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Newly Adopted ABA Model Rule 1.15 Offers Guidance to Client Trust Account Maintenance, Brings Lawyers Into Updated Technological Practices

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Lawyers for the Profession® Alert

Brief Summary

The American Bar Association has adopted new *Model Rules for Client Trust Account Records* (Model Rule 1.15), replacing the outdated *Model Rule on Financial Recordkeeping*, which was promulgated in 1993. The Model Rules clarify the ethical rules that lawyers are obligated to follow in maintaining client trust accounts in an age of electronic banking practices.

Complete Summary

While the *Model Rule on Financial Recordkeeping* offered clarity to lawyers regarding their specific obligations, technology and banking practices rendered many of those obligations archaic. For example, attorneys were required to retain original canceled checks. The past 17 years' dramatic changes to the banking industry spurred a need to revise those best practices. In 2003, Congress passed banking laws which allowed banks to substitute electronic images of checks for canceled checks. The new Rules will now permit lawyers to retain either physical or electronic equivalents of all checkbook registers, bank statements, deposit records, pre-numbered canceled checks and substitute checks.

The new Model Rules continue to propose that lawyers maintain client trust account records for five years after termination of representation.

The newly-adopted Model Rules would also require lawyers to maintain, for a five-year period, the records of all electronic transfers from client trust accounts, including the name of the person authorizing the transfer, the date of the transfer, the name of the recipient, and confirmation from the financial institution of the same. Note that to be in compliance with these rules, a lawyer should not re-use a check number which was previously used in an electronic transfer transaction.

Another best practice that the Model Rules suggest is regular reconciliation of the client trust accounts. All client trust account balances should be matched by bank statements on a monthly basis.

The Model Rules limit the scope of authorized electronic transfers. Lawyers should only authorize electronic transfers of money required for payment to a

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third person (or the client) on behalf of a client; money transferred from one client trust account to another; and transfers to the lawyer for expenses and fees properly incurred. This does not preclude split deposits (depositing one check into multiple accounts at the same time).

Finally, the Model Rules give guidance for law firm partner responsibilities when a firm is dissolved or sold. Under these Rules, each partner may be held responsible for the maintenance of client trust records.

The ABA will be sending these Model Rules to state high courts for potential adoption. Every state and jurisdiction has adopted the essence of ABA Model Rule of Professional Conduct 1.15, which the newly-adopted Model Rules modify and replace.

Significance of Model Rule

The Model Rules' recognition that lawyers operate within updated and modern day banking practices is timely and appreciated. The primary benefit for the newly adopted Model Rules is to ease the tension that lawyers face honoring their jurisdiction's ethical rules by being forced to maintain archaic record-keeping.

This alert has been prepared by Hinshaw & Culbertson LLP to provide information on recent legal developments of interest to our readers. It is not intended to provide legal advice for a specific situation or to create an attorney-client relationship.