

**Everyday Conflicts
The QUIZ –
A Potpourri of the Hottest Topics**

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2021 Everyday Conflicts

Kansas

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Everyday Conflicts

Your Trust Account

“Nowhere is the misbegotten maxim that an honest lawyer will instinctively do the ethically correct thing more glaringly disproven than in the area of care of client funds. The proper handling of funds entrusted to a lawyer is not an intuitive matter of innate morality but rather the subject of extensive technical requirements.”

Bloomberg/BNA ; Client Funds and Property; 45:501.

KRPC 1.15 Comment [1] A lawyer should hold property of others with the care required of a professional **fiduciary**.

Comment [2] Separate trust accounts may be warranted when administering estate monies or acting in similar **fiduciary** capacities

Comment [7] Rule 1.15 of the Kansas Rules of Professional Conduct requires that lawyers in the practice of law who are entrusted with the property of law clients and third persons must hold that property with the care required of a professional **fiduciary**. The basis for Rule 1.15 is the lawyer's **fiduciary** obligation to safeguard trust property and to segregate it from the lawyer's own property, and not to benefit personally from the possession of the property.

KRPC 1.15 - SAFEKEEPING PROPERTY

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state of Kansas. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- (d) Preserving identity of funds and property of a client.
- (1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the State of Kansas with a federal or state chartered or licensed financial institution and insured by an agency of the federal or state government, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (i) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (2) The lawyer shall:
 - (i) Promptly notify a client of the receipt of the client's funds, securities, or other properties.
 - (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
 - (iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.
 - (iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.
 - (v) Produce all trust account records for examination by the Disciplinary Administrator upon request of the Disciplinary Administrator in compliance with Rule 236.
- (3) Except as provided in subsection (3)(iv), any lawyer or law firm that creates or maintains an account for funds of clients or third persons that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons shall comply with the following provisions:
 - (i) Such an account shall be established and maintained with a federal or state chartered or licensed financial institution located in Kansas and insured by an agency of the federal or state government. Funds shall be subject to withdrawal upon request and without delay.
 - (ii) If the account bears interest, the rate of interest payable shall not be less than the rate paid by the institution to regular, non-attorney depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately.
 - (iii) If the account bears interest, lawyers or law firms that deposit client funds in such an account shall direct the depository institution:
 - (aa) to remit at least quarterly, to the Kansas Bar Foundation, Inc., interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice; and
 - (bb) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of the interest applied; and
 - (cc) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.
 - (iv) A lawyer or law firm that elects not to comply with **Rule 1.15(d)(3)(iii)**:
 - (aa) shall file a Notice of Declination with the Clerk of the Appellate Courts on or before the beginning of the next annual registration period under [Supreme Court Rule 206](#); or
 - (bb) notwithstanding the foregoing, may file a Notice of Declination with the Clerk of the Appellate Courts at such other time, after July 1, 1992, that a decision to decline is effected.
 - (v) Every lawyer who has not previously registered or who is required to register under [Supreme Court Rule 206](#) shall be provided the opportunity, at the time of initially registering, to elect or decline to comply with **Rule 1.15(d)(3)(iii)** (the IOLTA program) on such forms as the Clerk of the Appellate Courts may prescribe.
- (e) Every Kansas lawyer engaged in the private practice of law in Kansas shall, as a part of his or her annual registration, certify to the following:
 - "I am familiar with and have read Kansas Supreme Court Rule 240, KRPC 1.15, and I and/or my law firm comply/complies with KRPC 1.15 pertaining to preserving the identity of funds and property of a client."

KRPC 1.15 - SAFEKEEPING PROPERTY

Overdraft Reporting

(f) (1) Every federal or state chartered or licensed financial institution referred to in KRPC 1.15(d)(1) shall be approved as a depository for lawyer trust accounts if it files with the Disciplinary Administrator an agreement, in a form provided by the Disciplinary Administrator, to report to the Disciplinary Administrator in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, whether or not the instrument is honored. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days' notice in writing to the Disciplinary Administrator. The Disciplinary Administrator shall annually publish a list of approved financial institutions.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall contain the following information:

(i) the identity of the financial institution;

(ii) the identity of the lawyer or law firm;

(iii) the account number;

(iv) either (i) the amount of the overdraft and the date created; or (ii) the amount of returned instrument(s) and date returned.

The information required by the notification agreement shall be provided within five (5) banking days of the date the item(s) were paid or returned unpaid.

(3) Every lawyer admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule. The Disciplinary Administrator's Office shall reimburse the financial institution for the reasonable cost of producing the reports and records required by this rule should the lawyer or law firm fail to do so.

(5) This rule shall not create any cause of action for any person or organization against the financial institution based upon the failure of the financial institution to provide the notices required by this rule.

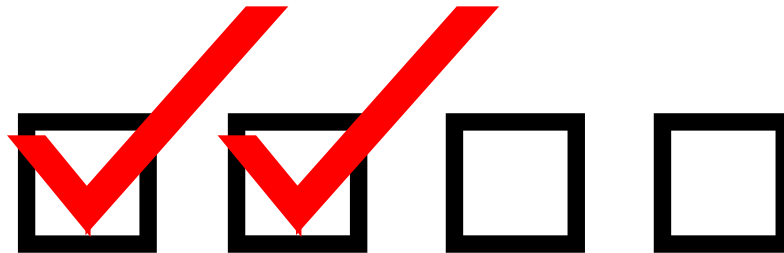
1.15 OVERDRAFT REPORTING Advisory Committee Regulation

These banks have been approved for lawyer trust accounts:

(<https://www.kscourts.org/Attorneys/Office-of-Disciplinary-Administration/Banks-Approved-for-Lawyer-s-Trusts>)



A Quiz



1. Funds of clients or third parties may be deposited into your operating account, if:

A. You will have the funds in the account for a short period of time.

B. The funds are nominal in amount.

C. Both A. and B.

D. It is never OK to deposit funds of clients or third parties into your operating account.

2. You accept a client on a retainer flat fee arrangement. Your written fee agreement signed by the client states that the retainer flat fee is earned upon receipt and is non-refundable. The client pays you \$6,000 for attorney fees and \$176 for filing fees. You deposit both sums in your firm operating account. The deposits into the firm operating account are:

A. Proper as to both fees because the flat fee is earned and the filing fees were expended within 24 hours.

B. Proper as to the flat fee because it was earned upon receipt but improper as to the filing fees.

C. Proper as to the filing fee because it was expended within 24 hours but improper as the flat fee.

D. Improper as to both fees.

3. You accept a client whose fee will be paid by her parents. The parents pay an advance fee of \$5,000 that you will bill against at an agreed hourly rate. Several month into the representation the advance fee is depleted and you request a replenishment. The parents request a billing statement and an accounting related to the previous advance fee. You:

A. Shall not provide a billing statement or an accounting because the documents will reveal confidential information.

B. Shall not provide a billing statement or an accounting because the documents will reveal attorney-client privileged communications.

C. Shall provide a billing statement.

D. Shall provide an accounting.

4. The terms “trust account” and “IOLTA account”:

A. Describe the same type of trust account.

B. Describe two distinct and separate types of trust accounts.

C. Are the descriptions for an Declined Account.

D. Are lawyer-type legalese.

5. One day you accept a client on a contingent fee basis the day before the client's SOL runs. Client tenders a check to you for expenses and filing fees which you immediately deposit. You then draft and file a petition, pay the filing fees from your firm account and transfer the amount of the filing fees from your IOLTA trust account to your firm account. Busy day! Transferring the expenses to your firm account is:

A. Impermissible because the client funds have not cleared your IOLTA account.

B. Permissible because you paid the amount and your contingent fee contract states client is responsible for all costs and filing fees.

C. Permissible because there were sufficient funds in the IOLTA account to cover the transfer amount.

D. Permissible because the client's check has been deposited.

6. During the course of a contingent fee case you receive notice of apparently valid hospital liens against the client for care provided as a result of client's injuries sustained in the accident. After a 5 day jury trial you and the client prevail and the insurance company issues you a check. The client refuses to give you permission to pay the liens and demands payment of the full amount recovered, after your fees, or she will report you to the Disciplinary Administrator's Office. You:

A. Shall pay all funds, after your fee, to the client unless client gives permission to pay the liens.

B. Shall pay all funds as per the client's demand, after your fee, to the client unless client gives permission to pay the liens only after you communicate adequate information and explanation about the material risks of and reasonably available alternatives to this proposed course of conduct.

C. Shall disregard client's demands and pay the lien amounts.

D. Shall hold up any payment to client or hospital until the lien issue is resolved.

7. One of your clients is a corporation headquartered in Kansas. Suit is filed against it in California. You call adverse counsel and request additional time to file a reply. This is:

A. The unauthorized practice of law in California.

B. Not the unauthorized practice of law in California because you did not appear in court.

C. Not the unauthorized practice of law in California because you did not file a pleading or motion with the court.

D. Not the unauthorized practice of law in California because you had already filed a pending motion to be admitted pro hac vice before attending the phone conference.

8. To avoid overdrafts you keep a small amount of firm funds in the account. This procedure is:

A. Impermissible.

B. Permissible so long as accurate records are maintained as to what money in the account belongs to the firm.

C. Permissible as long as the amount is de minimis.

D. Permissible because there has never been an overdraft of the account.

9. Regarding your trust account activity you are required to:

A. Maintain complete records.

B. Maintain complete records which includes fee agreements, engagement letters, retainer agreements and compensation agreements with clients.

C. Maintain complete records which includes bills for legal fees and expenses rendered to clients.

D. Maintain complete records which includes those portions of client files that are reasonably related to client trust account transactions.

10. Complete records of trust account activity shall be maintained:

A. Forever.

B. For five years.

C. For ten years.

D. For three years.