.FreedmanLPM.com. Ellen also publishes the Law Practice Management blog at www.PA-LawPracticeManagement.com.

Ellen holds the designation of Certified Legal Manager through the Association of Legal Administrators (ALA), the credentialing body for the CLM degree. Of the 11,000+ members of the ALA, approximately 260 are certified legal managers. Ellen was one of the first 20 in the nation to have achieved this designation. She holds a Certification in Computer Programming from Maxwell Institute, and a Certification in Web Site Design and a B.A. from Temple University.

Ellen was inducted as a Fellow of the College of Law Practice Management in October, 2020. Membership in the College is by invitation only. Eligible nominees include those who have made significant contributions to the field of law practice management for over ten years. Since its establishment over twenty years ago, nearly 300 practitioners from 5 different countries have become Fellows of the College.

Ellen managed inside law firms for twenty years. Most of that time was spent in a mid-size (35+ attorney) firm environment. She launched her consulting practice in 1998, and joined the Pennsylvania Bar Association in 1999.

Ellen is an associate member of the American Bar Association, and its Law Practice Management and General Practice & Small Firm sections. She was a member of the Association of Legal Administrators for over 20 years, and founded the Independence Chapter. She is a frequent author and speaker on law firm management issues on a national level.

Handling Entrusted Funds

Ellen Freedman, CLM
Law Practice Management Coordinator
PA Bar Association

Pennsylvania Bar Association
Your Other Partner

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PBA's Law Practice Management Coordinator
Ellen Freedman, CLM

assistance for your firm in:
- Human Resources
- Technology
- Financial Mgt / Profitability
- Equipment buying
- Strategic planning
- Marketing
- Start-up / Closing / Sale
- Risk management
- and much more

800-932-0311 x2228
LawPractice@PaBar.org

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SPECIAL THANKS

Barbara Rosenberg

- Retired! Focused on attorneys' professional responsibility matters
- Served as disciplinary counsel
- Authored articles and book chapter on handling of funds
- Planned and presented courses on ethical issues & professionalism for 30+ years

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SPECIAL THANKS

Craig Simpson

- 40 years experience in attorney ethics/disciplinary law
- Proprietor of the Law Office of Craig Simpson (www.simpsonethics.com)
- AV rated
- Adjunct Professor of Professional Responsibility at Duquesne University School of Law
- Frequent CLE presenter in attorney ethics and disciplinary law

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SPECIAL THANKS

Robert Stasa

- Graduate of Allegheny College and University of Pittsburgh Law School
- Associate concentrating in attorney Disciplinary law and bar admission (character and fitness) matters
- Chosen for the YLD Bar Leadership Initiative for the Allegheny County Bar Association and elected Council Member for the ACBA Sole and Small Firm Practitioners Section

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We're going to cover:

- Rules & Amendments
- Day-to-day best practices & procedures e.g. "the practical stuff"
- What to expect if you don't comply
- Questions (hold for end, please)

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The Amended Trust Account Rules

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- Effective February 28, 2015 there are several amendments to the Rules of Professional Conduct regarding the handling of entrusted funds
  - This presentation will cover the *most* important rule changes
  - Although the rules may seem burdensome at first, they are actually quite manageable and in fact will often protect the attorney from disciplinary exposure for inadvertent mishandling of entrusted funds

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Rule 1.15(c) – *Required Records*

Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the writing required by Rule 1.5(b) (relating to the requirement of a writing communicating the basis or rate of the fee) and the records identified in Rule 1.5(c) (relating to the requirement of a written fee agreement and distribution statement in a contingent fee matter).

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Rule 1.15(c)(2) – *Separately Maintained Ledgers*

[For each Trust Account or for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l) the attorney shall maintain a] check register or separately maintained ledger, which shall include the payee, date, purpose and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction....

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Rule 1.15(c)(2) – *Individual Ledgers*

...where an account is used to hold funds of more than one client, a lawyer shall also maintain an individual ledger for each trust client, showing the source, amount and nature of all funds received from or on behalf of the client, the description and amounts of charges or withdrawals, the names of all persons or entities to whom such funds were disbursed, and the dates of all deposits, transfers, withdrawals and disbursements.

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Rule 1.15(c)(3) – *Recordkeeping Methods*

The records required by this Rule may be maintained in hard copy form or by electronic, photographic, or other media provided that the records otherwise comply with this Rule and that printed copies can be produced. Whatever method is used to maintain required records must have a backup so that the records are secure and always available.

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Rule 1.15(c)(3) – *Electronic Records*

If records are kept only in electronic form, then such records shall be backed up on a separate electronic storage device at least at the end of any day on which entries have been entered into the records.

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Rule 1.15(c)(3) – *Accessibility of Records*

These records shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security or the Office of Disciplinary Counsel in a timely manner upon a request or demand....

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Rule 1.15(c)(4) – *Maintaining a Regular Trial Balance*

A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed.

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Rule 1.15(c)(4) – *Reconciling Each Account*

On a monthly basis, a lawyer shall conduct a reconciliation for each fiduciary account. The reconciliation is not complete if the reconciled total cash balance does not agree with the total of the client balance listing.

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	Previous Balance	Cash In (+)	Cash Out (-)	Current Balance
Client A	500.00	5,000.00	1,000.00	4,500.00
Client B	18,000.00	-	12,000.00	6,000.00
Client C	1,500.00	5,000.00	-	6,500.00
	20,000.00	10,000.00	13,000.00	17,000.00
	Total	Total	Total	Grand Total

MUST EQUAL BANK BALANCE

MUST CROSS-FOOT

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Rule 1.15(g) – *Authorized Signatories*

. . . Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or authorize transfers from a Trust Account or any other account in which Fiduciary Funds are held pursuant to Rule 1.15(l).

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Rule 208(f). Pa.R.D.E. – *Emergency Temporary Suspension*

The Board on its own motion, or upon the petition of Disciplinary Counsel, may issue a rule to show cause why the respondent-attorney should not be placed on temporary suspension whenever it appears that the respondent-attorney has . . . failed to maintain or produce the records required to be maintained and produced under Pa.R.P.C. 1.15(c). . . .

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Rule 219(d)(1)(iii)&(v), Pa.R.D.E. – *Listing Accounts on Annual Registration*

- [The annual attorney registration form shall set forth] the name of each Financial Institution, as defined in Pa.R.P.C. 1.15(a)(4), within or outside this Commonwealth in which the attorney on May 1 of the current year or at any time during the preceding 12 months held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the attorney held such funds, and each IOLTA Account shall be identified as such.

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- Note: If an attorney employed by a law firm receives fiduciary funds from or on behalf of a client and deposits or causes the funds to be deposited into a law firm account, the attorney must report the account of deposit under this subparagraph.
- [You must also set forth] every **business operating account** maintained or utilized by the attorney in the practice of law . . . . For each account, the attorney shall provide the name of the financial institution, location and account number.

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Day-to-day Best Practices & Procedures

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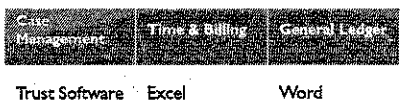
- Use software !



- Individual client ledger sheets
- Record each transaction with description
- Reconcile monthly to bank *and* individuals
- Best practice is only attorneys can sign
- Are you insured properly? (LPL / BMP / Cyber)

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- Timing matters !
  - ☑ Available v. Cleared
  - ☑ Billing precedes payment
  - ☑ Take fees as earned
  - ☑ Unclaimed Property: Escheat

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Credit Card: Words of Caution

- Any fees must be taken from operating account
- Be sure you can designate account
- Separate charges for earned and unearned on same transaction
- Cannot "wash" through operating account
- Buyer's remorse can trigger investigation
- Charge-backs are dangerous!

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- Reasonable fraud prevention measures
  - ☑ No signature stamps
  - ☑ Look when signing
  - ☑ Pre-numbered sequential checks
  - ☑ Random review unopened bank stmts
  - ☑ Randomly verify accounting, esp. on old or inactive estates
  - ☑ Credit and criminal checks on anyone with access to trust funds

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Final Tips on Fraud Prevention

- Take away any expectation of escaping detection

- Keep an eye out for lifestyle changes

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Cybersecurity

- The biggest risk to trust funds is a data breach
- Law firms have lost millions from trust accounts
- Most loses are uncovered by anything except cyber insurance
- Most breaches are avoidable!
  - Training
  - Procedures

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Most common entry point?

- Malicious emails and texts (Phishing/Smishing)
  - Business email compromise
  - Phony dangerous links
  - Train people to recognize
  - Train people NOT TO CLICK
  - Look at examples in handouts and share
  - Stay up to date on what's going around!

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Other schemes that still work:

- Phoney bank checks
- Identity theft – check ID!
- Phoney clients
  - The quick settlement / collection
  - The overseas deadbeat spouse
- Last minute changes in money-handling instructions

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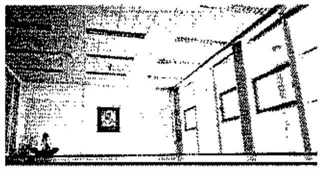
When you don't comply . . .



- PA Code
- Selected recent cases
- IOLTA Rules
- Rules of Disciplinary Enforcement

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Questions

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Connect with me !

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