

## ETHICS: WHEN TO BRING INK AND PAPER INTO A TRANSACTION

by

**Joshua H. Brand, Assistant Director  
Minnesota Office of Lawyers Professional Responsibility**

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Recently, a clever donut-shop employee gave new life to a quote by the short-lived but (at least in some circles) much-loved comedian Mitch Hedberg, who joked:

“I bought a donut and they gave me a receipt for the donut. I don’t need a receipt for a donut. I’ll just give you the money, you give me the donut. End of transaction. We don’t need to bring ink and paper into this. I just could not imagine a scenario where I would have to prove that I bought a donut.”

While Mr. Hedberg’s point is well-taken in that one should not need evidence of such a fleeting transaction, legal services are most often not consumed on the spot or in between frantic breaths on the car ride home from the donut shop and disputes arise in the context of the provision of legal services that rarely arise in the context of a donut purchase. Attorneys are, therefore, required to abide by slightly more stringent requirements when handling client-related funds.

Rule 1.15(f) and (h), Minnesota Rules of Professional Conduct, requires Minnesota attorneys engaged in the private practice of law to maintain (and preserve for a minimum of six years) certain books and records relative to funds and property received and disbursed on behalf of clients. Rule 1.15(i), MRPC, confers authority upon the Lawyers Board to publish the books and records required under Rule 1.15, MRPC; such books and records requirements are found within Appendix 1 to the MRPC. While, under Rule 1.15(h), MRPC, substantially equivalent books and records can arguably be acceptable, in general the failure to comply with the requirements of Appendix 1 is a disciplinable offense as a violation of, at the very least, Rule 1.15, MRPC. Typically, in the absence of evidence of misappropriation, a period of private probation or the issuance of an admonition is sufficient to correct any failures in this regard; public discipline has, however, been imposed in cases involving significant and severe noncompliance with the books and records requirements.

While the books and records requirements are too detailed to discuss in their totality in this brief article, a few occasionally overlooked issues are worth noting:

If you receive cash from or on behalf of a client, you must document the transaction with a receipt countersigned by the payor. By requiring you to issue a receipt which is then signed by the payor, written documentation of the payment is created where it may not otherwise exist (i.e., as it would with a check or credit card payment) and the payment is verified by both parties to the transaction. This practice serves to protect both you and the payor from recriminations or disagreements at a later point as to the amount paid in cash. See App. 1, I(6) and II(2).

You may certainly maintain the required books and records electronically. You are, however, responsible for maintaining appropriate backups of those electronically stored records; a detachable hard drive is a useful method of storage for backups of electronic books and records. Bear in mind that, irrespective of the means of storage that you choose (i.e., paper or electronic), you and you alone are responsible for retaining and (in the event a trust account issue comes to the attention of the Director's Office) producing the required books and records. See App. 1, I(7).

Electronic funds transfers may only be directed by an attorney within your law firm who is authorized by your firm to handle trust account funds. Bank wire withdrawals and electronic funds transfers must be documented by a written memorandum which is signed by the attorney authorizing the transaction. See App. 1, I(6); Rule 1.15(j), MRPC.

What must be remembered is that unearned fees, payments for costs or expenses, and other funds provided to you for safekeeping by or on behalf of your client do not belong to you (at least not until earned or expended). Similar to what you would expect from a bank holding your own personal savings, such funds coming into your possession must be tracked down to the penny. Simply put: unless you're dealing in donuts, records matter. While perhaps seemingly onerous and undoubtedly time-consuming to some extent, the maintenance of the books and records set forth within Appendix 1 is critical to the preservation of the confidence of clients and others with whose funds you are entrusted.

To assist you, the director's office publishes on its website a handy guide entitled "Other People's Money: Operating Lawyer Trust Accounts" which offers a comprehensive breakdown of the books and records requirements set forth within the MRPC and Appendix 1 and includes samples of the required trust account trial balances and reconciliations. Also available on the website is information on how to establish a trust account (IOLTA account) and a list of frequently asked questions pertaining to an attorney's use of their trust account. As always, you are encouraged to contact the director's office at (651) 296-3952 with any questions.