

Proposed Rule 1.15 [4-100]

“Handling Funds and Property of Clients and Other Persons”

(Draft #17, 12/12/09)

Summary: Proposed Rule 1.15 is a complete rewrite of the general language of ABA Model Rule 1.15 to provide detailed standards for client protection and guidance of lawyers. Parts of the proposal also reject some ABA policies because they are inconsistent with statutes (Business & Professions Code §§ 6091.1 and 6210-6228), violate access to justice concepts, and would impair disciplinary enforcement.

Comparison with ABA Counterpart

Rule	Comment
<input type="checkbox"/> ABA Model Rule substantially adopted <input checked="" type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input type="checkbox"/> No ABA Model Rule counterpart	<input type="checkbox"/> ABA Model Rule substantially adopted <input checked="" type="checkbox"/> ABA Model Rule substantially rejected <input type="checkbox"/> Some material additions to ABA Model Rule <input type="checkbox"/> Some material deletions from ABA Model Rule <input type="checkbox"/> No ABA Model Rule counterpart

Primary Factors Considered

Existing California Law

Rules

RPC 4-100

Statute

Case law

State Rule(s) Variations (See provided excerpt of selected state variations.)

Fifteen states have created their own rule or substantially amended ABA Model Rule 1.15; twelve states have made substantive amendments to the Model Rule. (See Introduction, at par. 6.)

Other Primary Factor(s)

Rule Revision Commission Action/Vote to Recommend Rule Adoption

(13 Members Total – votes recorded may be less than 13 due to member absences)

Approved on 10-day Ballot, Less than Six Members Opposing Adoption

Vote (see tally below)

Favor Rule as Recommended for Adoption 9

Opposed Rule as Recommended for Adoption 2

Abstain 0

Approved on Consent Calendar

Approved by Consensus

Minority/Position Included on Model Rule Comparison Chart Yes No

Stakeholders and Level of Controversy

No Known Stakeholders

The Following Stakeholders Are Known:

State Bar Office of the Chief Trial Counsel and local bar association ethics committees (see public commenter chart)

Very Controversial – Explanation:

Local bar association ethics committees have differing views on whether Model Rule 1.15 is preferable to the proposed rule. Also, the Los Angeles County Bar Association believes that advance fees should not be required to be held in a client trust account until earned. However, the State Bar Office of the Chief Trial Counsel takes the opposite position on advance fees and favors a requirement that advance fees be held in a client trust account until earned.

Moderately Controversial – Explanation:

Not Controversial

COMMISSION FOR THE REVISION OF THE RULES OF PROFESSIONAL CONDUCT

Proposed Rule 1.15* Safekeeping Property: Handling Funds and Property of Clients and Other Persons

December 2009

(Draft rule to be considered after public comment.)

INTRODUCTION:

Proposed Rule 1.15 is a complete rewrite of the general language of the ABA Model Rule to provide detailed standards for client protection and guidance of lawyers. The proposed Rule largely codifies existing California law rather than changing it. The existing California law, especially the case law, is complex and the proposed rule reflects that complexity. Codifying the existing law in a comprehensive rule promotes compliance by organizing within a rule structure otherwise disparate and inaccessible trust accounting duties. Parts of the proposal also reject some ABA policies because they are inconsistent with statutes (Business & Professions Code §§ 6091.1 and 6210-6228), violate access to justice concepts, and would impair disciplinary enforcement.

1. **The proposal satisfies the need for greater and specific regulation of lawyer conduct in handling entrusted funds and property:** ABA Model Rule 1.15 states general principles regarding lawyer handling of other people's funds and property, often with reference to principles of other fiduciaries or accountants that do not apply in this context. California experimented with such general language from 1927-1974 with former Rule 9, California Rules of Professional Conduct. Because lawyer mismanagement of trust funds and property continued to be a substantial percentage of disciplinary investigations and prosecution, Rule 4-100, adopted in 1975 and 1989, rejected continuation of a general approach and added other more specific regulations and standards for record keeping.
2. Although the Mandatory Continuing Legal Education requirement, the State Bar's publication of the *Handbook on Client Trust Accounting for California Attorneys* and the State Bar Ethics Hotline program have assisted in preventing mismanagement of trust funds and property, handling of trust funds and property continues to be a significant disciplinary issue.

* Proposed Rule, Draft 17 (12/12/09).

3. According to the State Bar of California Annual Discipline Report for 2007, 12% of all disciplinary complaints arose from allegations of mishandling of funds, and banks made 2617 reports pursuant to Business and Professions Code section 6091.1 of instances of insufficient funds presented against an attorney's client trust account, regardless of whether the instrument was honored.

4. Moreover, when the State Bar Office of Chief Trial Counsel processing of disciplinary complaints was reduced to almost nothing from June 1998 until the system commenced significant operations in early 1999, due to absence of funding and during its 1999 resumption of disciplinary enforcement, the trust account mismanagement spiked dramatically:

(a) The highest number of insufficient funded trust account checks was reported: 4260 in 1998 and 4417 in 1999 (more than 500 reports in the prior and succeeding years. (2000 State Bar of California Annual Discipline Report, at p. 9.)

(b) Moreover, complaints about handling entrusted funds rose to 15% of all disciplinary complaints in 1999 from an average of 10-12% of all disciplinary complaints in prior and succeeding years. (2000 State Bar of California Annual Discipline Report, at p. 11.)

5. These statistics suggest that disciplinary enforcement acts as a deterrent. Therefore, more detailed regulation than provided by the Model Rule is necessary to serve as guidance to lawyers, to protect the public from improper handling of trust funds and property and to increase public confidence in the legal profession's abilities in safekeeping property.

6. A number of other jurisdictions have reached the conclusion that more detailed regulation is needed than is provided by ABA Model Rule 1.15.

(a) The following jurisdictions have either created their own rule or have substantially revised the ABA Model Rule with amendments and additions: Delaware, District of Columbia, Florida, Massachusetts, Minnesota, New York, North Carolina, North Dakota, Ohio, Pennsylvania, South Dakota, Virginia, Washington, Wisconsin, and Wyoming.

(b) Many other states have made some substantive amendments to ABA Model Rule 1.15 (Alabama, Connecticut, Indiana, Iowa, Louisiana, Maryland, Mississippi, Montana, Nevada, North Dakota, Oregon, and South Carolina.) Gillers, Simon & Perlman (2009) *Regulation of Lawyers: Statutes and Standards*, ABA Model Rules of Professional Conduct, Rule 1.15, Selected State Variations, pp. 189-192; ABA Center for Professional Responsibility, Charts Comparing Professional Conduct Rules at:

<http://www.abanet.org/cpr/jclr/charts.html>

Proposed Rule 1.15:

7. As is true with the corresponding Rules adopted by several other jurisdictions, proposed Rule 1.15 elaborates in some detail on, and gives more specific guidance than, the ABA statements of general principles about how to handle funds and property of others that have been entrusted to the lawyer. The proposed Rule does so by adding sufficient detail designed to instruct the lawyer as to the minimum standards at every phase of handling the funds and property.

8. Proposed Rule 1.15 also expands the scope of ABA Model Rule 1.15 by including:

(a) standards concerning the handling of electronic financial transactions;

(b) requirements with respect disciplinary audits; and

(c) identification of alternatives to keeping disputed property in trust (when a third party and a client dispute distribution of funds or property and do not want the lawyer to maintain the funds) that are available to the lawyer, such as by the use of interpleader.

Minority:

9. A minority believe that Model Rule 1.15 is a much more understandable and workable rule on safekeeping property for California lawyers than this very complex rule for the reasons stated by the Los Angeles County Bar Association Professional Responsibility and Ethics Committee. In addition, California should provide the same level of public protection provided in the Model Rule and in the rule followed by most jurisdictions by requiring advance fees to be deposited in a client trust account. Having such a requirement would greatly simplify this rule and would reconcile this rule with proposed rule 1.5.

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>(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 where the lawyer's office is situated, or elsewhere with the consent of the client or third person. 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.</p>	<p>(a) <u>Duty to deposit entrusted funds in trust account.</u> A lawyer shall hold property of clients or third persons <u>deposit all funds that is in the lawyer receives or holds for the benefit of a lawyer's possession client or other person</u> in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent <u>performance of the client's legal service or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept</u> <u>representation</u> by the lawyer and shall be preserved, including an advance for a period of [five years] after termination of the representation <u>costs and expenses, in one or more trust accounts in accordance with this Rule.</u></p>	<p>In the Commission's opinion, Model Rule 1.15(a) does not provide sufficient guidance or specific regulation necessary for adequate protection of California residents because:</p> <p>Sentence 1: Although the Rule requires segregation of entrusted funds and property from property of the lawyer, it does not require that trust funds be placed in a labeled trust account which can be located by the owner of the funds, and it does not require that any depository be a state or federal regulated financial institution or be federally insured. (See proposed 1.15(a), (b), and (c). The Commission has retained the concepts of segregation in proposed 1.15(a), (f), and (k)(2)).</p> <p>Sentence 2: The Model Rule permits trust funds to be held in another jurisdiction with the permission of the client or a third party. This concept was not adopted because it is contrary to existing California legislative policy regarding (1) requiring IOLTA accounts to be established with the interest to be paid to the State Bar for legal services for the indigent pursuant to Business and Professions Code §§ 6210-6228 and (2) requiring banks to make reports to the State Bar of instances of insufficient funds presented against an attorney's client trust account pursuant to Business and Professions Code § 6091.1; and the difficulty for State Bar Office of Chief Trial Counsel to acquire records from out of state financial institutions where there is no subpoena authority. (See proposed 1.15(b).) However, the Commission proposes adding 1.15(l), discussed below.</p>

* Proposed Rule, Draft 17 (12/12/09). Redline/strikeout showing changes to the ABA Model Rule

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		<p>Sentence 3: The Model Rule's standard that "other property shall be identified as such and appropriately safeguarded" is so general that it does not afford adequate public protection. This standard does not provide specific guidance to lawyers concerning what is "appropriate" safeguarding of other property (such as keeping other property in a safety deposit box which can be located in the event of the lawyer's death or disability) and it does not provide a minimal standard which prosecutors can enforce. (See proposed 1.15(k)(2) - (4).)</p> <p>Sentence 4: The Model Rule's standard of keeping complete records of all accounts and property provides no enforceable standard for disciplinary enforcement and no guidance for lawyers for preventive law purposes. The Commission also rejected the requirement that records be retained for a period of time after termination of the attorney client relationship. Since lawyers often terminate the attorney-client relationship while retaining client or other person's funds and property, the better public protection requires retention of all records for a period of time after the last funds or property are disbursed. (See 1.15(k).)</p>

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<p>(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.</p>	<p>(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.</p> <p>(b) <u>Approved depositories for trust accounts.</u> Except as provided in paragraph (l), or as expressly ordered by a tribunal, all trust accounts under this Rule shall be in depositories approved by the California Supreme Court in the State of California. All IOLTA trust accounts as defined in Business and Professions Code section 6211 shall be in depositories that are in compliance with the requirements of Business and Professions Code section 6212.</p>	<p>The Commission retained the subject of Model Rule 1.15(b) in proposed 1.15(f)(1) (regarding an exception to commingling by depositing personal funds to pay bank service charges but without the limit on amount). The Commission has recommended other exceptions which protect the public including making restitution for funds wrongfully removed and holding disputed attorneys fees and costs in trust until the dispute is resolved. (See proposed 1.15(f).)</p> <p>Paragraph (b) is derived from current rule 4-100(A). The current standard has been modified to require that funds be held in California depositories unless there is a contrary court order or the circumstances fall into the category of multijurisdictional practice covered by paragraph (l).</p>
	<p>(c) <u>Trust account designation.</u> A lawyer shall designate each trust account as "Client Trust Account" or other identifiable fiduciary title.</p>	<p>Paragraph (c), which requires a lawyer to identify each trust account, is carried forward from current rule 4-100 and is intended to afford client protection.</p>

<p style="text-align: center;"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property</p>	<p style="text-align: center;"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons</p>	<p style="text-align: center;"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(d) <u>Advances for fees; deposit and accounting. A lawyer may, but is not required to, deposit an advance for fees in a trust account. Regardless of whether the lawyer has deposited an advance for fees in a trust account:</u></p> <p>(1) <u>subject to Business and Professions Code section 6068(e), the lawyer must account to the client or other person who advanced the fees; and</u></p> <p>(2) <u>if a client or other person disputes a lawyer's entitlement to a fee, any disputed portion of an advance for fees not yet fixed must be deposited in a trust account.</u></p>	<p>Added for public protection: The Commission rejected the concept of Model Rule 1.15(c), which requires that all advance fees be placed in a trust account until earned. Many lawyers can follow this principle as a matter of good risk management and to foster good client relations, but there are situations in which the requirement would create harm. For example, lawyers in certain fields of practice, such as criminal defense and family law lawyers, customarily utilize advance fee payments beginning when received and count on this in order to provide services to their clients. If their advance fees had to be deposited in a client trust account, the funds could be seized by client creditors or by law enforcement agencies, so the client would have no funds with which to pay for a defense. Adding the Model Rule's requirement would prevent some lawyers from representing clients, thereby limiting access to justice in those areas. In addition, there are situations in which the client could be harmed if advance fees were placed in the lawyer's trust account, such as when creditors attach or government agencies freeze client trust funds that otherwise would be held to pay legal fees and expenses (<i>S.E.C. v. Interlink Data Network of Los Angeles Inc.</i> (9th Cir. 1996) 77 F3d 1201). This, also, is a significant access to justice issue. Finally, our Supreme Court has historically refused to approve such a mandatory rule.</p> <p>The Commission believes these public protection issues are better addressed by a rule that regulates advanced fees and makes the standards for handling such fees explicit. (See Proposed Rule 1.15(d), above.)</p>

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<p>(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.</p>	<p>(ce) <u>Duties concerning maintenance and use of trust funds.</u> A lawyer shall <u>maintain inviolate all funds on deposit into a client trust account</u> legal fees and expenses that have been paid in advance, <u>all property entrusted to be withdrawn by the lawyer only as fees are earned for the benefit of a client or expenses incurred</u> other person until distributed in accordance with this Rule.</p>	<p>Accepted, with clarifying amendments. The Commission adopted the concept of depositing trust funds , including advanced costs, in proposed Rule 1.15(a), believing that for guidance, the duty to deposit should be the first part of the rule. The concept of the rule has been retained here, but clarified to add the duty not to misappropriate entrusted funds.</p> <p>Rejected mandatory advance fee deposit in trust account: The Commission rejected one concept of Model Rule 1.15(c), which requires that all advance fees be placed in a trust account until earned. Many lawyers can follow this principle as a matter of good risk management and to foster good client relations, but there are situations in which the requirement would create harm. For example, lawyers in certain fields of practice, such as criminal defense and family law lawyers, customarily utilize advance fee payments beginning when received and count on this in order to provide services to their clients. If their advance fees had to be deposited in a client trust account, the funds could be seized by client creditors or by law enforcement agencies, so the client would have funds with which to pay for a defense. Adding the MR's requirement would prevent some lawyers from representing clients, thereby limiting access to justice in those areas. In addition, there are situations in which the client could be harmed if advance fees were placed in the lawyer's trust account, such as when creditors attach or government agencies freeze client trust funds that otherwise would be held to pay legal fees and expenses (<i>S.E.C. v. Interlink Data Network of Los Angeles Inc.</i> (9th Cir. 1996) 77 F3d 1201). This, also, is a significant access to justice issue. Finally, our Supreme Court has historically refused to approve such a mandatory rule.</p>

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		<p>The Commission believes these public protection issues are better addressed by a rule that regulates advanced fees and makes the standards for handling such fees explicit. (See Proposed Rule 1.15(d), above.)</p>
	<p>(f) Commingling of lawyer's funds and trust funds prohibited; exceptions. Funds belonging to a lawyer or law firm shall not be commingled with funds held in a trust account established under this Rule except:</p> <ul style="list-style-type: none"> (1) funds reasonably sufficient to pay bank charges; (2) deposits for overdraft protection that compensate exactly for the amount that the overdraft exceeds the funds on deposit plus any bank charges; (3) the lawyer's or law firm's funds deposited to restore entrusted funds that have been improperly withdrawn; (4) funds in which the lawyer claims an interest but which are disputed by the client or other person; or (5) funds belonging in part to a client or other person and in part, presently or potentially, to the lawyer, but which are claimed by a third party. 	<p>Added for public protection: Proposed paragraph (f) adds in mandatory form important details not found in Model Rule 1.5. The Commission believes these additions are needed to assure full compliance with the client-protective purpose of paragraph (a). Each of these requirements is consistent with the Model Rule 1.15, current California rule 4-100, and California case law.</p>

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	<p>(g) <u>Duties when lawyer's entitlement to funds or property becomes fixed or the lawyer's entitlement is disputed.</u> In the case of property, or funds held in a trust account, that belong in part to a client or other person and in part to the lawyer, the lawyer shall withdraw or distribute the portion belonging to the lawyer at the earliest reasonable time after the lawyer's interest in that portion becomes fixed, provided that:</p> <ol style="list-style-type: none"> (1) <u>the client or other person may still dispute that the lawyer is entitled to the funds or property;</u> (2) <u>when the right of a lawyer to receive a portion of entrusted funds or property is disputed by the client or other person, the lawyer shall distribute the undisputed portion in accordance with paragraph (k)(7), but shall not distribute the disputed portion until the dispute is finally resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order;</u> (3) <u>a lawyer shall take reasonable steps promptly to resolve any dispute regarding entrusted funds or property in the circumstances of paragraph (g)(2); and</u> (4) <u>if the client or other person disputes the lawyer's interest in entrusted funds or property after the lawyer's interest has become fixed and the lawyer has withdrawn the fixed portion, the lawyer shall have no duty to redeposit the disputed portion in a trust account.</u> 	<p>Added for public protection: Because there continues to be much confusion about when a lawyer's entitlement to entrusted funds occurs [<i>Matter of Davis</i> (Review Dept. 2003) 4 Cal.State Bar Ct. Rptr. 576, 586-587 [withdrawal of disputed fees from trust account], this part of the rule has been expanded. It retains the concept of ABA Model Rule 1.15(d)(e) which was not clear concerning the application of the rule to lawyers' fees and cost.</p>

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	<p>(h) <u>Duties when a client or other person disputes the other's entitlement to funds or property. When the right of a client or other person to receive a portion of entrusted funds or property is disputed by a client or other person, the lawyer shall not distribute the disputed portion of entrusted funds or property until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order, except that the lawyer shall make any distribution required by paragraph (k)(7).</u></p>	<p>Added for public protection: Consistent with current California case law, proposed paragraph (h) mandates that a lawyer not unilaterally determine entitlement to entrusted funds or property held by the lawyer when the entitlement is disputed by the client or a third party. Such a unilateral determination by a lawyer is an act of moral turpitude under Business & Professions Code § 6106. (<i>Matter of Davis</i> (Review Dept. 2003) 4 Cal.State Bar Ct. Rptr. 576, 589 [knowing an wilful withdrawal of disputed fees from trust account constituted moral turpitude].) Placing this requirement in Rule 1.15 makes the lawyer's obligation more apparent and therefore fosters compliance.</p>

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<p>(d) 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.</p>	<p>(di) Upon receiving <u>Duties when entitlement to funds or other property in which is disputed by third party.</u> When the right of a client or third other person has an interest, to receive a portion of entrusted funds or property (1) is disputed by a third party that has a security or ownership interest in the entrusted funds or property or (2) is subject to a court order, the lawyer shall promptly notify not distribute the client disputed portion until the dispute is resolved, the lawyer interpleads the funds or third person. Except as stated in this rule property, or otherwise permitted the distribution is authorized by law or by agreement with court order. Nevertheless the client, a lawyer shall promptly deliver to the client or third person distribute any undisputed entrusted funds or other property that the client or third person is entitled to receive and, upon request as required by the client or third person, shall promptly render a full accounting regarding such property <u>paragraph (k)(7).</u></p>	<p>Sentence 1: The Model Rule's notification requirement does not adequately protect the public, because it does not require notification of the amount of funds or the identity or quantity of property received by a lawyer on behalf of another. Therefore, the Commission has retained the concept of notification upon receipt of funds and property but added a component requiring disclosure of what has been received on behalf of another. (See proposed 1.15(k)(1).)</p> <p>Sentence 2: This part of the Model Rule is confusing, and therefore more likely to cause non-compliance, because it mixes concepts of distribution of funds and property with accounting for the use of funds. The Commission has separated these important provisions in proposed 1.15(k)(4) and (7). Moreover, the requirement of rendering a "full accounting" does not provide sufficient public protection because the minimal components of a full accounting are not included in the Rule. The Commission has added such accounting features in proposed 1.15(k)(4) for entrusted funds and in proposed 1.15(d) and Comment [10].</p>

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<p>(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.</p>	<p>(e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.</p>	<p>Sentence 1: This sentence inaccurately merges concepts of handling funds and property disputed between clients and third parties with disputes about the lawyer's fees and costs and requires that disputed funds be segregated until the dispute is resolved. As noted above, segregation is not adequate public protection. This concept does not adequately protect the public because it does not include within its scope court orders that lawyers hold funds or property, which commonly occurs in litigation or in family law matters. The Commission has separated the types of disputes for clarity of application and has included court orders (see proposed 1.15(h) and (i)). Moreover, maintenance in a trust fund may expose the funds to attachment by judgment creditors of one of the disputants or seizure by government agencies, thereby affording little protection to other disputants. Accordingly, the Commission has provided for interpleader as an alternative to holding funds or property in trust.</p> <p>Sentence 2: The Commission has retained this concept, as reworded to fit the context of proposed 1.15(h) and (i).</p>

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	<p>(j) <u>Credit card, debit, or other electronically transferred payments.</u> A lawyer may establish a relationship with a merchant bank or electronic payment service so that a client or other person may use credit card, debit, or other electronically transferred payments to pay an advance for fees or costs directly into a trust account, provided that the contract with the merchant bank or electronic payment service requires that the lawyer's obligations for any charges, chargebacks and offsets be paid from a source that is not a trust account.</p>	<p>New concept, added for public protection and guidance: Model Rule 1.15 does not address electronically transferred payments, although they are increasingly common. Proposed paragraph (j) is consistent with current California law as explained in State Bar. Formal Opn. 2007-172 and likely is consistent with the Model Rule. Placing this requirement in Rule 1.15 makes the lawyer's obligation more apparent and therefore fosters compliance.</p>
	<p>(k) <u>Management, recordkeeping and accounting for funds and property held in trust.</u> A lawyer shall:</p> <p>(1) <u>promptly notify a client or other person of the receipt of funds, securities, or other property in which the client or other person claims or has an interest and notify the client or other person of the amount of such funds or the identity or quantity of such property;</u></p> <p>(2) <u>identify and label securities and property of a client or other person promptly upon receipt, place them in a safe deposit box or other place of safekeeping as soon as practicable, segregate any securities or property from the lawyer's own securities or property of the same character, and notify the client or other person of the location of the property;</u></p>	<p>Concepts similar to Model Rule 1.15(d) but separated, added and clarified for the protection of the public. The Commission believes that proposed paragraph (k) is consistent with concepts in the Model Rule, but it expresses the Model Rule's general concepts in considerable detail in order to foster lawyer compliance. Greater specificity about the duties of the lawyer for each phase of the rule will give clear guidance about how to handle entrusted funds or property and will provide for easier charging of disciplinary violations.</p> <p>Subparagraph (k)(1) includes the concept of Model Rule 1.15(d) sentence 1, but adds the duty to disclose the amount of such funds or the identity or quantity of such property.</p> <p>Subparagraph (k)(2) includes the concept of Model Rule 1.15(a) sentence 3, reworded slightly for conformity and adds a notification requirement.</p>

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	<p>(3) maintain complete records of all funds and property of a client or other person coming into the possession of the lawyer;</p> <p>(4) account to the client or other person for whom the lawyer holds funds or property. An accounting shall include, but is not limited to: (i) a statement of all funds and property received by the lawyer as of the date of the accounting, the source, amount of funds or description of property, and date received; (ii) a statement of all distributions of such funds and property, the date of distribution, the amount of funds or description of property distributed, the payee or distributee, and any trust account check number; and (iii) any balance remaining in the possession of the lawyer;</p> <p>(5) preserve records of all entrusted funds or property for a period of no less than five years after final appropriate distribution of such funds or property;</p>	<p>Subparagraph (k)(3) restates the concept of Model Rule 1.15(a), sentence 4, first clause [“Complete records of such account funds and other property shall be kept by the lawyer . . .”]. The Commission has opted for the active voice consistent with the policy of the State Bar, following the Administrative Office of the Courts, to make all rules be in the active not passive voice unless there was a compelling reason. The Commission opted to retain the concept</p> <p>Subparagraph (k)(4) restates the concept of Model Rule 1.15(d), sentence 2, last clause [“. . .and, upon request by the client or third person, shall promptly render a full accounting regarding such property.”] Although Bus. & Prof. C., §6091 creates a duty to provide an accounting upon request, <i>Matter of Brockway</i> (Review Dept. 2006) 4 Cal. State Bar Ct. Rptr. 944, suggests that the duty to account under present rule 4-100(B)(3) does not require a client’s or other person’s request. Because the latter provides greater public protection, the Commission adopted the latter.</p> <p>Subparagraph (k)(5) restates the concept of Model Rule 1.15(a), sentence 4, last clause ([trust account records] “shall be preserved for a period of [five years] after termination of the representation”) but changes the trigger [distribution of funds or property] for when the five (5) years starts to run. Because lawyers can terminate representation, without making appropriate distributions of trust funds or property, the records can be destroyed before the client ever learns of any misconduct and before a disciplinary complaint is filed. Therefore, to provide maximum protection for the public, the Commission has recommended that the five years run from the appropriate distribution of trust funds or property.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(6) comply with any order for an audit of such records issued by the State Bar Court pursuant to the Rules of Procedure of the State Bar; and</p> <p>(7) promptly distribute, as requested by a client or other person, any undisputed funds or property in the possession of the lawyer that the client or other person is entitled to receive.</p>	<p>Subparagraph (k)(6) has been added to protect the public in disciplinary proceedings to require lawyers to comply with State Bar Court ordered audits. This concept does not exist in Model Rule 1.15 and is needed for greater public protection.</p> <p>Subparagraph (k)(7) restates Model Rule 1.15(d), sentence 2 (“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...”) The Commission has opted for a request of the client or other person as a trigger to the duty to distribute funds or property, because it is clearer and because it empowers the client or other person. The proposed rule has been clarified that only “undisputed” funds or property may be distributed by the lawyer.</p>
	<p>(l) Scope and Application of Rule. This Rule does not apply to the following:</p> <p>(1) A member of the State Bar of California residing and practicing law in a state other than California who (i) receives funds or property from a person who is not a resident of California, arising from or related to a legal representation not in California, and (ii) handles the funds or property in accordance with the law of the controlling jurisdiction. See Rule 8.5(b).</p>	<p>This paragraph clarifies application of this Rule to multijurisdictional practice.</p> <p>In particular, subparagraph (l)(4) has been added to help assure accountability and recordkeeping when funds are held in a non-California bank or financial institution. The language used in subparagraph (l)(4) was drafted with input from a representative of the Office of the Chief Trial Counsel.</p>

<p style="text-align: center;"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property</p>	<p style="text-align: center;"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons</p>	<p style="text-align: center;"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(2) <u>Funds or property entrusted to a multi-jurisdictional law firm in locations outside of California by clients domiciled outside of California regarding disputes or matters arising or being litigated outside of California, even though the firm maintains an office in California.</u></p> <p>(3) <u>Lawyers practicing under California Rules of Court 9.47 or 9.48, regarding all matters involving a client or other person domiciled outside of California in which no other party to the matter, residing in California, claims an interest.</u></p> <p>(4) <u>At the request of the State Bar of California disciplinary agency, a member of the State Bar of California who is subject to subparagraphs (l)(1) and (2) shall provide information respecting the lawyer's or law firm's non-California bank or financial institution account holding client or third party funds, including, but not limited to, requested bank or financial institution records.</u></p>	

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p>(m) <u>Board of Governors' Standards.</u> The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyers in accordance with paragraph (k)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.</p>	<p>The proposed rule includes a provision authorizing the Board of Governors to set standards for record keeping of entrusted property and funds. The lack of adequate record keeping is often the cause of trust account mismanagement and loss of entrusted funds. Standards for appropriate record keeping have reduced the incidence of such misfeasance.</p>

<p align="center">ABA Model Rule Rule 1.15 Safekeeping Property Comment</p>	<p align="center">Commission's Proposed Rule Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
<p>[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.</p>	<p>[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See, e.g., ABA Model Financial Recordkeeping Rule.</p>	<p>Rejected entirely for lack of public protection and guidance:</p> <p>Sentence 1: Since there are many different standards of care for professional fiduciaries in California, this offers no guidance for lawyers who desire to handle funds properly or standards for discipline for the protection of the public. It also is inconsistent with legal duties that lawyers have under law, such as maintaining IOLTA trust accounts (Bus. & Prof. §§6210, et sec.)</p> <p>Sentence 2: This concept (with the added protection of requiring the labelling of securities as belonging to a particular person) has been incorporated into the proposed Rule as 1.15(k)(2). Placing these requirements in the Rule makes them enforceable in disciplinary proceedings for the protection of the public.</p> <p>Sentence 3: The concept of prohibiting commingling is set forth in the proposed Rule. Because this sentence neither clarifies what the duty is nor provides guidance or a disciplinary standard, it was deleted.</p> <p>Sentence 4: Rejected because it is incomplete and therefore may confuse. The concept is discussed more directly in the latter part of added Comment [2].</p> <p>Sentences 5-6: These sentences are overbroad and provide little guidance. Moreover, they conflict with the record keeping standards which the Board has adopted to give specific guidance regarding the frequency, nature and extent of record keeping for the protection of the public.</p>

* Proposed Rule, Draft 15.3 (5/29/09). Note that Proposed Rule 1.15 includes a "Definitions" sections which precedes the "Comments" section.

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><u>Definitions</u></p> <p>[1] <u>As used in this Rule, "property" means (a) a tangible or intangible asset, other than funds, in which a client or other person claims any ownership interest or right of possession or enjoyment. Property does not include a client's file except for anything in it that has pecuniary value (e.g., a negotiable instrument) or intrinsic value (e.g., a will or trust). Regarding the client's file, see Rule 1.16(e). All references in this Rule to "a client or other person" mean a client or other person for whose benefit the lawyer holds funds or property.</u></p>	<p>New comment [1]: Added to clarify for guidance and enforcement purposes the fundamental issues of what "property" and whose "property" are governed by the Rule.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.</p>	<p>[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.</p> <p>[2] <u>As used in this Rule "in connection with the performance of a legal service or representation" means that there is a relationship between the actions of a lawyer in his or her capacity as a lawyer and the receipt or holding of funds from a client or other person. The provisions of this Rule are also applicable when a lawyer serves a client both as a lawyer and as one who renders nonlegal services. (Kelly v. State Bar (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298].) Although lawyers who provide fiduciary services that are not related to the performance of a legal service or representation may be required to handle funds in a fiduciary manner (e.g., when serving as an executor, escrow agent for parties to an escrow who are not clients, or as a trustee for a non-client), this Rule does not govern those activities. Because the latter fiduciary accounts are governed by other law, funds should be maintained in separate fiduciary accounts and not in a trust account established under this Rule. However, the failure to discharge fiduciary duties in relation to the provision of such services may result in discipline for other violations. (See, e.g., Business and Professions Code section 6106.)</u></p>	<p>Rejected entirely for redundancy:</p> <p>Sentence 1: This merely repeats the Rule and therefore is deleted as unnecessary.</p> <p>Sentence 2: This also merely repeats the Rule regarding record keeping and is deleted as unnecessary.</p> <p>New Comment [2]: Proposed for definition and clarification of another concept that is essential to the application of the Rule, which is that the Rule applies only when a lawyer acts "in connection with the performance of a legal service or representation". Other laws and regulations might apply to other fiduciary roles, such as when a lawyer acts as the personal representative of a probate estate. This clarification is for guidance and enforcement.</p>

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<p>[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.</p>	<p>[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.</p> <p>[3] <u>As used in this Rule "client" means a prospective, current, or former client for whom not all legal services have been completed, or as to whom not all funds or property have been distributed in accordance with this Rule.</u></p>	<p>Rejected this language as a comment but incorporated the concepts into the proposed Rule. (See proposed Rule 1.15(d),(g) and (h).) Also, the concepts are clarified in added Comments [12], [13].)</p> <p>New Comment [3]: Proposed for definition of the essential term "client", for guidance and enforcement.</p>

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<p>[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.</p>	<p>[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third party claims against wrongful interference by the client. In such cases, when the third party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.</p> <p>[4] <u>As used in this Rule "entrusted funds" means funds that have been put into the care of a lawyer, by or on behalf of a client or other person in connection with the performance of a legal service or representation, that are held for the benefit of the client or other person, regardless of whether the funds are deposited or held in a trust account. Entrusted funds do not include (i) an advance for fees unless there is an agreement between the lawyer and the client or other person that the advance for fees will be held in trust; (ii) funds belonging wholly to a lawyer or law firm; (iii) payments for undisputed past-due fees; or (iv) undisputed reimbursement by a client or other person for costs advanced by a lawyer or law firm.</u></p>	<p>Rejected this language as a comment but incorporated the concepts into the proposed Rule. (See proposed Rule 1.15(g) and (h).)</p> <p>New Comment [4]: Proposed for definition and clarification of another essential term, which is what "entrusted funds" are governed by the Rule itself, for guidance and enforcement.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
<p>[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.</p>	<p>[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.</p> <p>[5] <u>As used in this Rule, "advance for fees" means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client's behalf.</u></p>	<p>Adopted the concept but rejected its expression: Lawyers acting as escrow agents in a transaction involving a client owe fiduciary duties to the non-client, requiring application of this Rule. (See e.g., <i>Matter of Lilly</i> (Review Dept. 1992) 2 Cal.State Bar Ct. Rptr. 185) This provides important public protection. In order to prevent confusion, the concept has been rewritten as proposed Comment [2].</p> <p>New Comment [5]: Proposed for definition and clarification of an essential term, for guidance and enforcement.</p>
<p>[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.</p>	<p>[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.</p> <p>[6] <u>As used in this Rule, "bank charges" include any administrative or service charges charged to a trust account by an approved depository for trust accounts but does not include merchant account charges, chargebacks, or offsets charged in connection with a merchant account that is attached to a trust account.</u></p>	<p>Rejected entirely because the Client Security Fund is established independently of these Rules, and participation in it is not voluntary. (Bus. & Prof. Code §6140.5.)</p> <p>New Comment [6]: Proposed for definition and clarification of an essential term, for guidance and enforcement.</p>

<p align="center">ABA Model Rule Rule 1.15 Safekeeping Property Comment</p>	<p align="center">Commission's Proposed Rule Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
	<p><i>Application of Rule</i></p> <p>[7] Funds do not take on a fiduciary status merely because they are deposited into a trust account. A lawyer's misuse of a client trust account can result in discipline. In the Matter of McKiernan (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 (deposit of non-client business operating funds in trust account was misconduct.)</p>	<p>Added for public protection and guidance: This Comment clarifies that a lawyer is subject to professional discipline for depositing the lawyer's own funds or for depositing non-client business operating funds in a trust account. The purpose of this prohibition is to protect client funds from attachment or execution by the lawyer's or non-client's creditors or other claimants.</p>
	<p><i>Paragraph (a) - Application to true retainer fees</i></p> <p>[8] Because a true retainer fee, as defined in Rule 1.5(f), is earned on receipt and so is not held for the benefit of the client, a lawyer may not deposit it in a client trust account. (Baranowski v. State Bar (1979) 24 Cal.3d 153, 164 [154 Cal.Rptr. 752].)</p>	<p>Added for public protection and guidance to clarify the prohibition against commingling as applied to true retainers.</p>
	<p>[9] If any part of a true retainer fee is paid for or applied to fees for the performance of legal services, the entire amount loses its character as a true retainer fee and is converted to an advance for fees. (Baranowski v. State Bar (1979) 24 Cal.3d 153, 164, fn. 4 [154 Cal.Rptr. 752]; In the Matter of Fonte (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) When this occurs, the lawyer must comply with paragraphs (d) and (k)(4) with respect to the entire fee. See also Comment [10].</p>	<p>Added for public protection: This Comment clarifies proper handling of a true retainer converted to an advance for fees. It also clarifies that a converted true retainer should be afforded the same accounting and other protections afforded an advance for fees.</p>

<p align="center"><u>ABA Model Rule</u> Rule 1.15 Safekeeping Property Comment</p>	<p align="center"><u>Commission's Proposed Rule</u> Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center"><u>Explanation of Changes to the ABA Model Rule</u></p>
	<p><u><i>Paragraph (d) - Advances for fees; accounting for advances for fees</i></u></p> <p>[10] <u>Although a lawyer has no duty to deposit an advance for fees in a trust account, the lawyer still has a duty under paragraph (d)(1) to account for all funds received as an advance for fees. In preparing an accounting as required under paragraph (d), a lawyer may follow the standards set forth in Business and Professions Code section 6148(b). (In the Matter of Fonte (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756-758.)</u></p>	<p>Added for public protection and guidance to lawyers: This Comment clarifies that a lawyer has a duty to account to the client for an advance for fees and provides guidance for the form of the accounting.</p>
	<p><u><i>Paragraph (e) - Duty to hold funds inviolate</i></u></p> <p>[11] <u>Compliance with paragraphs (e) and (k)(4) requires that all withdrawals and disbursements from a trust account must be made in a manner that permits the recipient or payee of the withdrawal to be identified. Paragraphs (e) and (k)(4) are not intended to prohibit electronic transfers or to preclude a means of withdrawal that might be developed in the future, provided that the recipient of the payment is identified. When payment is made by check, the check should be payable to a specific person or entity.</u></p>	<p>Added for guidance and public protection by providing clarification about proper record keeping.</p>

<p align="center">ABA Model Rule Rule 1.15 Safekeeping Property Comment</p>	<p align="center">Commission's Proposed Rule Rule 1.15 Handling Funds and Property of Clients and Other Persons Comments/Definitions*</p>	<p align="center">Explanation of Changes to the ABA Model Rule</p>
	<p><u><i>Paragraphs (g) - (i) - Disputed fees</i></u></p> <p><u>[12] Paragraph (g)(2) of this Rule applies even when the lawyer claims to have a valid lien on trust funds for the payment for services, costs and expenses.</u></p>	<p>Added in place of Model Rule Comment [2] for clarification.</p>
	<p><u>[13] A lawyer may not withhold the undisputed portion of a client's or other person's funds because of a fee dispute. The undisputed amount must be paid promptly to the owner upon demand. (<i>Friedman v. State Bar</i> (1990) 50 Cal.3d 235, 240-241 [266 Cal.Rptr. 632].)</u></p>	<p>Added for public protection: This Comment clarifies that undisputed funds must be disbursed to prevent loss of use of the money by the owner.</p>
	<p><u>[14] A lawyer may not unilaterally withdraw disputed fees from a trust account. However, in circumstances coming within paragraphs (h) or (i), a lawyer may interplead the disputed funds or property.</u></p>	<p>Added for public protection: This Comment clarifies that a lawyer may not unilaterally withdrawal entrusted funds.</p>

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	<p><i>Paragraph (k) - Duties to maintain records and account for receipt of trust funds or property</i></p> <p>[15] A lawyer who receives client funds in which another person is known to have an interest (e.g., a medical provider lienholder), must also notify that person of the receipt. (In the Matter of Respondent P (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632) Certain statutory liens may have statutory notice requirements applicable to lawyers. (See, e.g., Welfare and Institutions Code section 14124.79.)</p>	<p>Added for public protection: This Comment clarifies important aspects of a lawyer's duty when holding entrusted funds in which someone other than the client claims an interest.</p>
	<p>[16] With respect to the timing and frequency of a lawyer's accounting under paragraph (k)(4), see Business & Professions Code section 6091.</p>	<p>Added for public protection: This Comment provides clarification by its cross-reference to a related statutory provision.</p>
	<p><i>Other Guidance</i></p> <p>[17] Trust account practice assistance. For guidance concerning the management and administration of trust accounts under this Rule, see State Bar of California publication "Handbook on Trust Accounting for California Attorneys" and the "California Compendium on Professional Responsibility" Index.</p>	<p>Added for public protection: Because of the wide range of factual situations that can arise under this Rule and its central role in client protection and lawyer discipline, this Comment refers lawyers to additional sources of guidance on the application of the Rule.</p>

Rule 1.15 Handling Funds and Property of Clients and Other Persons

(Redline Comparing Proposed Rule to Public Comment Draft)

- (a) Duty to deposit entrusted funds in trust account. A lawyer shall deposit all funds that the lawyer receives or holds for the benefit of a client or other person in connection with the performance of a legal service or representation by the lawyer, including an advance for costs and expenses, in one or more trust accounts in accordance with this Rule.
- (b) Approved depositories for trust accounts. ~~All~~Except as provided in paragraph (l), or as expressly ordered by a tribunal, all trust accounts under this Rule shall be in depositories approved by the California Supreme Court in the State of California, ~~except that a trust account may be established elsewhere as expressly ordered by a tribunal.~~ All IOLTA trust accounts as defined in Business and Professions Code section 6211 shall be in depositories that are in compliance with the requirements of Business and Professions Code section 6212.
- (c) Trust account designation. A lawyer shall designate each trust account as "Client Trust Account" or other identifiable fiduciary title.
- (d) Advances for fees; deposit and accounting. A lawyer may, but is not required to, deposit an advance for fees in a trust account. Regardless of whether the lawyer has deposited an advance for fees in a trust account:
- (1) subject to Business and Professions Code section 6068(e), the lawyer must account to the client or other person who advanced the fees; and
 - (2) if a client or other person disputes a lawyer's entitlement to a fee, any disputed portion of an advance for fees not yet fixed must be deposited in a trust account.
- (e) Duties concerning maintenance and use of trust funds. A lawyer shall maintain inviolate all funds on deposit in a trust account and all property entrusted to the lawyer for the benefit of a client or other person until distributed in accordance with this Rule.
- (f) Commingling of lawyer's funds and trust funds prohibited; exceptions. Funds belonging to a lawyer or law firm shall not be commingled with funds held in a trust account established under this Rule except:
- (1) funds reasonably sufficient to pay bank charges;
 - (2) deposits for overdraft protection that compensate exactly for the amount that the overdraft exceeds the funds on deposit plus any bank charges;
 - (3) the lawyer's or law firm's funds deposited to restore entrusted funds that have been improperly withdrawn;
 - (4) funds in which the lawyer claims an interest but which are disputed by the client or other person; or
 - (5) funds belonging in part to a client or other person and in part, presently or potentially, to the lawyer, but which are claimed by a third party.

(g) Duties when lawyer's entitlement to funds ~~become~~ or property becomes fixed or the lawyer's entitlement is disputed. In the case of property, or funds held in a trust account, that belong in part to a client or other person and in part to ~~at~~ the lawyer, the lawyer shall withdraw or distribute the portion belonging to the lawyer at the earliest reasonable time after the lawyer's interest in that portion becomes fixed, provided that:

- (1) the client or other person may still dispute that the lawyer ~~has earned~~ is entitled to the funds or property;
- (2) when the right of a lawyer to receive a portion of entrusted funds or property is disputed by the client or other person, the lawyer shall distribute the undisputed portion in accordance with paragraph (k)(7), but shall not ~~withdraw~~ distribute the disputed portion until ~~either~~ the dispute is finally resolved, the lawyer interpleads the funds or property, or the ~~withdrawal~~ distribution is authorized by law or court order;
- (3) a lawyer shall take reasonable steps promptly to resolve any dispute regarding entrusted funds or property in the circumstances of paragraph (g)(2); and
- (4) if the client or other person disputes the lawyer's interest in entrusted funds or property after the lawyer's interest has become fixed and the lawyer has withdrawn the fixed portion, the lawyer shall have no duty to redeposit the disputed portion in a trust account.

(h) Duties when a client or other person disputes the other's entitlement to funds or property. When the right of a client or other person to receive

a portion of entrusted funds or property is disputed by a client or other person, the lawyer shall not distribute the disputed portion of entrusted funds or property until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order, except that the lawyer shall make any distribution required by paragraph (k)(7).

- (i) Duties when entitlement to funds or property is disputed by third party. When the right of a client or other person to receive a portion of entrusted funds or property (1) is disputed by a third party that has a security or ownership interest in the entrusted funds or property or (2) is subject to a court order, the lawyer shall not distribute the disputed portion until the dispute is resolved, the lawyer interpleads the funds or ~~unless~~ property, or the distribution is authorized by law or court order. Nevertheless the lawyer shall distribute any undisputed entrusted funds or property, as required by paragraph (k)(7).
- (j) Credit card, debit, or other electronically transferred payments. A lawyer may establish a relationship with a merchant bank or electronic payment service so that a client or other person may use credit card, debit, or other electronically transferred payments to pay an advance for fees or costs directly into a trust account, provided that the contract with the merchant bank or electronic payment service requires that the lawyer's obligations for any charges, chargebacks and offsets be paid from a source that is not a trust account.
- (k) Management, recordkeeping and accounting for funds and property held in trust. A lawyer shall:

- (1) promptly notify a client or other person of the receipt of funds, securities, or other ~~properties~~ property in which the client or

- other person claims or has an interest and notify the client or other person of the amount of such funds or the identity or quantity of such property;
- (2) identify and label securities and ~~properties~~ property of a client or other person promptly upon receipt, place them in a safe deposit box or other place of safekeeping as soon as practicable, segregate any securities or property from the lawyer's own securities or property of the same character, and notify the client or other person of the location of the property;
 - (3) maintain complete records of all funds and property of a client or other person coming into the possession of the lawyer;
 - (4) account to the client or other person for whom the lawyer holds funds or property. An accounting shall include, but is not limited to: (i) a statement of all funds and property received by the lawyer as of the date of the accounting, the source, amount of funds or description of property, and date received; (ii) a statement of all distributions of such funds and property, the date of distribution, the amount of funds or description of property distributed, the payee or distributee, and any trust account check number; and (iii) any balance remaining in the possession of the lawyer;
 - (5) preserve records of all entrusted funds or property for a period of no less than five years after final appropriate distribution of such funds or property;

- (6) comply with any order for an audit of such records issued by the State Bar Court pursuant to the Rules of Procedure of the State Bar; and
- (7) promptly distribute, as requested by a client or other person, any undisputed funds or property in the possession of the lawyer that the client or other person is entitled to receive.

~~(l)~~ Scope and Application of Rule. This Rule does not apply to the following:

- (1) A member of the State Bar of California residing and practicing law in a state other than California who (i) receives funds or property from a person who is not a resident of California, arising from or related to a legal representation not in California, and (ii) handles the funds or property in accordance with the law of the controlling jurisdiction. See ~~{~~Rule 8.5(b)~~}~~.
- (2) Funds or property entrusted to a multi-jurisdictional law firm in locations outside of California by clients domiciled outside of California regarding disputes or matters arising or being litigated outside of California, even though the firm maintains an office in California.
- (3) Lawyers practicing under California Rules of Court 9.47 or 9.48, regarding all matters involving a client or other person domiciled outside of California in which no other party to the matter, residing in California, claims an interest.~~}~~
- (4) At the request of the State Bar of California disciplinary agency, a member of the State Bar of California who is subject to

subparagraphs (l)(1) and (2) shall provide information respecting the lawyer's or law firm's non-California bank or financial institution account holding client or third party funds, including, but not limited to, requested bank or financial institution records.

- (m) Board of Governors' Standards. The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyers in accordance with paragraph (k)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

CommentCOMMENT

Definitions

- [1] As used in this Rule, "property" means (a) a tangible or intangible asset, other than funds, in which a client or other person claims any ownership interest or right of possession or enjoyment. Property does not include a client's file except for anything in it that has pecuniary value (e.g., a negotiable instrument) or intrinsic value (e.g., a will or trust). Regarding the client's file, see Rule 1.16(e). All references in this Rule to "a client or other person" mean a client or other person for whose benefit the lawyer holds funds or property.
- [2] As used in this Rule "in connection with the performance of a legal service or representation" means that there is a relationship between the actions of a lawyer in his or her capacity as a lawyer and the receipt or holding of funds from a client or other person. The provisions of this Rule are also applicable when a lawyer serves a client both as a lawyer and as one who renders nonlegal services.

(*Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298].) Although lawyers who provide fiduciary services that are not related to the performance of a legal service or representation may be required to handle funds in a fiduciary manner (e.g., when serving as an executor, escrow agent for parties to an escrow who are not clients, or as a trustee for a non-client), this Rule does not govern those activities. Because the latter fiduciary accounts are governed by other law, funds should be maintained in separate fiduciary accounts and not in a trust account established under this Rule. However, the failure to discharge fiduciary duties in relation to the provision of such services may result in discipline for other violations. (See, e.g., Business and Professions Code section 6106.)

- [3] As used in this Rule "client" means a prospective, current, or former client for whom not all legal services have been completed, or as to whom not all funds or property have been distributed in accordance with this Rule.
- [4] As used in this Rule "entrusted funds" means funds that have been put into the care of a lawyer, by or on behalf of a client or other person in connection with the performance of a legal service or representation, that are held for the benefit of the client or other person, regardless of whether the funds are deposited or held in a trust account. Entrusted funds do not include (i) an advance for fees unless there is an agreement between the lawyer and the client or other person that the advance for fees will be held in trust; (ii) funds belonging wholly to a lawyer or law firm; (iii) payments for undisputed past-due fees; or (iv) undisputed reimbursement by a client or other person for costs advanced by a lawyer or law firm.

[5] As used in this Rule, “advance for fees” means a payment ~~or retainer~~ intended by the client ~~to be funds paid in as an~~ advance payment for some or all of the services that the lawyer is expected to perform on the client's behalf.

[6] As used in this Rule, “bank charges” include any administrative or service charges charged to a trust account by an approved depository for trust accounts but does not include merchant account charges, chargebacks, or offsets charged in connection with a merchant account that is attached to a trust account.

Application of Rule

[7] Funds do not take on a fiduciary status merely because they are deposited into a trust account. A lawyer's misuse of a client trust account can result in discipline. *In the Matter of McKiernan* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 (deposit of non-client business operating funds in trust account was misconduct.)

Paragraph (a) - Application to true retainer fees

[8] Because a true retainer fee, as defined in Rule 1.5(f), is earned on receipt and so is not held for the benefit of the client, a lawyer may not deposit it in a client trust account. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164 [154 Cal.Rptr. 752].)

[9] If any part of a true retainer fee is paid for or applied to fees for the performance of legal services, the entire amount loses its character as a true retainer fee and is converted to an advance for fees. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4 [154 Cal.Rptr. 752]; *In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.)

When this occurs, the lawyer must comply with paragraphs (d) and (k)(4) with respect to the entire fee. See also Comment [10].

Paragraph (d) - Advances for fees; accounting for advances for fees

[10] Although a lawyer has no duty to deposit an advance for fees in a trust account, the lawyer still has a duty under paragraph (d)(1) to account for all funds received as an advance for fees. In preparing an accounting as required under paragraph (d), a lawyer may follow the standards set forth in Business and Professions Code section 6148(b). (*In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756-758.)

Paragraph (e) - Duty to hold funds inviolate

[11] Compliance with paragraphs (e) and (k)(4) requires that all withdrawals and disbursements from a trust account must be made in a manner that permits the recipient or payee of the withdrawal to be identified. Paragraphs (e) and (k)(4) are not intended to prohibit electronic transfers or to preclude a means of withdrawal that might be developed in the future, provided that the recipient of the payment is identified. When payment is made by check, the check should be payable to a specific person or entity.

Paragraphs (g) - (i) - Disputed fees

[12] Paragraph (g)(2) of this Rule applies even when the lawyer claims to have a valid lien on trust funds for the payment for services, costs and expenses.

[13] A lawyer may not withhold the undisputed portion of a client's or other person's funds because of a fee dispute. The undisputed amount must be paid promptly to the owner upon demand. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 240-241 [266 Cal.Rptr. 632].)

[14] A lawyer may not unilaterally withdraw disputed fees from a trust account. However, in circumstances coming within paragraphs (h) or (i), a lawyer may interplead the disputed funds or property.

Paragraph (k) - Duties to maintain records and account for receipt of trust funds or property

[15] A lawyer who receives client funds in which another person is known to have an interest (e.g., a medical provider lienholder), must also notify that person of the receipt. (*In the Matter of Respondent P* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632) Certain statutory liens may have statutory notice requirements applicable to lawyers. (See, e.g., Welfare and Institutions Code section 14124.79.)

[16] With respect to the timing and frequency of a lawyer's accounting under paragraph (k)(4), see Business & Professions Code section 6091.

Other Guidance

[17] Trust account practice assistance. For guidance concerning the management and administration of trust accounts under this Rule, see State Bar of California publication "Handbook on Trust Accounting for California Attorneys" and the "California Compendium on Professional Responsibility" Index.

Rule 4-100 Preserving Identity of 1.15: Handling Funds and Property of a Client Clients and Other Persons

(Comparison of the Current Proposed Rule to Current California Rule)

- (a) ~~(A) All~~ Duty to deposit entrusted funds received in trust account. A lawyer shall deposit all funds that the lawyer receives or holds for the benefit of clients by a member client or law firm other person in connection with the performance of a legal service or representation by the lawyer, including advances an advance for costs and expenses, shall be deposited in one or more identifiable bank trust accounts labeled "Trust Account," "Client's Funds Account" or words of similar import, maintained in the State of California, or, accordance with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction this Rule. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:
- (b) Approved depositories for trust accounts. Except as provided in paragraph (l), or as expressly ordered by a tribunal, all trust accounts under this Rule shall be in depositories approved by the California Supreme Court in the State of California. All IOLTA trust accounts as defined in Business and Professions Code section 6211 shall be in depositories that are in compliance with the requirements of Business and Professions Code section 6212.
- (c) Trust account designation. A lawyer shall designate each trust account as "Client Trust Account" or other identifiable fiduciary title.
- (d) Advances for fees; deposit and accounting. A lawyer may, but is not required to, deposit an advance for fees in a trust account. Regardless of whether the lawyer has deposited an advance for fees in a trust account:
- (1) subject to Business and Professions Code section 6068(e), the lawyer must account to the client or other person who advanced the fees; and
 - (2) if a client or other person disputes a lawyer's entitlement to a fee, any disputed portion of an advance for fees not yet fixed must be deposited in a trust account.
- (e) Duties concerning maintenance and use of trust funds. A lawyer shall maintain inviolate all funds on deposit in a trust account and all property entrusted to the lawyer for the benefit of a client or other person until distributed in accordance with this Rule.
- (f) Commingling of lawyer's funds and trust funds prohibited; exceptions. Funds belonging to a lawyer or law firm shall not be commingled with funds held in a trust account established under this Rule except:
- (1) ~~Funds~~ funds reasonably sufficient to pay bank charges;
 - (2) deposits for overdraft protection that compensate exactly for the amount that the overdraft exceeds the funds on deposit plus any bank charges;
 - (3) the lawyer's or law firm's funds deposited to restore entrusted funds that have been improperly withdrawn;
 - (4) funds in which the lawyer claims an interest but which are disputed by the client or other person; or

(5) funds belonging in part to a client or other person and in part, presently or potentially, to the lawyer, but which are claimed by a third party.

(g) ~~(2) Duties when lawyer's entitlement to funds or property becomes fixed or the lawyer's entitlement is disputed. In the case of property, or funds belonging held in a trust account, that belong in part to a client or other person and in part presently or potentially to the member or lawyer, the law firm, lawyer shall withdraw or distribute the portion belonging to the member or law firm must be withdrawn lawyer at the earliest reasonable time after the member's lawyer's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved. provided that:~~

~~(B) — A member shall:~~

~~(1) — Promptly notify a client of the receipt of the client's funds, securities, or other properties.~~

(1) the client or other person may still dispute that the lawyer is entitled to the funds or property;

(2) when the right of a lawyer to receive a portion of entrusted funds or property is disputed by the client or other person, the lawyer shall distribute the undisputed portion in accordance with paragraph (k)(7), but shall not distribute the disputed portion until the dispute is finally resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order;

(3) a lawyer shall take reasonable steps promptly to resolve any dispute regarding entrusted funds or property in the circumstances of paragraph (g)(2); and

(4) if the client or other person disputes the lawyer's interest in entrusted funds or property after the lawyer's interest has become fixed and the lawyer has withdrawn the fixed portion, the lawyer shall have no duty to redeposit the disputed portion in a trust account.

(h) Duties when a client or other person disputes the other's entitlement to funds or property. When the right of a client or other person to receive a portion of entrusted funds or property is disputed by a client or other person, the lawyer shall not distribute the disputed portion of entrusted funds or property until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order, except that the lawyer shall make any distribution required by paragraph (k)(7).

(i) Duties when entitlement to funds or property is disputed by third party. When the right of a client or other person to receive a portion of entrusted funds or property (1) is disputed by a third party that has a security or ownership interest in the entrusted funds or property or (2) is subject to a court order, the lawyer shall not distribute the disputed portion until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order. Nevertheless the lawyer shall distribute any undisputed entrusted funds or property, as required by paragraph (k)(7).

(j) Credit card, debit, or other electronically transferred payments. A lawyer may establish a relationship with a merchant bank or electronic

payment service so that a client or other person may use credit card, debit, or other electronically transferred payments to pay an advance for fees or costs directly into a trust account, provided that the contract with the merchant bank or electronic payment service requires that the lawyer's obligations for any charges, chargebacks and offsets be paid from a source that is not a trust account.

(k) Management, recordkeeping and accounting for funds and property held in trust. A lawyer shall:

- (1) promptly notify a client or other person of the receipt of funds, securities, or other property in which the client or other person claims or has an interest and notify the client or other person of the amount of such funds or the identity or quantity of such property;
- (2) ~~Identify~~identify and label securities and ~~properties~~property of a client or other person promptly upon receipt~~and~~, place them in a safe deposit box or other place of safekeeping as soon as practicable~~;~~, segregate any securities or property from the lawyer's own securities or property of the same character, and notify the client or other person of the location of the property;
- (3) maintain complete records of all funds and property of a client or other person coming into the possession of the lawyer;
- (4) account to the client or other person for whom the lawyer holds funds or property. An accounting shall include, but is not limited to: (i) a statement of all funds and property received by the lawyer as of the date of the accounting, the source, amount of funds or description of property, and date received; (ii) a

statement of all distributions of such funds and property, the date of distribution, the amount of funds or description of property distributed, the payee or distributee, and any trust account check number; and (iii) any balance remaining in the possession of the lawyer;

- (5) ~~(3) Maintain complete~~preserve records of all entrusted funds, securities, and other properties of a client coming into the possession of the member or law firm and render appropriate accounts to the client regarding them; preserve such recordsproperty for a period of no less than five years after final appropriate distribution of such funds or ~~properties~~property; ~~and comply with any order for an audit of such records issued pursuant to the Rules of Procedure of the State Bar.~~
 - (6) comply with any order for an audit of such records issued by the State Bar Court pursuant to the Rules of Procedure of the State Bar; and
 - (7) ~~(4) Promptly pay or deliver~~promptly distribute, as requested by ~~the~~a client, ~~any funds, securities,~~ or other ~~properties~~person, any undisputed funds or property in the possession of the ~~member which~~lawyer that the client or other person is entitled to receive.
- (l) Scope and Application of Rule. This Rule does not apply to the following:
- (1) A member of the State Bar of California residing and practicing law in a state other than California who (i) receives

funds or property from a person who is not a resident of California, arising from or related to a legal representation not in California, and (ii) handles the funds or property in accordance with the law of the controlling jurisdiction. See Rule 8.5(b).

(2) Funds or property entrusted to a multi-jurisdictional law firm in locations outside of California by clients domiciled outside of California regarding disputes or matters arising or being litigated outside of California, even though the firm maintains an office in California.

(3) Lawyers practicing under California Rules of Court 9.47 or 9.48, regarding all matters involving a client or other person domiciled outside of California in which no other party to the matter, residing in California, claims an interest.

(4) At the request of the State Bar of California disciplinary agency, a member of the State Bar of California who is subject to subparagraphs (l)(1) and (2) shall provide information respecting the lawyer's or law firm's non-California bank or financial institution account holding client or third party funds, including, but not limited to, requested bank or financial institution records.

(m) ~~(C)~~ Board of Governors' Standards. The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by ~~members and law firms~~ lawyers in accordance with ~~subparagraph~~ paragraph (Bk)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all ~~members~~ lawyers.

COMMENT

Definitions

[1] As used in this Rule, "property" means (a) a tangible or intangible asset, other than funds, in which a client or other person claims any ownership interest or right of possession or enjoyment. Property does not include a client's file except for anything in it that has pecuniary value (e.g., a negotiable instrument) or intrinsic value (e.g., a will or trust). Regarding the client's file, see Rule 1.16(e). All references in this Rule to "a client or other person" mean a client or other person for whose benefit the lawyer holds funds or property.

[2] As used in this Rule "in connection with the performance of a legal service or representation" means that there is a relationship between the actions of a lawyer in his or her capacity as a lawyer and the receipt or holding of funds from a client or other person. The provisions of this Rule are also applicable when a lawyer serves a client both as a lawyer and as one who renders nonlegal services. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298].) Although lawyers who provide fiduciary services that are not related to the performance of a legal service or representation may be required to handle funds in a fiduciary manner (e.g., when serving as an executor, escrow agent for parties to an escrow who are not clients, or as a trustee for a non-client), this Rule does not govern those activities. Because the latter fiduciary accounts are governed by other law, funds should be maintained in separate fiduciary accounts and not in a trust account established under this Rule. However, the failure to discharge fiduciary duties in relation to the provision of such services may result in discipline for other violations. (See, e.g., *Business and Professions Code* section 6106.)

[3] As used in this Rule “client” means a prospective, current, or former client for whom not all legal services have been completed, or as to whom not all funds or property have been distributed in accordance with this Rule.

[4] As used in this Rule “entrusted funds” means funds that have been put into the care of a lawyer, by or on behalf of a client or other person in connection with the performance of a legal service or representation, that are held for the benefit of the client or other person, regardless of whether the funds are deposited or held in a trust account. Entrusted funds do not include (i) an advance for fees unless there is an agreement between the lawyer and the client or other person that the advance for fees will be held in trust; (ii) funds belonging wholly to a lawyer or law firm; (iii) payments for undisputed past-due fees; or (iv) undisputed reimbursement by a client or other person for costs advanced by a lawyer or law firm.

[5] As used in this Rule, “advance for fees” means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client’s behalf.

[6] As used in this Rule, “bank charges” include any administrative or service charges charged to a trust account by an approved depository for trust accounts but does not include merchant account charges, chargebacks, or offsets charged in connection with a merchant account that is attached to a trust account.

Application of Rule

[7] Funds do not take on a fiduciary status merely because they are deposited into a trust account. A lawyer’s misuse of a client trust

account can result in discipline. *In the Matter of McKiernan* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 (deposit of non-client business operating funds in trust account was misconduct.)

Paragraph (a) - Application to true retainer fees

[8] Because a true retainer fee, as defined in Rule 1.5(f), is earned on receipt and so is not held for the benefit of the client, a lawyer may not deposit it in a client trust account. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164 [154 Cal.Rptr. 752].)

[9] If any part of a true retainer fee is paid for or applied to fees for the performance of legal services, the entire amount loses its character as a true retainer fee and is converted to an advance for fees. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4 [154 Cal.Rptr. 752]; *In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) When this occurs, the lawyer must comply with paragraphs (d) and (k)(4) with respect to the entire fee. See also Comment [10].

Paragraph (d) - Advances for fees; accounting for advances for fees

[10] Although a lawyer has no duty to deposit an advance for fees in a trust account, the lawyer still has a duty under paragraph (d)(1) to account for all funds received as an advance for fees. In preparing an accounting as required under paragraph (d), a lawyer may follow the standards set forth in Business and Professions Code section 6148(b). (*In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756-758.)

~~Standards:-~~

~~Pursuant to rule 4-100(C) the Board of Governors of the State Bar adopted the following standards, effective January 1, 1993, as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3).~~

- ~~(1) A member shall, from the date of receipt of client funds through the period ending five years from the date of appropriate disbursement of such funds, maintain:~~
 - ~~(a) a written ledger for each client on whose behalf funds are held that sets forth:
 - ~~(i) the name of such client,~~
 - ~~(ii) the date, amount and source of all funds received on behalf of such client,~~
 - ~~(iii) the date, amount, payee and purpose of each disbursement made on behalf of such client, and~~
 - ~~(iv) the current balance for such client~~~~
 - ~~(b) a written journal for each bank account that sets forth:
 - ~~(i) the name of such account,~~
 - ~~(ii) the date, amount and client affected by each debit and credit, and~~~~

~~(iii) the current balance in such account;~~

~~(c) all bank statements and canceled checks for each bank account; and~~

~~(d) each monthly reconciliation (balancing) of (a), (b), and (c).~~

Paragraph (e) - Duty to hold funds inviolate

[11] Compliance with paragraphs (e) and (k)(4) requires that all withdrawals and disbursements from a trust account must be made in a manner that permits the recipient or payee of the withdrawal to be identified. Paragraphs (e) and (k)(4) are not intended to prohibit electronic transfers or to preclude a means of withdrawal that might be developed in the future, provided that the recipient of the payment is identified. When payment is made by check, the check should be payable to a specific person or entity.

Paragraphs (g) - (j) - Disputed fees

[12] Paragraph (g)(2) of this Rule applies even when the lawyer claims to have a valid lien on trust funds for the payment for services, costs and expenses.

[13] A lawyer may not withhold the undisputed portion of a client's or other person's funds because of a fee dispute. The undisputed amount must be paid promptly to the owner upon demand. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 240-241 [266 Cal.Rptr. 632].)

[14] A lawyer may not unilaterally withdraw disputed fees from a trust account. However, in circumstances coming within paragraphs (h) or (i), a lawyer may interplead the disputed funds or property.

~~(2) — A member shall, from the date of receipt of all securities and other properties held for the benefit of client through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written journal that specifies:~~

~~(a) — each item of security and property held;~~

~~(b) — the person on whose behalf the security or property is held;~~

Paragraph (k) - Duties to maintain records and account for ~~(c) the date of receipt of the security~~trust funds or property;

~~(d) — the date of distribution of the security or property; and~~

~~(e) — person to whom the security or property was distributed.~~

[15] A lawyer who receives client funds in which another person is known to have an interest (e.g., a medical provider lienholder), must also notify that person of the receipt. (*In the Matter of Respondent P* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632) Certain statutory liens may have statutory notice requirements applicable to lawyers. (See, e.g., Welfare and Institutions Code section 14124.79.)

[16] With respect to the timing and frequency of a lawyer's accounting under paragraph (k)(4), see Business & Professions Code section 6091.

Other Guidance

[17] Trust account practice assistance. For guidance concerning the management and administration of trust accounts under this Rule, see State Bar of California publication "Handbook on Trust Accounting for California Attorneys" and the "California Compendium on Professional Responsibility" Index.

Rule 1.15: Handling Funds and Property of Clients and Other Persons
(Commission's Proposed Rule – Clean Version)

- (a) Duty to deposit entrusted funds in trust account. A lawyer shall deposit all funds that the lawyer receives or holds for the benefit of a client or other person in connection with the performance of a legal service or representation by the lawyer, including an advance for costs and expenses, in one or more trust accounts in accordance with this Rule.
- (b) Approved depositories for trust accounts. Except as provided in paragraph (l), or as expressly ordered by a tribunal, all trust accounts under this Rule shall be in depositories approved by the California Supreme Court in the State of California. All IOLTA trust accounts as defined in Business and Professions Code section 6211 shall be in depositories that are in compliance with the requirements of Business and Professions Code section 6212.
- (c) Trust account designation. A lawyer shall designate each trust account as "Client Trust Account" or other identifiable fiduciary title.
- (d) Advances for fees; deposit and accounting. A lawyer may, but is not required to, deposit an advance for fees in a trust account. Regardless of whether the lawyer has deposited an advance for fees in a trust account:
- (1) subject to Rule 1.6 and Business and Professions Code section 6068(e), the lawyer must account to the client or other person who advanced the fees; and
 - (2) if a client or other person disputes a lawyer's entitlement to a fee, any disputed portion of an advance for fees not yet fixed must be deposited in a trust account.
- (e) Duties concerning maintenance and use of trust funds. A lawyer shall maintain inviolate all funds on deposit in a trust account and all property entrusted to the lawyer for the benefit of a client or other person until distributed in accordance with this Rule.
- (f) Commingling of lawyer's funds and trust funds prohibited; exceptions. Funds belonging to a lawyer or law firm shall not be commingled with funds held in a trust account established under this Rule except:
- (1) funds reasonably sufficient to pay bank charges;
 - (2) deposits for overdraft protection that compensate exactly for the amount that the overdraft exceeds the funds on deposit plus any bank charges;
 - (3) the lawyer's or law firm's funds deposited to restore entrusted funds that have been improperly withdrawn;
 - (4) funds in which the lawyer claims an interest but which are disputed by the client or other person; or
 - (5) funds belonging in part to a client or other person and in part, presently or potentially, to the lawyer, but which are claimed by a third party.
- (g) Duties when lawyer's entitlement to funds or property becomes fixed or the lawyer's entitlement is disputed. In the case of property, or funds held in a trust account, that belong in part to a client or other person and in part to the lawyer, the lawyer shall withdraw or distribute the

portion belonging to the lawyer at the earliest reasonable time after the lawyer's interest in that portion becomes fixed, provided that:

- (1) the client or other person may still dispute that the lawyer is entitled to the funds or property;
 - (2) when the right of a lawyer to receive a portion of entrusted funds or property is disputed by the client or other person, the lawyer shall distribute the undisputed portion in accordance with paragraph (k)(7), but shall not distribute the disputed portion until the dispute is finally resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order;
 - (3) a lawyer shall take reasonable steps promptly to resolve any dispute regarding entrusted funds or property in the circumstances of paragraph (g)(2); and
 - (4) if the client or other person disputes the lawyer's interest in entrusted funds or property after the lawyer's interest has become fixed and the lawyer has withdrawn the fixed portion, the lawyer shall have no duty to redeposit the disputed portion in a trust account.
- (h) Duties when a client or other person disputes the other's entitlement to funds or property. When the right of a client or other person to receive a portion of entrusted funds or property is disputed by a client or other person, the lawyer shall not distribute the disputed portion of entrusted funds or property until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court

order, except that the lawyer shall make any distribution required by paragraph (k)(7).

- (i) Duties when entitlement to funds or property is disputed by third party. When the right of a client or other person to receive a portion of entrusted funds or property (1) is disputed by a third party that has a security or ownership interest in the entrusted funds or property or (2) is subject to a court order, the lawyer shall not distribute the disputed portion until the dispute is resolved, the lawyer interpleads the funds or property, or the distribution is authorized by law or court order. Nevertheless the lawyer shall distribute any undisputed entrusted funds or property, as required by paragraph (k)(7).
- (j) Credit card, debit, or other electronically transferred payments. A lawyer may establish a relationship with a merchant bank or electronic payment service so that a client or other person may use credit card, debit, or other electronically transferred payments to pay an advance for fees or costs directly into a trust account, provided that the contract with the merchant bank or electronic payment service requires that the lawyer's obligations for any charges, chargebacks and offsets be paid from a source that is not a trust account.
- (k) Management, recordkeeping and accounting for funds and property held in trust. A lawyer shall:
 - (1) promptly notify a client or other person of the receipt of funds, securities, or other property in which the client or other person claims or has an interest and notify the client or other person of the amount of such funds or the identity or quantity of such property;

- (2) identify and label securities and property of a client or other person promptly upon receipt, place them in a safe deposit box or other place of safekeeping as soon as practicable, segregate any securities or property from the lawyer's own securities or property of the same character, and notify the client or other person of the location of the property;
 - (3) maintain complete records of all funds and property of a client or other person coming into the possession of the lawyer;
 - (4) account to the client or other person for whom the lawyer holds funds or property. An accounting shall include, but is not limited to: (i) a statement of all funds and property received by the lawyer as of the date of the accounting, the source, amount of funds or description of property, and date received; (ii) a statement of all distributions of such funds and property, the date of distribution, the amount of funds or description of property distributed, the payee or distributee, and any trust account check number; and (iii) any balance remaining in the possession of the lawyer;
 - (5) preserve records of all entrusted funds or property for a period of no less than five years after final appropriate distribution of such funds or property;
 - (6) comply with any order for an audit of such records issued by the State Bar Court pursuant to the Rules of Procedure of the State Bar; and
 - (7) promptly distribute, as requested by a client or other person, any undisputed funds or property in the possession of the lawyer that the client or other person is entitled to receive.
- (l) Scope and Application of Rule. This Rule does not apply to the following:
- (1) A member of the State Bar of California residing and practicing law in a state other than California who (i) receives funds or property from a person who is not a resident of California, arising from or related to a legal representation not in California, and (ii) handles the funds or property in accordance with the law of the controlling jurisdiction. See Rule 8.5(b).
 - (2) Funds or property entrusted to a multi-jurisdictional law firm in locations outside of California by clients domiciled outside of California regarding disputes or matters arising or being litigated outside of California, even though the firm maintains an office in California.
 - (3) Lawyers practicing under California Rules of Court 9.47 or 9.48, regarding all matters involving a client or other person domiciled outside of California in which no other party to the matter, residing in California, claims an interest.
 - (4) At the request of the State Bar of California disciplinary agency, a member of the State Bar of California who is subject to subparagraphs (l)(1) and (2) shall provide information respecting the lawyer's or law firm's non-California bank or financial institution account holding client or third party funds,

including, but not limited to, requested bank or financial institution records.

- (m) Board of Governors' Standards. The Board of Governors of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyers in accordance with paragraph (k)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

COMMENT

Definitions

- [1] As used in this Rule, "property" means (a) a tangible or intangible asset, other than funds, in which a client or other person claims any ownership interest or right of possession or enjoyment. Property does not include a client's file except for anything in it that has pecuniary value (e.g., a negotiable instrument) or intrinsic value (e.g., a will or trust). Regarding the client's file, see Rule 1.16(e). All references in this Rule to "a client or other person" mean a client or other person for whose benefit the lawyer holds funds or property.
- [2] As used in this Rule "in connection with the performance of a legal service or representation" means that there is a relationship between the actions of a lawyer in his or her capacity as a lawyer and the receipt or holding of funds from a client or other person. The provisions of this Rule are also applicable when a lawyer serves a client both as a lawyer and as one who renders nonlegal services. (*Kelly v. State Bar* (1991) 53 Cal.3d 509, 517 [280 Cal.Rptr. 298].) Although lawyers who provide fiduciary services that are not related to

the performance of a legal service or representation may be required to handle funds in a fiduciary manner (e.g., when serving as an executor, escrow agent for parties to an escrow who are not clients, or as a trustee for a non-client), this Rule does not govern those activities. Because the latter fiduciary accounts are governed by other law, funds should be maintained in separate fiduciary accounts and not in a trust account established under this Rule. However, the failure to discharge fiduciary duties in relation to the provision of such services may result in discipline for other violations. See, e.g., Business and Professions Code section 6106.

- [3] As used in this Rule "client" means a prospective, current, or former client for whom not all legal services have been completed, or as to whom not all funds or property have been distributed in accordance with this Rule.
- [4] As used in this Rule "entrusted funds" means funds that have been put into the care of a lawyer, by or on behalf of a client or other person in connection with the performance of a legal service or representation, that are held for the benefit of the client or other person, regardless of whether the funds are deposited or held in a trust account. Entrusted funds do not include (i) an advance for fees unless there is an agreement between the lawyer and the client or other person that the advance for fees will be held in trust; (ii) funds belonging wholly to a lawyer or law firm; (iii) payments for undisputed past-due fees; or (iv) undisputed reimbursement by a client or other person for costs advanced by a lawyer or law firm.
- [5] As used in this Rule, "advance for fees" means a payment intended by the client as an advance payment for some or all of the services that the lawyer is expected to perform on the client's behalf.

- [6] As used in this Rule, “bank charges” include any administrative or service charges charged to a trust account by an approved depository for trust accounts but does not include merchant account charges, chargebacks, or offsets charged in connection with a merchant account that is attached to a trust account.

Application of Rule

- [7] Funds do not take on a fiduciary status merely because they are deposited into a trust account. A lawyer’s misuse of a client trust account can result in discipline. *In the Matter of McKiernan* (Rev. Dept. 1995) 3 Cal. State Bar Ct. Rptr. 420 (deposit of non-client business operating funds in trust account was misconduct.)

Paragraph (a) – Application to true retainer fees

- [8] Because a true retainer fee, as defined in Rule 1.5(f), is earned on receipt and so is not held for the benefit of the client, a lawyer may not deposit it in a client trust account. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164 [154 Cal.Rptr. 752].)
- [9] If any part of a true retainer fee is paid for or applied to fees for the performance of legal services, the entire amount loses its character as a true retainer fee and is converted to an advance for fees. (*Baranowski v. State Bar* (1979) 24 Cal.3d 153, 164, fn. 4 [154 Cal.Rptr. 752]; *In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.) When this occurs, the lawyer must comply with paragraphs (d) and (k)(4) with respect to the entire fee. See also Comment [10].

Paragraph (d) – Advances for fees; accounting for advances for fees

- [10] Although a lawyer has no duty to deposit an advance for fees in a trust account, the lawyer still has a duty under paragraph (d)(1) to account for all funds received as an advance for fees. In preparing an accounting as required under paragraph (d), a lawyer may follow the standards set forth in Business and Professions Code section 6148(b). (*In the Matter of Fonte* (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 756–758.)

Paragraph (e) – Duty to hold funds inviolate

- [11] Compliance with paragraphs (e) and (k)(4) requires that all withdrawals and disbursements from a trust account must be made in a manner that permits the recipient or payee of the withdrawal to be identified. Paragraphs (e) and (k)(4) are not intended to prohibit electronic transfers or to preclude a means of withdrawal that might be developed in the future, provided that the recipient of the payment is identified. When payment is made by check, the check should be payable to a specific person or entity.

Paragraphs (g) – (i) – Disputed fees

- [12] Paragraph (g)(2) of this Rule applies even when the lawyer claims to have a valid lien on trust funds for the payment for services, costs and expenses.
- [13] A lawyer may not withhold the undisputed portion of a client’s or other person’s funds because of a fee dispute. The undisputed amount must be paid promptly to the owner upon demand. (*Friedman v. State Bar* (1990) 50 Cal.3d 235, 240–241 [266 Cal.Rptr. 632].)

- [14] A lawyer may not unilaterally withdraw disputed fees from a trust account. However, in circumstances coming within paragraphs (h) or (i), a lawyer may interplead the disputed funds or property.

Paragraph (k) – Duties to maintain records and account for receipt of trust funds or property

- [15] A lawyer who receives client funds in which another person is known to have an interest (e.g., a medical provider lienholder), must also notify that person of the receipt. (*In the Matter of Respondent P* (Rev. Dept. 1993) 2 Cal. State Bar Ct. Rptr. 622, 632) Certain statutory liens may have statutory notice requirements applicable to lawyers. See, e.g., Welfare and Institutions Code section 14124.79.
- [16] With respect to the timing and frequency of a lawyer's accounting under paragraph (k)(4), see Business and Professions Code section 6091.

Other Guidance

- [17] Trust account practice assistance. For guidance concerning the management and administration of trust accounts under this Rule, see State Bar of California publication "Handbook on Trust Accounting for California Attorneys" and the "California Compendium on Professional Responsibility" Index.

Rule 1.15: Handling Funds and Property of Clients and Other Persons

STATE VARIATIONS

(The following is an excerpt from Regulation of Lawyers: Statutes and Standards (2008 Ed.) by Steven Gillers and Roy D. Simon. The text relevant to proposed Rule 1.8 is highlighted)

District of Columbia. The language of D.C. Rule 1.15 differs significantly from the ABA Model Rule, though the basic requirements are the same. D.C.'s version of Rule 1.17 deals with notification of trust account overdrafts.

Florida: Chapter 5 of Florida's Supreme Court Rules regulates lawyer trust accounts.

Georgia: Rule 1.15(1) generally tracks the 1983 version of ABA Model Rule 1.15, but Georgia adds Rule 1.15(II) to govern trust accounts and IOLTA accounts, and Rule 1.15(III) to govern trust account recordkeeping, overdraft notification and auditing by disciplinary authorities. Rule 1.15(111) requires that lawyers deposit trust funds in a financial institution that agrees "to report to the State Disciplinary Board whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored." The Comment to Rule 1.15(III) explains the overdraft agreement as follows:

[2] The overdraft agreement requires that all overdrafts be reported to the Office of General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept "overdraft privileges" or any other arrangement for a personal loan on a client trust

account particularly in exchange for the institution's promise to delay or not to report an overdraft....

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Illinois: Rule 1.15(g), a highly unusual provision adopted in 1998 at the urging of the real estate bar, provides as follows: "In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds," and (among other requirements) the lawyer deposits only "good funds," which include only seven specified forms of deposits, including "(a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision ... (c) a cashier's check, teller's check, bank money order, or official bank check ... (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the law of any state, ... [or] (f) a check

drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development" Rule 1.15(g) ends by stating: "Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected."

Massachusetts: Rule 1.15 has extensive provisions for deposit of client funds in IOLTA accounts, and contains provisions to ensure that disciplinary authorities are notified in the event a lawyer's check is dishonored.

Michigan: provides for IOLTA accounts in Rule 1.15(d).

Minnesota: Rule 1.15 differs significantly in structure and substance from ABA Model Rule 1.15.

New Jersey: Under Rule 1.15(a), funds must be deposited in New Jersey institutions, without exception. Rule 1.15(a) also incorporates the substance of ABA Model Rule 1.15(b), and requires lawyers to keep trust account records for seven years. New Jersey deletes ABA Model Rule 1.15(c), and New Jersey Rule 1.15(b) deletes the requirement in ABA Model Rule 1.15(d) that a lawyer promptly render a full accounting of property upon request. New Jersey adds 1.15(d), which refers lawyers to section 1:21-6 of the Court Rules on recordkeeping.

New York: New York's DR 9-102 addresses the same issues in extensive detail. New York imposes a seven-year record-keeping requirement for eight specified categories of documents, such as "records of all deposits in and withdrawals from" trust accounts, and copies of "all retainer and compensation agreements with clients," "all bills rendered to clients," and "all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed."

Ohio: Rule 1.15 differs significantly from ABA Model Rule 1.15. Among other things, Rule 1.15(f) provides as follows: "Upon dissolution of any law firm, the former partners, managing partners, or supervisory lawyers shall promptly account for all client funds and shall make appropriate arrangements for one of them to maintain all records" Rule 1.15(h) imposes strict requirements on every lawyer or law firm that U owns an interest in a business that provides a law-related service"

Pennsylvania: Effective September 20, 2008, Pennsylvania adopted substantial changes to Rule 1.15, along with companion changes to Supreme Court Rule 221 (governing overdraft notification). The Pennsylvania rules now include requirements and definitions that are far more detailed and nuanced than the Model Rule.

Virginia: Rule 1:15, which substantially incorporates provisions from Virginia's former Code of Professional Responsibility, differs significantly from ABA Model Rule 1.15. Virginia Rule 1.15(d) prescribes the responsibility of lawyers who receive funds or other property in which a client or third person has an interest.

Washington: Rule 1.15(e) provides that a lawyer "must promptly provide a written accounting to a client or third person after distribution of property or upon request. A lawyer must provide at least annually a written accounting to a client or third person for whom the lawyer is holding funds."

Wisconsin: Rule 1.15 is so highly detailed and so long (about 16 pages) that it has its own table of contents. Rule 1.15(a) defines 10 separate terms (such as "Demand account," "Fiduciary property," and "Financial institution"). Rule 1.15(b)(4) provides: "Unearned fees and advanced payments of fees shall be held in trust until earned by the lawyer.... Funds advanced by a client or 3rd party for payment

of costs shall be held in trust until the costs are incurred.” Particularly interesting is Rule 1.15(e)(4), which elaborates on a series of "Prohibited transactions," including:

a. **Cash.** No disbursement of cash shall be made from a trust account or from a deposit to a trust account, and no check shall be made payable to “Cash.”

b. **Telephone transfers.** No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer 'of funds. This section does not prohibit any of the following: (1) wire transfers, and (2) telephone transfers between separate, non-pooled demand and separate, non-pooled, non-demand trust accounts that a lawyer maintains for a particular client.

c. **Internet transactions.** A lawyer shall not make deposits to or disbursements from a trust account by way of an Internet transaction.

d. **Electronic transfers by 3rd parties.** A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer’s trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds without the permission of the lawyer.

e. **Credit card transactions.** A lawyer shall not authorize transactions by way of credit card to or from a trust account. However t earned fees may be deposited by way of credit card to a lawyer's business account. ...

**Rule 1.15 Safekeeping Property: Handling Funds
and Property of Clients and Other Persons.
[Sorted by Commenter]**

**TOTAL = 9 Agree = 2
Disagree = 2
Modify = 5
NI = 0**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
1	Bach, James A.	A			Whole-heartedly endorse and recommend the proposed rule that would permit accepting advance fees outside of the trust account, and requiring deposit into the trust account only if those fees are disputed.	No comment necessary.
2	COPRAC	M			<p>Among the unanswered questions before this proposed rule was the propriety of transferring disputed trust funds to court by way of interpleader. We support the Commission's recommendation in favor of this dispute resolution device. We urge only that this provision, now in Comment [14], be included as part of the Rule itself.</p> <p>In addition, we subscribe to the importance of establishing definitions of key terms, and we in accord with the definitions developed by the Commission. We urge only that these definitions be incorporated into the Rule itself.</p>	<p>Consistent with this recommendation, a majority of the Drafting Team recommends moving the concept of interpleader into the black letter rule. Paragraph (g)(2) has been changed accordingly.²</p> <p>Because of the length of this proposed Rule, the Commission recommends that definitions which apply to this particular rule only, should remain in the comments.</p>

¹ A = AGREE with proposed Rule D = DISAGREE with proposed Rule M = AGREE ONLY IF MODIFIED NI = NOT INDICATED

² Ms. Peck and Mr. Sapiro recommend that the concept of interpleader be in the black letter rule; Mr. Kehr recommends that it remain in the comment and that the comment be clarified. See fn.

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TOTAL = 9 **Agree = 2**
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No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>Finally, we ask the Commission to clarify the status of the “standards” heretofore promulgated by the Board of Governors for purpose of the existing Rule 4-100. We recommend that the proposed Rule 1.15 call for the continued efficacy of those standards pending Board of Governors review to determine whether changes are in order once proposed Rule 1.15 is adopted.</p>	<p>The Commission agrees. For this reason, it has proposed the continued authority of the Board of Governors to adopt the standards. (See proposed Rule 1.15(m).)</p> <p>The Commission recommends that:</p> <p>(1) upon completion of a proposed Rule 1.15, that the Board of Governors authorize the appropriate committee or other entity to review and update the standards for review and adoption by the Board of Governors;</p> <p>(2) that the current standards remain fully applicable to proposed rule 1.15 as they are to current rule 4-100;</p> <p>(3) the current Standards be republished with any new effective rule as of the effective date of the new rules, unless the Supreme Court otherwise orders; and</p> <p>(4) the current Standards remain in effect unless and until the Board of Governors adopts new or revised standards.</p>
3	Los Angeles County Bar Association, Professional Responsibility and Ethics Committee	M			ABA Model Rule 1.15 is superior in form and function to proposed Rule 1.15.	The Commission has adopted all of the concepts in Model Rule 1.15, except the requirement to place advance fees in a trust account, as LACBA PREC has suggested.

**Rule 1.15 Safekeeping Property: Handling Funds
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No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>Although no one argues with the Commission's observation that a strong rule may deter misconduct, proposed Rule 1.15 is not a strong disciplinary standard but, rather, an impossibly detailed trap for the unwary. This rule should be published as a guideline, as part of the State Bar's official publication on client trust accounts (which the state bar currently publishes, and which it could easily place online or email to each of its active members), rather than as a disciplinary rule.</p> <p>A majority of our members agrees with the Commission that, based on longstanding and well understood California law, costs must be deposited into the client trust account, but advanced fees may or may not be. We have no objection to including a recommendation in the State Bar's publication, to the effect that advanced fees should be safeguarded against the possibility that, if the services are not completed, the lawyer will be ethically required to refund the unearned portion of the fees. However, it ought not to be a disciplinary offense if a California lawyer follows the traditional rule and does not</p>	<p>The Commission has concluded that ABA Model Rule 1.15, which does not even provide for the establishment of a trust account, does not provide adequate public protection and does not provide adequate guidance to lawyers concerning their fiduciary duties to clients and other persons or the handling, management, recordkeeping and accounting for entrusted funds and properties. As other states have done before California, the Commission has concluded that a recitation of these duties as they now exist in California is the best means of protecting clients and other persons from a breach and to notify lawyers of the minimum standards required of them.</p> <p>The Commission agrees with LACBA's position that advance fees are not required to be deposited in a client trust account. It disagrees that the proposed rule 1.15(d) should be omitted from the rule, but rather should be in a State Bar publication. If, as LACBA asserts, this has been the law in California, the Commission believes that the proposed rule should reflect the law for the guidance of lawyers, the Courts, clients and the public.</p>

**Rule 1.15 Safekeeping Property: Handling Funds
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TOTAL = 9 **Agree = 2**
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No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>deposit the advanced fee in the trust account, particularly where the services were fully performed and the fee fully earned.</p> <p>We recommend that ABA Model Rule 1.15 be adopted, except that the word “fees” be deleted from Model Rule subpart (c); or alternatively, that current Rule 4-100 be retained as is, and simply renumbered as Rule 1.15.</p>	<p>The Commission disagrees. Public protection and lawyer guidance require greater specificity and greater direction than afforded in Model Rule 1.15.</p>
4	Medina, Michael	D		1.15(j)	<p>My office does bankruptcy filings. Federal rules required all cases be filed electronically, including fee payments.</p> <p>State bar rules require that court costs and fees be deposited in Attorney-Client trust accounts.</p> <p>Financial institutions will not issue debit cards or credit cards on IOLTA accounts, i.e.: Attorney-Client Trust Accounts.</p> <p>Therefore, the only way to service our clients is to transfer funds from Trust accounts to General Accounts and electronically submit fee payments. I can have the clients give me a waiver, but, I think, as to a non-waivable provision.</p>	<p>The Commission agrees that electronic payments are the way of the future and that the rule must be flexible enough to provide for electronic deposits and payments. The Commission disagrees that the rule prohibits electronic payments or receipts or that there are not commercial means of both protecting a client trust account from intrusion and control by third party financial institutions which may result in loss of client funds and receiving and making payments for the benefit of a client.</p> <p>Assuming arguendo that no financial institution will issue a credit card or debit card on an attorney-client trust account, which is not our experience, there are still other means of making electronic payments (e.g., by making an electronic payment from the general account first and then reimbursing the general account from the trust account).</p>

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					I believe in the future most business will be conducted electronically. State Bar rules need to recognize this legitimate way of doing business. Moreover, Federal Courts are not going to change their procedures to accommodate individual state rules for attorneys.	Improving commercial means of making electronic payments by lawyers is outside of the scope of the Commission. The Commission urges the Board of Governors to refer this issue to the appropriate standing committee or request the assistance of an appropriate section for study, report and recommendations.
5	Office of Chief Trial Counsel ("OCTC"), State Bar	M			<p>1. While OCTC supports some of the Commission's additions or changes to the Model Rules, such as the Commission's exclusion of trust accounts maintained in other jurisdictions, and there is merit to its explanation that costs are covered by the rule, OCTC finds most of the changes from the Model Rules confusing and potentially inconsistent.</p> <p>For example, OCTC supports the Model Rules provision requiring that advanced fees be placed in the Client Trust Account (CTA). This will prevent confusion and lack of consistency. Either every lawyer should be placing advanced fees in the CTA or no lawyer should be placing the advanced fees in the CTA. A rule requiring that advanced fees be deposited into the CTA will also protect clients. OCTC has many cases where the attorney does not return unearned fees and claims not to have the funds to do so. If this</p>	<p>No comment.</p> <p>The Commission disagrees. The Commission has concluded that Rule 1.15 should not require advances for fees to be placed in a client trust account, as previously reported and as is the state of the law at the present time. The Commission has not received reports of confusion or complaints about lack of consistency concerning the current rule. Accordingly, the risk of confusion or perceived inconsistency is unlikely.</p> <p>The Commission disagrees with the alternative suggestion that no fees should be placed in a trust</p>

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No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>proposal is adopted, it may require a change to Comment 10.</p> <p>2. OCTC finds very confusing and inconsistent the proposed rule as to when disputed funds need to be placed in the client trust account. (See proposed rules 1.15(d), (g), (h) and (i).)</p> <p>OCTC suggests deletion of the deviation from the Model Rules regarding these issues. This may require changes to Comments 12 - 14.</p> <p>3. OCTC suggests that the term "inviolate" in proposed rule 1.15(e) be deleted as it is confusing and unnecessary in light of the rest of the sentence. All client funds should be maintained in a trust account until the time it is permitted to withdraw them.</p>	<p>account. In appropriate circumstances, placing advances for fees in a client trust account provides greater client protection. The OCTC proposal contravenes current required deposits of advances for fees in a trust account even where the advances may have been initially held in a general account. (See <i>In the Matter of Fonte</i> (Rev. Dept. 1994) 2 Cal. State Bar Ct. Rptr. 752, 757.)</p> <p>The Commission has clarified subparagraph (g), in order to prevent confusion.</p> <p>The Commission disagrees that it should not deviate from ABA Model Rule 1.15 for the reasons stated in its initial report.</p> <p>The Commission disagrees that the word "inviolate" should be removed. The duty to maintain inviolate client and third party funds and property has been a part of the California trust account rule since 1927. "Maintaining" funds and property in trust without the word "inviolate" may be ambiguous (implying a duty as to the depository only). The word "inviolate" clarifies the ambiguity, and has been interpreted to mean that the amount in the account is not permitted to dip below the amount to be held. The danger in removing "inviolate" is that some may interpret a change in policy.</p>

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NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>4. OCTC finds confusing and inconsistent proposed rule 1.15(f).</p> <p>OCTC sees no compelling reason here to deviate from the Model Rules and, therefore, OCTC suggests that the first sentence of rule 1.15(a) of the Model Rules be reinstated.</p> <p>OCTC is particularly concerned that there are too many exceptions to the prohibition on the commingling of client funds and this will undermine the rule prohibiting commingling of client funds with the lawyer's own funds or allow such commingling if the attorney has the funds somewhere.</p>	<p>The Commission disagrees.</p> <p>The Commission reordered ABA Model Rule 1.15 and placed duties with respect to property primarily in proposed subparagraph (k)(2). The Commission agrees that subparagraph (k)(2) should be clarified to include the concept of the first sentence of Model Rule 1.15(a).</p> <p>The Commission shares the concern that there should be no diminution of the fundamental prohibition against commingling. The Commission disagrees that listing the five recognized exceptions to the prohibition in the rule undermines the commingling prohibition. The exceptions set forth in (f)(1) and (4) and (5) have been part of California's rule since 1975, although (f)(4) and (5) have been amplified with the addition of "other person" to the rule. Omitting these traditional exceptions would suggest that there is a change in policy and that they are no longer exceptions.</p> <p>The exceptions set forth in (f)(1) and (2) are important public protection issues which prioritize prompt restitution to consumers when loss occurs. This policy was set by the California Supreme Court in <i>Guzzetta v. State Bar</i> (1987) 43 Cal.3d 962. The Commission has concluded that this is good policy for consumer protection.</p>

**Rule 1.15 Safekeeping Property: Handling Funds
and Property of Clients and Other Persons.
[Sorted by Commenter]**

TOTAL = 9 **Agree = 2**
Disagree = 2
Modify = 5
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					<p>5. OCTC supports proposed rule 1.15(k) even though it is not in the Model Rules because it is essentially current rule 4-100(B). However, OCTC is concerned that subparagraph (6) is too limited as it does not provide for the Supreme Court or other court to issue an order for an audit. The rules should not determine jurisdiction or send a message that attorneys can violate a court's order. The Supreme Court has always provided that it has the right to involve itself at any stage of the disciplinary proceedings and investigation. (See <i>Brotsky v. State Bar</i> (1962) 57 Cal.2d 287, 301; <i>In re Rose</i> (2000) 22 Cal.4th 430, 439; <i>O'Brien v. Jones</i> (2000) 23 Cal.4th 40, 48. See also <i>In re Accusation a/Walker</i> (1948) 32 Cal.2d 488, 490.) OCTC also believes that subparagraph (7) should add the word "authorized" to other person to make clear that only authorized persons can request undisputed funds.</p> <p>6. OCTC is concerned that the language of rule 1.15(1) is too broad and, as written, no part of the rule applies to those attorneys and firms discussed in the subparagraphs. This</p>	<p>The Commission disagrees that subparagraph (k)(6) was intended to or does limit the authority or jurisdiction of Supreme Court or other court to issue an order for an audit. Proposed subparagraph (k)(6) is limited to lawyer discipline for failing to comply with an audit ordered by the State Bar Court pursuant to the Rules of Procedure, since the State Bar Court is not otherwise empowered through sanction, contempt or other authority to enforce its orders for audit.</p> <p>The Commission does believe that it should provide a separate rule requiring a lawyer to comply with a court order, since Business and Professions Code section 6103 already covers the duty and provides for suspension or disbarment for failure to comply with that duty. Because of the case law that OCTC cites, because (k)(6) has been part of the rules since at least 1983, and because Business and Professions Code section 6087 provides that the State Bar's promulgation of Rules of Professional Conduct does not limit or alter the powers of the Supreme Court, the Commission did not believe that any explanatory comment was needed.</p> <p>The Commission has clarified this in new comment [16a].</p> <p>OCTC's desire to obtain jurisdiction to subpoena financial records from California lawyers who are</p>

**Rule 1.15 Safekeeping Property: Handling Funds
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[Sorted by Commenter]**

**TOTAL = 9 Agree = 2
Disagree = 2
Modify = 5
NI = 0**

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
					seems counter to the purpose of the rule and public protection. OCTC is also concerned that subparagraphs (2) and (3) do not state, as subparagraph (1) does, that, if the rule does not apply in those situations, the firms and lawyers handle the funds in accordance with the law of the controlling jurisdiction. OCTC is further concerned how it would be able to obtain copies of those out of state records and believes that the lawyers in those situations should have a disciplinable obligation to provide those to us or ensure that the financial institutions provide those records to us. Further, OCTC is concerned how this paragraph is impacted by the proposed Choice of Law rule in the September batch of proposed rules. (See proposed rule 8.5.)	outside of the State Bar's subpoena power outside of California cannot be cured by adoption or rejection of proposed Rule 1.15. Perhaps it may be approached in a different forum (e.g., the Legislature or the California Supreme Court, through a California Rule of Court). The Commission continues to monitor conformance between this rule and proposed rule 8.5.
6	Orange County Bar Association	M			The OCBA recommends for consistency purposes that the definition appear in the body of the Proposed Rule, rather than in the Comments. The OCBA also recommends that a definition of the term "fixed," as used in subsection (g), be included in order to provide useful guidance to the membership with regard to their duties under the Proposed Rule.	Because of the length of this proposed Rule, the Commission recommends that definitions which only apply to this particular rule should remain in the comments. The Commission agrees that a definition of "fixed" would be useful. The Commission has nevertheless concluded that there are too many facts and circumstances in individual cases which may affect ³ when a fee is fixed to provide any useful definition.

³ Ms. Peck and Mr. Kehr recommend that no further attempts at defining "fixed" be pursued. Mr. Sapiro believes we should discuss whether we should attempt to define it.

**Rule 1.15 Safekeeping Property: Handling Funds
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[Sorted by Commenter]**

TOTAL = 9 **Agree = 2**
Disagree = 2
Modify = 5
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
7	San Diego County Bar Association Legal Ethics Committee	A			Approve the rule in its entirety.	No further comment.
8	Santa Clara County Bar Association	M			<p>The SCCBA believes that the proposed rule does not adequately account for the differences and distinctions between advance payment of fees; true retainers and flat fees. The proposed rule speaks to advanced payment of fees and true retainers but does not explain the treatment of flat fees. In fact, the definition and discussion of advanced fees and true retainers in Comments [5], [8], [9] and [10] should be clearer in defining these three categories of fees.</p> <p>For example, in Comment [5], it uses the word “retainer” in defining an “advance for fees.” We recommend that the word “retainer” be deleted so that the practitioner does not confuse it with a “true retainer.”</p> <p>In addition, a flat fee needs to be defined and distinguished from a true retainer. The definition and discussion of a “true retainer” does not make clear that it is not the same as a flat fee, a common mistake made by many practitioners.</p>	<p>Consistent with this recommendation, comment [5] has been clarified.</p> <p>The Commission disagrees that comments [8], [9] and [10] should be clarified further. The definitions of a true retainer is set forth in 1.5(f) as cross-referenced here. The comments distinguish between a true retainer and an advance fee. Further clarification can be developed in the State Bar Trust Account Manual.⁴</p> <p>The Commission agrees and has amended comment [5].</p> <p>The Commission disagrees. A discussion of the distinction between a flat fee and a true retainer, if one is needed, should be in rule 1.5 rather than this rule. Alternatively, rather than lengthen the rule further, the distinction can be made in the State Bar Trust Account Manual.</p>

⁴ Mr. Kehr and Ms. Peck do not recommend further clarification of comments [8] – [10]. Mr. Sapiro recommends that we discuss whether the comments should be clarified. He has observed that if the comments are not clear to the Santa Clara County Bar Association commenters, it is likely that they are not likely to be clear to the membership.

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[Sorted by Commenter]**

TOTAL = 9 **Agree = 2**
Disagree = 2
Modify = 5
NI = 0

No.	Commenter	Position ¹	Comment on Behalf of Group?	Rule Paragraph	Comment	RRC Response
9	Smith, Paul W.	D		1.15(j)	<p>I believe subparagraph (j) regarding the method of accepting credit card payments should be modified. As proposed it ignores the economic realities of accepting payments by credit card, at least as to small firms or sole practitioners.</p> <p>The service providers I have used have two charges. A monthly service fee and a percentage of the transaction. For a large majority of us that only have a few trust account transactions a month it is not justifiable to be paying \$30-\$45 per month just for the privilege of accepting cards which is duplicated if we accept them in the general account.</p> <p>Also, I understand that very few providers will deposit the funds in one account and take the charges out of another one. This rule ignores that reality. It would be just as safe and much more practical to allow the initial funds to be credited to the general account and when cleared, moved to the trust account. What is the "safety" difference from having a physical check in my hand which I manually deposit in the trust account verses moving funds electronically or writing a check from the general to the trust account? Many of us will continue to refuse to accept trust fund deposits because of this. It is form over substance and ignores the realities of business. Please reconsider.</p>	<p>The Commission agrees that commercial resources catering to the special needs of lawyers serving fiduciaries are limited. Accordingly, it has urged the Board of Governors to refer this issue to the appropriate standing committee or section for further study, report and recommendations.</p> <p>The Commission disagrees with the solution recommended by the commenter. After careful and serious study, the Commission concluded that providing a short window of time within which a lawyer may permit an advance credit card cost payment to be deposited into a non-client trust account for immediate transfer to a client trust account was not good public protection policy. Any period of commingling of a lawyer's funds with those of the client creates a risk of loss of client funds to a lawyer's third party creditors, asset freezing or institutional closure without federal insurance (since a general account need not be in a FDIC insured bank). These dangers plus the availability of other commercial means of handling advance costs payments outweigh creating a special exception to the commingling policy in the rule.</p>