

**Rule 1.15 [4-100] Safekeeping Funds and Property of Clients and Other Persons
(Commission's Proposed Rule Adopted on October 21–22, 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 labeled "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) If the flat fee exceeds \$1,000.00, 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or potentially to the lawyer or the law firm,* in which case the portion belonging to the lawyer or law firm* must be withdrawn at the earliest reasonable* time after the lawyer or law firm's interest in that portion becomes fixed.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person* disputes the lawyer or law firm's right to receive a portion of trust funds, the disputed portion shall not be withdrawn until the dispute is finally resolved.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.

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Synopsis of Public Comments

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

No.	Commenter/Signatory	Comment on Behalf of Group?	A/D/M/NI ¹	Rule Section or Cmt.	Comment	RRC Response
Y-2016-20	American Immigration Lawyers Ass'n (AILA) of Northern California Chapter (Lee) (01-09-17)	Y	M		<p>1. We recommend that Comment 3 be amended to reflect that an agreement in a writing signed by the client is not always necessary. Comment 3 makes no reference to the exemption from the signed writing requirement if the fee does not exceed \$1,000.</p> <p>2. Proposed rule 1.15 fails to address whether it applies to existing fee agreements, a significant issue.</p>	<p>The Comment picks up the exception by reference to the applicable paragraph. Therefore, no change to the comment is necessary.</p> <p>The concern raised by the commenter relates to how the rule is implemented not to the substance of the rule. Changes to the Rules of Professional Conduct are generally not retroactive. As a result, the adoption of this proposed rule would not require lawyers or their clients to unwind prior financial transactions which were governed by the old rules. For example, advance deposits of legal fees placed into a law firm's operating account prior to the adoption of the new rule could remain in the firm's operating account. Any advance deposit of fees tendered to the lawyer after the effective date of the proposed rules would be governed by the new</p>

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

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					<p>3. AILA requests that further study of the potential impact on the public and access to justice be implemented prior to the adoption of rule 1.15. A change to the rule at this point would adversely affect the ability of low-income consumers to access the justice system and be very disruptive to our ability to serve immigrant clients.</p>	<p>requirement that the funds be placed into the client trust account unless the client gives informed written consent to deposit the advance fee into the lawyer's operating account.</p> <p>The Commission has evaluated the issues and does not believe further study is needed. Many U.S. jurisdictions currently have a rule similar to the proposed rule, and the Commission is not aware of any access-to-justice problems in those jurisdictions caused by Rule 1.15.</p>
Y-2016-1	Bach, James (12-09-16)	No	D	1.15	<p>1. This proposed rule imposes one more useless burden – trust accounting - on attorneys who provide flat fee arrangements for clients who often would not otherwise have access to legal services.</p>	<p>1. The Commission disagrees with the commenter's assessment. All California attorneys are required to account for client funds and maintain appropriate written records of the receipt and disbursement of client money. The proposed rule does not impose a new accounting requirement. The proposed rule simply carries forward the requirement in current rule 4-100(B) to account to the client regardless of the fee arrangement.</p>

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					<p>2. The attorney is charged with the impossible task of determining when each part of the fee is due, and then moving money in and out of a trust account to avoid rule violation.</p> <p>3. For an attorney to take flat fee cases and for them to be profitable, it is necessary at some point in the case for the attorney to say that the fee has been earned and is nonrefundable, even though all of the work has not yet been done.</p> <p>4. The State Bar should make the jobs of its members easier. I do not see any compelling reason to upset decades-old practices, and to impose significant burdens, costs and liabilities on its members who provide flat fee legal services, and who require payment in advance to insure they get paid.</p>	<p>2. The Commission disagrees with the commenter's assessment. A lawyer and client can agree in their legal services agreement when all or part of a flat fee is earned, or can agree to invoke the paragraph (b) exception regarding the placement of flat fees into the attorney's operating account under paragraph (b).</p> <p>3. The proposed rule does not regulate when a particular fee is earned. See proposed Rule 1.5 [4-200].</p> <p>4. The Commission again disagrees with the commenter's assessment. The proposed rule conforms to a national standard for safekeeping client funds and property, a substantial majority of jurisdictions requiring that advance fees be maintained in a trust account.</p>

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Y-2016-6c	Los Angeles County Bar Association (Schmid) (12-20-16)	Y	D	1.15(a)	<p>1. We continue to oppose the adoption of paragraph (a) of Proposed Rule 1.15 in its current revised form. The inclusion of the word “fees” in paragraph (a) would mandate that all routine fee retainers (which are customarily required as advance deposits on fees for a new client engagement) be deposited into a trust account.</p> <p>2. The Proposed Rule fails to address whether or not fees that have already been advanced prior to the effective date of the rule will need to be moved from a general account or other source to a trust account. In order to avoid further disruption, we strongly urge that, if the Proposed Rule is adopted in its current form, fees so advanced prior to the effective date of the change be excluded from the application of the rule.</p>	<p>1. The Commission continues to believe that requiring that advance fees be placed in a trust account is a public protection measure that has been recognized by a substantial majority of the jurisdictions in the United States. Further, paragraph (b) of the proposed rule permits an attorney to deposit flat fees into the attorney’s operating account with the client’s informed written consent. The proposed rule will not have a negative impact on legal business models, and contains an exception for fees of less than \$1,000.</p> <p>2. The Commission continues to believe that the concern raised by the commenter is addressed to how the rule should be applied and does not believe that any further changes to either the text or the comments of the rule are required. Changes to the Rules of Professional Conduct are generally not retroactive. As a result, the adoption of this proposed rule would not require lawyers or their clients to unwind prior financial transactions which were</p>

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					<p>governed by the old rules. For example, advance deposits of legal fees placed into a law firm's operating account prior to the adoption of the new rule could remain in the firm's operating account. Any advance deposit of fees tendered to the lawyer after the effective date of the proposed rules would be governed by the new requirement that the funds be placed into the client trust account unless the client gives informed written consent to deposit the advance fee into the lawyer's operating account.</p> <p>3. Commenter notes that the Rules Revision Commission, in its response in the Synopsis of Public Comments, stated its belief that this issue is one of several "easily resolvable implementation issues if the Supreme Court decides to adopt the rule." We propose that, instead of addressing this concern as an implement issue, paragraph (a) of the Proposed Rule should be modified to delete the words "or held," to make more clear that the Proposed Rule only applies to "funds</p>	<p>3. The language of the rule does not need to be revised in this fashion to address a transition from the existing rule to the proposed rule. The Commission does not believe that the commenter's suggested deletion of current rule language is appropriate to address what is a transient concern with implementation of the rule.</p>

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					received" (i.e., after the effective date of the rule), rather than extending to "funds held" (i.e., as of the effective date of the rule).	
Y-2016-10b	Miller, Merwyn J. (01-04-17)	N	M	1.15(b)	<p>1. Minimum flat fees which are paid in advance are not included in the definition of 1.15(b) and, therefore, under the proposal must be place in the trust account without exception. Based on my years of experience as an attorney, this approach will cause more disputes between client, attorney, and others, provide less protection to specified parties, restrict the freedom with which attorneys render advice, and increase fees to the client.</p> <p>2. <u>Increase in lawyer-client disputes</u>. In the probate field, flat fees paid by the estate are deductible. If the fees are not deemed "paid" until earned, the estate's reporting them as "paid" will create a tax deficiency because of the reporting error.</p> <p>3. <u>Less protection</u>. There will be</p>	<p>Requiring unearned fees to be deposited in a client trust account will not result in an increase in disputes between attorneys and clients, restrict the freedom of an attorney to give advice or increase legal fees. The comment does not explain why these events would occur. Further, for many years, other U.S. jurisdictions have required such fees to be deposited into a trust account, and there is no evidence that those jurisdictions are experiencing the problems alleged in the comment.</p> <p>The rule will not affect tax treatment of attorney fees because whether a fee is earned or unearned does not depend on where the money is deposited by the lawyer. Further, other jurisdictions with rules similar to that proposed by the Commission do not report the alleged problem mentioned in the comment.</p> <p>The proposed rule has no</p>

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					<p>less protection for beneficiaries because the trustee of the estate will not provide a full accounting to of the estate's transactions to them.</p> <p>4. <u>Fee increases</u>. Because of the added administrative costs of maintaining the trust account and the potential that clients will discharge their lawyer when confronted with the repeated decisions the client will have to make consenting to the lawyer's withdrawal of payments out the trust account, fees will increase as the lawyer is taking more risk that he will get his complete fee.</p> <p>5. <u>Less robust and complete advice</u>. A lawyer's advice to the client trustee to render a complete accounting to beneficiaries will be less robust and complete because of the potential that the client will not approve the withdrawal from the trust account.</p>	<p>impact on a lawyer or trustee's duty to fully account to beneficiaries. The comment fails to explain why the rule would result in less protection for beneficiaries or why the rule would result in a trustee not providing a full accounting of estate transactions.</p> <p>Lawyer fees will not increase because of the proposed rule. The administrative costs of maintaining an IOLTA trust account are insignificant. Further, clients are not required to approve every withdrawal from a client trust account where the lawyer's fee agreement provides that the lawyer may take fees as they are earned. The experience of other jurisdictions with a similar rule fails to corroborate the concern.</p> <p>The experience of other jurisdictions with a similar rule fails to corroborate the concern. Existing rules already prohibit an attorney from taking a fee that is disputed by a client. The rule will not trigger more fee disputes.</p>

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					<p>6. <u>Recommendation.</u> Include minimum flat fees in your definition of flat fees at 1.5(e) and make clear that an attorney will not violate the rules for charging more if the client requires the attorney to deposit the fee in his trust account.</p> <p>7. <u>Recommendation.</u> I recommend that you either remove the term “writing” from 1.15(b)(1) leaving (b)(2) to require that all flat fees in excess of \$1000 be in writing, or rewrite (b)(2) to make it clear that if the flat fee does not exceed \$1000 there is no requirement of a writing.</p>	<p>A “minimum flat fee,” which the commenter appears to define as a minimum fee subject to additional charges, is most likely a prohibited non-refundable fee and is not allowed under current rules. The Commission has concluded that public protection is furthered when an attorney deposits advance fees into a client trust account, and this is the rule prevailing in a substantial majority of U.S. jurisdictions.</p> <p>Removing the word “writing” could lead to undesirable disputes about oral agreements and would not protect the public. The Commission believes that clients should be given the choice to allow the attorney to deposit advance fees into the lawyer’s operating account, or require that they be maintained in a trust account until earned.</p>
Y-2016-2	Morse, Rory S. (12-15-16)	N	D	1.15	I strongly disagree with the proposal to require attorneys to hold flat fees in trust until the completion of the work. I understand there is a concern	The proposed rule has been modified to address concerns raised during the initial public comment period that the rule would impose a

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					<p>about money paid in advance that is subject to a refund being placed directly into a business account where that money can be spent freely, but there are other approaches to address this concern, such as a simple requirement to maintain a minimum balance within business accounts.</p> <p>The increase in administrative work with maintaining flat fees in a trust account, billing hourly time against them, and recordkeeping to live up to a formal audit under this rule would double to triple administrative time required on maintaining billing records for relatively simple flat fee works for clients, and most would not benefit in any way from such increased administrative work.</p>	disproportionate burden legal services matters for which a low fee is charged, e.g., in immigration cases. The Commission is not aware of any empirical evidence indicating that requiring the deposit of flat fees into a trust account until earned creates unreasonable administrative problems. To the contrary, many law firms today in the United States and in California deposit flat fees into their Client Trust Accounts and withdraw those funds when earned.
Y-2016-9	Reed, Robert (01-04-17)	N	M	1.15	Modify for flat-fees above \$1000 to be deposited in a client trust account. Any amount less would be cumbersome.	Client money is at risk when a lawyer spends an advance fee before performing legal services. It is not unreasonably burdensome to deposit flat fees into a trust account rather than into an operating account. The comment does not explain why it would be unreasonably burdensome to deposit unearned fees into a trust account rather than into an

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						operating account.
Y-2016-21p	State Bar Office of Chief Trial Counsel (OCTC) (Dresser) (01-09-17)	Y			<p>1. 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 to be in writing. This enhances public protection.</p> <p>2. OCTC, however, is concerned with exempting a written agreement to deposit flat fees in the attorney's operating account for fees of \$1,000 or less. There is no good reason for this \$1,000 exemption.</p>	<p>1. No response required.</p> <p>The Commission proposes exempting a flat fee of less than \$1000 from requirement to obtain the client's consent to depositing the funds into the lawyer's operating account in order to address access-to-justice issues raised by commenters who note that it may be impracticable for many low income clients, such as clients seeking immigration advice who are not in the country, to provide a writing</p>