

**Rule 1.15 [4-100] Safekeeping of Funds and Property of Clients and Other Persons
(Commission's Proposed Rule Adopted on June 2 – 3, 2016 – Clean Version)**

- (a) All funds received or held by a lawyer or law firm* for the benefit of a client, or other person* to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for fees, costs and expenses, shall be deposited in one or more identifiable bank accounts labelled "Trust Account" or words of similar import, maintained in the State of California, or, 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.
- (b) Notwithstanding paragraph (a), a flat fee paid in advance for legal services may be deposited in a lawyer's or law firm's operating account, provided:
 - (1) The lawyer or law firm* discloses to the client in writing* (i) that the client has a right under paragraph (a) to require that the flat fee be deposited in an identified trust account until the fee is earned, and (ii) that the client is entitled to a refund of any amount of the fee that has not been earned in the event the representation is terminated or the services for which the fee has been paid are not completed, and
 - (2) The client's agreement to deposit the flat fee in the lawyer's operating account and the disclosures required by paragraph (b)(1) are set forth in a writing* signed by the client.
- (c) Funds belonging to the lawyer or the law firm* shall not be deposited or otherwise commingled with funds held in a trust account except:
 - (1) funds reasonably* sufficient to pay bank charges.
 - (2) funds belonging in part to a client or other person* and in part presently or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm's interest in that portion becomes fixed. However, if a client or other person* disputes the lawyer or law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (d) A lawyer shall:
 - (1) promptly notify a client or other person* of the receipt of funds, securities, or other property in which the lawyer knows* or reasonably should know* the client or other person* has an interest;
 - (2) identify and label securities and properties 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;

- (3) maintain complete records of all funds, securities, and other property of a client or other person* coming into the possession of the lawyer or law firm*;
 - (4) promptly account in writing* to the client or other person* for whom the lawyer holds funds or property;
 - (5) preserve records of all funds and property held by a lawyer or law firm* under this Rule 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 pursuant to the Rules of Procedure of the State Bar.
 - (7) promptly distribute, as requested by the client or other person,* any undisputed funds or property in the possession of the lawyer or law firm* that the client or other person* is entitled to receive.
- (e) The Board of Trustees of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by lawyers and law firms* in accordance with subparagraph(d)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all lawyers.

Standards:

Pursuant to this Rule, the Board of Trustees of the State Bar adopted the following standards, effective _____, as to what "records" shall be maintained by lawyers and law firms* in accordance with subparagraph (d)(3).

- (1) A lawyer shall, from the date of receipt of funds of the client or other person* through the period ending five years from the date of appropriate disbursement of such funds, maintain:
 - (a) a written* ledger for each client or other person* on whose behalf funds are held that sets forth:
 - (i) the name of such client or other person,
 - (ii) the date, amount and source of all funds received on behalf of such client or other person,
 - (iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person,* and
 - (iv) the current balance for such client or other person;
 - (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 cancelled checks for each bank account; and
- (d) each monthly reconciliation (balancing) of (a), (b), and (c).
- (2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person* 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;
 - (c) the date of receipt of the security or property;
 - (d) the date of distribution of the security or property; and
 - (e) person* to whom the security or property was distributed.

Comment

[1] Whether a lawyer owes a contractual, statutory or other legal duty under paragraph (a) to hold funds on behalf of a person* other than a client in situations where client funds are subject to a third-party lien will depend on the relationship between the lawyer and the third-party, whether the lawyer has assumed a contractual obligation to the third person* and whether the lawyer has an independent obligation to honor the lien under a statute or other law. In certain circumstances, a lawyer may be civilly liable when the lawyer has notice of a lien and disburses funds in contravention of the lien. See *Kaiser Foundation Health Plan, Inc. v. Aguiluz* (1996) 47 Cal.App.4th 302 [54 Cal.Rptr.2d 665]. However, civil liability by itself does not establish a violation of this Rule. Compare *Johnstone v. State Bar of California* (1966) 64 Cal.2d 153, 155-156 [49 Cal.Rptr. 97] (“When an attorney assumes a fiduciary relationship and violates his duty in a manner that would justify disciplinary action if the relationship had been that of attorney and client, he may properly be disciplined for his misconduct.”) and *Crooks v. State Bar* (1970) 3 Cal.3d 346, 358 [90 Cal.Rptr. 600] (lawyer who agrees to act as escrow or stakeholder for a client and a third-party owes a duty to the nonclient with regard to held funds).

[2] As used in this Rule, “advances 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. With respect to the difference between a true retainer and a flat fee, which is one type of advance fee, see Rule 1.5(d) and (e). Subject to Rule 1.5, a lawyer or law firm* may enter into an agreement that defines when or how an advance fee is earned and may be withdrawn from the client trust account.

[3] Absent written* disclosure and the client's agreement in a writing* signed by the client as provided in paragraph (b), a lawyer must deposit a flat fee paid in advance of legal services in the lawyer's trust account. Paragraph (b) does not apply to advance payment for costs and expenses. Paragraph (b) does not alter the lawyer's obligations under paragraph (d) or the lawyer's burden to establish that the fee has been earned.

**Proposed Rule 1.15 [4-100] Safekeeping Funds and Property of Clients
and Other Persons
Synopsis of Public Comments**

TOTAL = 7	A = 4
	D = 0
	M = 3
	NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response NI = 0
X-2016-bm	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (09-09-16)	Yes	A	1.15	<p>1. COPRAC supports the adoption of proposed Rule 1.15, with one suggestion for the Committee's consideration.</p> <p>COPRAC particularly supports the clarification provided by the proposed Rule as to payment of advance fee funds into trust, and believes that the correct balance is struck with respect to flat fee payments. Making clear in the black letter of the rule that the duties owed to a client may extend to other persons, such as statutory lien holders with claims against funds held by the lawyer, raises awareness of such duties, which may otherwise be found in less readily available sources.</p> <p>2. There may be an unintended consequence of including within proposed Rule 1.15 a requirement that advance fee payments be placed into trust. We recognize that such requirement is consistent with the ABA Model Rule; however, if required to be placed into a client trust account, advance fee payments, like advance</p>	<p>1. No response required.</p> <p>2. The Commission has not made the suggested change. The Commission does not agree that advance fee payments could not be made by credit card under the proposed rule. After the issuance of COPRAC Opinion 2007-172, credit card processing companies began to offer attorneys options to</p>

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

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					payments of costs under the present rule 4-100, will not be able to be made by credit card. (See COPRAC Formal Opinion 2007-172.) Our concern is that clients who do not have the ability to pay a fee retainer in cash, but could do so by credit card, will be unable to retain counsel of their choosing or, in some cases, perhaps be unable to retain counsel at all. COPRAC raises this point for the Commission's consideration. Perhaps advance payments for fees made by credit card should be exempted from the requirement that advance fee payments be deposited into a trust account. Such an exemption would be in the interests of more financially challenged clients and promote access to justice for such clients.	assign credit card chargebacks and credit card merchant fees to an operating account or to a non-client trust account. Therefore, the Commission believes that requiring that advance fees be placed into a client trust account will not prohibit credit card transactions.
X-2016-66I	San Diego County Bar Association (SDCBA) (Riley) (09-21-16)	Yes	A	1.15	We commend and approve this proposed rule, which makes significant changes to Rule 4-100. The proposed rule, subsection 1.15(a), makes it clear that unearned advanced fees are included within definition of funds held for the benefit of the client that must be held in trust. New subsection 1.15(b) provides that a flat fee for services to be rendered need not be placed in	No response required.

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					trust if the lawyers disclose to the client in a writing signed by the client that the client has a right to have that flat fee placed in trust until it is earned and a right to the unearned portion of that flat fee if services are not completed. New subsection 1.15(d)(4) explicitly contains the requirement that a lawyer account in writing for funds held for the benefit of clients, a requirement until now contained only in disciplinary case law.	
X-2016-76h	Los Angeles County Bar Association (LACBA) (Schmid) (09-26-16)	Yes	M	1.15	<p>We take exception to the addition of the word “fees,” which is not included in current Rule 4-100. The proposed requirement that fees paid in advance (as distinguished from advances for costs and expenses, which are included in the current rule) would mandate that all routine retainers (which are customarily required as advance deposits on fees for a new client engagement) be deposited into a trust account.</p> <p>2. If the change is implemented, then it is important that the effective date of the rule’s enforcement be delayed to allow sufficient time for the lawyers subject to the rule become</p>	<p>1. The Commission disagrees with the commenters’ assessment. Requiring that advance fees be placed in trust is a public protection measure. That current rule 4-100 speaks in terms of funds received for the benefit of client and not “fees” is not a valid objection to the rule’s requirement that fees be placed in trust until they are earned.</p> <p>2. The Commission believes that advance warning to practitioners and what to do about advance fees that are currently in the lawyer’s commercial account are easily</p>

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						NI = 0
					familiar with its requirements and implement the necessary procedures and measures in their firms.	resolvable implementation issues if the Supreme Court decides to adopt the rule.
X-2016-104ad	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A	1.15	OCTC supports this rule and the Comments to this rule. In particular, OCTC supports the amendments to the current rule to require an attorney to maintain advanced fees in a trust account until the fee is earned and requiring the accounting be in writing. This enhances public protection.	No response required.
X-2016-111	The American Immigration Lawyers Association -NorCal (AILA) (Lee) (10-03-16)	Yes	M	1.15	We recommend two amendments to better balance that public interest against the stated purpose of the proposed amendment, which is to protect the ability of clients to obtain a refund of unearned fees. First, we recommend that the rule explicitly state that it does not apply to funds paid in advance for a consultation by a potential client. Second, an advanced flat fee should be exempt from the trust account requirement if the total anticipated fee for the matter does not exceed \$1,000.	The Commission did not make the suggested change. As to the commenter's first suggestion, the Commission notes that funds paid in advance for a consultation with a prospective client could be a flat or fixed fee. If the lawyer complies with paragraph (b)'s requirements, the lawyer would not have to deposit the fees in the trust account. As to the second suggestion, the Commission is not aware of a rule in any jurisdiction that exempts deposits of advance fees in a trust account because they fall below a minimal level. The Commission does not believe it would be in the public

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						interest to do so.
X-2016-117	The American Immigration Lawyers Association -NorCal (AILA) & California Attorneys for Criminal Justice (CACJ) (Lee) (10-03-16)	Yes	M	1.15	See X-2016-111 The American Immigration Lawyers Association -NorCal dated October 3, 2016 for the comment synopsis. The comments are identical and the only difference is the signatories.	See response to AILA, X-2016-111.
X-2016-125b	California State Bar Committee on Mandatory Fee Arbitration (Harper) (10-04-16)	Yes	A	1.15	We support the changes set forth in the proposed rule. In particular, we support the language that would require that fees be deposited in client trust accounts unless the attorney and client agree in writing.	No response required.

**Rule 5.3.1 [1-311] Employment of Disbarred,
Suspended, Resigned, or Involuntarily Inactive Lawyer
(Commission's Proposed Rule Adopted on June 26, 2015 – Clean Version)**

- (a) For purposes of this Rule:
- (1) "Employ" means to engage the services of another, including employees, agents, independent contractors and consultants, regardless of whether any compensation is paid;
 - (2) "Member" means a member of the State Bar of California.
 - (3) "Involuntarily inactive member" means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code §§ 6007, 6203(d)(1), or California Rule of Court 9.31(d).
 - (4) "Resigned member" means a member who has resigned from the State Bar while disciplinary charges are pending.
 - (5) "Restricted lawyer" means a member whose current status with the State Bar of California is disbarred, suspended, resigned, or involuntarily inactive.
- (b) A lawyer shall not employ, associate in practice with, or assist a person* the lawyer knows* or reasonably should know* is a restricted lawyer to perform the following on behalf of the lawyer's client:
- (1) Render legal consultation or advice to the client;
 - (2) Appear on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, commissioner, or hearing officer;
 - (3) Appear as a representative of the client at a deposition or other discovery matter;
 - (4) Negotiate or transact any matter for or on behalf of the client with third parties;
 - (5) Receive, disburse or otherwise handle the client's funds; or
 - (6) Engage in activities that constitute the practice of law.
- (c) A lawyer may employ, associate in practice with, or assist a restricted lawyer to perform research, drafting or clerical activities, including but not limited to:

- (1) Legal work of a preparatory nature, such as legal research, the assemblage of data and other necessary information, drafting of pleadings, briefs, and other similar documents;
 - (2) Direct communication with the client or third parties regarding matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages; or
 - (3) Accompanying an active lawyer in attending a deposition or other discovery matter for the limited purpose of providing clerical assistance to the active lawyer who will appear as the representative of the client.
- (d) Prior to or at the time of employing, associating in practice with, or assisting a person* the lawyer knows* or reasonably should know* is a restricted lawyer, the lawyer shall serve upon the State Bar written* notice of the employment, including a full description of such person's current bar status. The written* notice shall also list the activities prohibited in paragraph (b) and state that the restricted lawyer will not perform such activities. The lawyer shall serve similar written* notice upon each client on whose specific matter such person* will work, prior to or at the time of employing, associating with, or assisting such person* to work on the client's specific matter. The lawyer shall obtain proof of service of the client's written* notice and shall retain such proof and a true and correct copy of the client's written* notice for two years following termination of the lawyer's employment by the client.
- (e) A lawyer may, without client or State Bar notification, employ, associate in practice with, or assist a restricted lawyer whose sole function is to perform office physical plant or equipment maintenance, courier or delivery services, catering, reception, typing or transcription, or other similar support activities.
- (f) When the lawyer no longer employs, associates in practice with, or assists the restricted lawyer, the lawyer shall promptly serve upon the State Bar written* notice of the termination.

Comment

If the client is an organization, the lawyer shall serve the notice required by paragraph (d) on its highest authorized officer, employee, or constituent overseeing the particular engagement. (See Rule 1.13.)

**Proposed Rule 5.3.1 [1-311] Employment of Disbarred, Suspended,
Resigned, or Involuntarily Inactive Lawyer
Synopsis of Public Comments**

TOTAL = 4 **A = 2**
D = 1
M = 1
NI = 0

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
2016-25a	McCue, Martin (08-02-16)	No	M	5.3.1	Some parts of this rule should also apply to employment of lawyers who have voluntarily elected inactive status. Using only the concept of “involuntary inactivity” creates a gap in the rule that does not make sense. A person who elects inactive status should not practice while inactive. They need not be “restricted” by an outside authority.	Proposed rule 5.3.1 is intended to regulate lawyers who are under some form of regulatory or disciplinary sanction not to practice law, i.e., those lawyers who are <i>involuntarily</i> inactive. Proposed rule 5.5 (b), on the other hand, regulates activities by those lawyers who are not admitted to practice law in California for other reasons, including those who <i>voluntarily</i> go on inactive status. The strict regimen of 5.3.1 is inappropriate for this latter group of lawyers, who can voluntarily elect to go back on active status.
X-2016-43ah	Committee on Professional Responsibility and Conduct (COPRAC) (Baldwin) (08-12-16)	Yes	A		Supports adoption of proposed Rule 5.3.1.	No response required.
X-2016-76p	Los Angeles County Bar Association (LACBA) – Professional Responsibility and Ethics Committee of Los Angeles (PREC) (Schmid) (09-24-16)	Yes	D		PREC urges the deletion of Proposed Rule 5.3.1 in its entirety. It has long been established that a lawyer who is suspended from practice and holds herself out as entitled to practice is engaged in the unauthorized practice of	The Commission disagrees with the commenter’s assessment of current rule 5.3.1.

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					<p>law and is subject to sanctions. Current Rule 1-311, impacts the employment of restricted California lawyers by imposing certain duties upon the active lawyer/employers; its revised version, Proposed Rule 5.3.1, has similar features. There is no current rule that describes a lawyer's responsibilities with respect to the employment or retention of nonlawyers in general. Proposed Rule 5.3 would bridge that gap. It is substantially similar to ABA Model Rule 5.3.</p> <p>If adopted, Proposed Rule 5.3 would both obviate the need for, and highlight the substantial defects of, current Rule 1-311 and its proposed revision, 5.3.1. Those defects include the following:</p> <p>1. Proposed Rule 5.3.1 is punitive. The purpose of disciplinary proceedings is not to punish but to protect the courts and the public. The rule limits the activities of restricted California lawyers in ways that greatly exceed the boundaries set by <i>Birbrower, Montalbano, Condon & Frank v. Superior</i></p>	<p>1. The commenter does not explain why rule 5.3.1 is "punitive." The purpose of the proposed Rule, which largely carries forward current rule 1-311, is to <i>restrict</i> the unauthorized practice of law by a disbarred, suspended or involuntarily inactive lawyer, but not prohibit that person</p>

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					<p><i>Court</i> for other lawyers not admitted in California without demonstrating an enhanced risk of harm. Where the restricted lawyer is involuntarily inactive for reasons other than discipline, the punitive effect is even more pronounced.</p> <p>2. Proposed Rule 5.3.1 imposes undue burdens on current practice. Strict compliance with the rule precludes the otherwise necessary and appropriate use of remote and online law-related services where the status of individual service providers cannot be ascertained. In addition, the reporting requirements are both onerous to potential employers and an unsustainable burden on the regulatory resources of the State Bar without demonstrating a commensurate risk to the public or the courts.</p>	<p>from working in a legal environment under lawyer supervision. The rule sets forth in precise terms what is expected of the employing lawyer who supervises a person who has been disbarred, suspended or placed on involuntarily inactive service. The Commission believes this provides a degree of public protection that would not be available with the rule's repeal.</p> <p>2. The commenter also criticizes the rule as imposing "undue burdens on current practice" because, theoretically, a lawyer might utilize "remote and online law-related services" where the status of service providers cannot be ascertained. The Commission believes this is a strained reading of the scope, purpose and intent of the rule. However, to the extent a lawyer is employing someone to engage in tasks covered by the rule, the lawyer is obligated to comply with the rule. There is no indication that the concerns raised by LACBA have caused problems</p>

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					<p>3. Proposed Rule 5.3.1 frustrates rehabilitation. Disciplinary proceedings are designed to rehabilitate lawyers. The rule imposes significant disincentives for potential lawyer-employers to hire restricted lawyers as opposed to other nonlawyers. In so doing, the rule effectively deprives restricted lawyers of potential employment, which, in turn, impairs their ability to attain the present learning and ability in law required for rehabilitation. Proposed new rule 5.3 would provide valuable guidance for the use of nonlawyer assistants that is not available under the current rules and, and it would be appropriate for contemporary practice. In contrast, the proposed rule 5.3.1, would be rendered moot by 5.3 and is otherwise unduly burdensome to both practitioners and regulators. Proposed rule 5.3 should be adopted, and proposed rule 5.3.1 should be deleted in its entirety.</p> <p>In the event Proposed Rule 5.3.1</p>	<p>under the existing rule, and therefore the Commission does not believe the issue needs to be addressed further.</p> <p>3. The Commission also believes that the rule does not frustrate rehabilitation. The rule does not impose unreasonable disincentives, and the client and public's right to know that a person who is disbarred, suspended or involuntarily inactive is working on their case is a matter of public protection and outweighs the disincentives that exist by virtue of requiring disclosure of the employment status to the client.</p>

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					<p>is not deleted, we have the following remaining comments on its current form:</p> <p>4. Proposed Rule 5.3.1(a) (3) and (4) each use the term “member,” despite the fact that that term has generally been eliminated in the proposed new rules, with the term “lawyer” being used in its place. Under these circumstances, the use of the term “member” in these subparagraphs, without reference to the term “lawyer,” may lead to confusion. It is also internally inconsistent with language of subparagraph (a)(5), as well as the title of the rule, which do use the term “lawyer.” To avoid this, we recommend that in subparagraphs (a)(3) and (4), the first use of the term “member” be replaced with the term “lawyer.” Under this approach, subparagraph (a)(3) would read, “(3) ‘Involuntarily inactive lawyer’ means a member who is ineligible to practice law as a result of action taken pursuant to Business and Professions Code §§ 6007, 6203(d)(1), or California Rule of Court 9.31(d).” Likewise, subparagraph (a)(4) would read, “(4) ‘Resigned lawyer’ means a</p>	<p>4. The Commission thanks the commenter but has not made the suggested changes to the rule. The term “member” is used because the rule as drafted applies only to the employment of <i>members</i> of the State Bar of California who have been disbarred, suspended or placed on involuntary inactive status.</p>

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					member who has resigned from the State Bar while disciplinary charges are pending.” Finally, we read this proposed rule to prohibit a lawyer from assisting a restricted lawyer from negotiating any matter on behalf of a client. However, there are contexts (e.g., in transactional work) where attorneys appropriately work with investment bankers and business brokers in negotiating transactions. If a restricted lawyer is functioning in such a role (and not as an attorney), the transactional attorney should not be in violation of the rule. As a result, we recommend deleting the reference to “assisting”.	
X02016-104az	Office of Chief Trial Counsel (OCTC) (Dresser) (09-27-16)	Yes	A		Supports adoption of proposed Rule 5.3.1.	No response required.