

Lawyers Board Opinions and Appendix

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The Lawyers Professional Responsibility Board first issued written advisory opinions to guide the conduct of Minnesota lawyers more than three decades ago.[Ftn 1](#) The Board eventually issued 19 opinions.[Ftn 2](#)

In *In re Admonition Issued in Panel File No. 99-42*, the Minnesota Supreme Court held that attorneys are not subject to professional discipline solely for violations of Board opinions. In light of that holding, the Board repealed or incorporated into the Minnesota Rules of Professional Conduct all but five of its 19 opinions. The Board last issued an opinion in 1999 and the topic of issuing new opinions has not been revisited until recently.

In March 2008, the Board established a new Opinion Committee and charged it with the task of revisiting the question of whether the Board should again issue written advisory opinions to guide the bar. At the June meeting, the Board adopted the committee's recommendation that the Board resume issuing written opinions.

Because the Office of Lawyers Professional Responsibility issues informal advisory opinions upon request, the Board will limit its opinions to matters of importance and general application to the bar where guidance is deemed helpful. Where appropriate, the Board will consult with interested or affected persons and persons with expertise on the particular subject matter under consideration. The Board then will publish for comment all proposed opinions prior to their formal issuance, except in rare instances where such publication is considered unnecessary.

The Board's Opinion Committee also examined whether Appendix 1 to the Minnesota Rules of Professional Conduct should be amended to allow for more flexibility in the use of electronic fund transfers from lawyer trust accounts. Rule 1.15(i) authorizes the Board to "publish annually the books and records required by [Rule 1.15](h)." [Ftn 3](#) On Sept. 30, 2005, pursuant to Rule 1.15(i) the Board adopted Appendix 1.

Appendix 1, I(6), details the books and records lawyers in private practice are required to keep for trust accounts. Appendix 1, I(6), as it existed prior to June 26, 2008, required that all disbursements from a trust account be made by check "except when payment by check would be economically imprudent or when exigent circumstances require a transaction by wire transfer."

However, Rule 1.15(j), which states that "[e]very check, draft, electronic transfer, or other withdrawal instrument or authorization shall be personally signed or, in the case of electronic, telephone, or wire

transfer, directed by one or more lawyers authorized by the law firm," ostensibly permitted the use of electronic fund transfers, which appeared inconsistent.

After research, the Opinion Committee recommended, and the Board adopted, the following amendments to Appendix 1, I(6), effective June 26, 2008:

6. Bank statements, canceled checks or copies of canceled checks if they are provided with the bank statements, bank wire or electronic fund transfer confirmations and duplicate deposit slips. Cash fee payments must be documented by copies of receipts countersigned by the payor. Attorneys making deposits using substitute checks pursuant to the Check Clearing for the 21st Century Act must request and retain image statements from the bank for each such deposit. ~~All disbursements must be by check, except when payment by check would be economically imprudent or when exigent circumstances require a transaction by wire transfer.~~ For withdrawal by bank wire or electronic fund transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The bank wire or electronic fund transfer must be entered in the check register and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Appendix.

The amendments did away with the requirement that disbursements be made by paper check except under limited circumstances. Moreover, and likely of particular import to collection law firms, the amendments permit the use of substitute checks in making deposits to a trust account. Lawyers using bank wire and other electronic fund transfers are still required to keep track of the same information that would be recorded with traditional checks.[Ftn 4](#)

Ultimately, the purpose of the amendments is to allow for more flexibility in the disbursement of funds from trust accounts while ensuring accountability through proper recordkeeping.

¹ Rule 4(c), Rules on Lawyers Professional Responsibility, allows the Board to "from time to time, issue opinions on questions of professional conduct." Opinion 1 states, in part, "The Board and the Supreme Court consider these opinions as rule interpretations that guide attorneys' professional conduct even though they are not binding on the Court."

² Board Opinions can be found online at <http://www.mncourts.gov/lprb/opinions.html>.

³ MRPC Rule 1.15(h) requires lawyers to maintain "books and records sufficient to demonstrate income derived from, and expenses related to, the lawyer's private practice of law."

⁴ The required information is found in Appendix 1, I(2)(b), which states, "Each check entry must include the date the check was issued, the payee, the amount, the identity of the client for whom the check was issued (if not the payee), and the purpose of the check."