

Escrow Requirements

Due to the fiduciary nature of the attorney-client relationship, an attorney must separate from his own properties and endeavor to keep those funds and other properties belonging to the client.¹ This is not merely an aspiration goal; any violation of the rules governing use of a client's property will subject an attorney to discipline even if no actual loss occurred, and to personal liability in the event of loss of funds whether or not the attorney profited personally in any respect.²

As a basic protection, all funds of clients paid to a lawyer or law firm must be deposited in one or more identifiable bank accounts within the state of New York or elsewhere with the client's written consent. The only funds belonging to the lawyer or firm that may be deposited in those accounts are funds sufficient to pay bank service charges. [DR9-102; EC95].

The exceptions to the rule are money advanced for future costs and withdrawal of funds due and owing. However, if there is any dispute, the disputed portion must remain in the separate client account pending resolution of the controversy.

DR 9-102 [§1200.46] Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records.

- (A) Prohibition Against Commingling and Misappropriation of Client Funds or Property. A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.
- (B) Separate Accounts
 - (1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within the State of New York which agrees to provide dishonored check reports in accordance with the provisions of Part 1300 of the joint rules of the Appellate Divisions. "Banking institution," means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which he or she is a member, or in the name of the lawyer or firm of lawyers by whom he

or she is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts which the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity, into which special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside the State of New York if such banking institution complies with such Part 1300, and the lawyer has obtained the prior written approval of the person to whom such funds belong which specifies the name and address of the office or branch of the banking institution where such funds are to be maintained.

(2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by DR 9402 [1200.46] (B) (1) as an "Attorney Special Account," or "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language, as the lawyer may deem appropriate provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or lawyer's firm.

(3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.

(4) Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(C) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property. A lawyer shall

(1) Promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest.

(2) Identify and label securities and properties of a client or third 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 properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.

(4) Promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

(D) Required Bookkeeping Records. A lawyer shall maintain for seven years after the events, which they record:

(1) The records of all deposits in and withdrawals from the accounts specified in DR 9-102 [1200.461(B) and of any other bank account, which concerns or affects the lawyer's practice of law. These records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement.

(2) A record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed.

(3) Copies of all retainer and compensation agreements with clients.

(4) Copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf.

(5) Copies of all bills rendered to clients.

(6) Copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed.

(7) Copies of all retainer and closing statements filed with the Office of Court Administration.

(8) All checkbooks and check stubs, bank statements, pre-numbered canceled checks and duplicate deposit slips.

(9) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account

kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(10) For purposes of DR 9-102 [1200.46J(D)], a lawyer may satisfy the requirements of maintaining “copies” by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(E) Authorized Signatories. All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only an attorney admitted to practice law in New York State shall be an authorized signatory of a special account.

(F) Missing Clients. Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers’ Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(G) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer’s estate; a lawyer who *was* affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled

thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

- (H) Dissolution of a Firm. Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in DR 9-102 [1200.46] (D).
- (I) Availability of Bookkeeping Records; Records Subject to Production in Disciplinary Investigations and Proceedings. The financial records required by this Disciplinary Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this subdivision shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the lawyer-client privilege.
- (J) Disciplinary Action. A lawyer who does not maintain and keep the accounts and records as specified and required by this Disciplinary Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

¹ *In re Le Pore*, 43 A.D.2d 793 (4th Dep't 1973). (Respondent commingled his client's funds received from the real estate transaction with his own personal funds, drew a check or checks against his account for his use or for other clients, thereby reducing his bank balance below that required to pay his client, and issued a check to his client when his account had insufficient funds with which to honor it).

² *In re Brown*, 180 A.D.2d 150, 586 N.Y.S.2d 565, (N.Y. App. Div. 1st Dep't 1992). (By commingling personal funds with client funds, respondent violated DR9-102(a) and 22 NYCRR § 603.15(a)).