

## Dealing With Third-Party Funds

by  
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Lawyers have an obligation to safeguard client funds by placing them in a trust account, either an IOLTA account or a separate segregated account.

But what about funds received on behalf of persons other than clients during the course of representation?

The Supreme Court recently amended Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), effective Aug. 1, 1999, to clarify that nonclient funds held by a lawyer are entitled to the same protection as client funds. Third-party funds must be placed in a trust account.

The clarification as to funds of third parties brought the rule in accord with ABA Model Rule 1.15 which, since its adoption in 1983, has recognized that third-party funds held by a lawyer must be protected. The amendment is consistent with the court's treatment of third-party funds as client funds in prior lawyer discipline cases involving trust account violations. See e.g. *In re Beach*, 502 N.W.2d 769 (Minn. 1993); *In re Bartsch*, 546 N.W.2d 246 (Minn. 1990); *In re Bard*, 359 N.W.2d 6 (Minn. 1984).

The rule amendment imposes certain specific duties with regard to the third person's funds. A lawyer in possession of third-party funds must:

- (1) promptly notify the third person of the receipt of the funds, securities, or other properties.
- (2) identify and label securities and properties of the third person promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
- (3) maintain complete records of all funds, securities and other properties of the third person coming into the possession of the lawyer and render appropriate accounts to the third person regarding them.
- (4) promptly pay or deliver to the third person as requested the funds, securities or other properties in the possession of the lawyer which the third person is entitled to receive.

These responsibilities are identical to those owed clients for whom an attorney holds funds or property, under the pre-existing rule.

There are many situations in which a lawyer receives funds for the benefit of third parties, including escrow transactions, funds deposited with the lawyer pursuant to court orders, funds being held for the benefit of a client's creditor, and funds in the lawyer's possession because he or she is a court-appointed fiduciary (e.g. personal representative, guardian or conservator).

Because these funds do not belong to the lawyer and are being held for the benefit of others, the funds cannot be commingled in the lawyer's office, business or personal account and must be deposited in a trust account.

The court also amended Rule 1.15, MRPC, to clarify a lawyer's obligation to withdraw earned fees from the trust account within a reasonable time after the fees have been earned. The amendment mirrors the court's prior holdings in commingling cases. *See, e.g., In re Selmer*, 529 N.W.2d 684, 686 (Minn. 1995) and *In re Montpetit*, 528 N.W.2d 243, 245 (Minn. 1995).

The amendment also parallels Opinion 15 of the Lawyers Professional Responsibility Board regarding advance fee payments. Specifically, the amendment requires that within a reasonable time after earning the fees (e.g. next billing cycle), the lawyer must withdraw the funds from the trust account and must provide an accounting for the withdrawal to the owner of the funds (e.g. client or a third person).

Finally, if after receiving the accounting, the owner of the funds objects within a reasonable time to the lawyer's right to the funds, the disputed portion must be re-deposited into the trust account and held there until the fee dispute is resolved. This procedure provides both the lawyer and the owner of the funds with a measure of security that the disputed funds will be safe and available once the dispute is resolved.