New York State Bar Association
Committee on Professional Ethics

Opinion 1114 (2/9/17)

Topic: Trust or special accounts; IOLA; authorized signature on special account checks

Digest: Attorneys may electronically sign checks issued from their law firm's "special," trust or IOLA account, provided that an authorized signatory who is a New York lawyer personally reviews and approves the issuance of the check with his or her digitized signature.

Rules: 1.15(b), (d) & (e)

FACTS

1. A multi-state law firm with offices in New York has a centralized out-of-state location for issuing checks from the attorney special or trust account that the firm maintains in a New York bank.

2. In accordance with Rule 1.15(e) of the New York Rules of Professional Conduct (the "Rules"), the firm has designated firm lawyers who are admitted to practice law in New York and are based in its New York offices as "authorized signatories" of the special or trust account. Currently, when a check is to be issued from the account, the requested check is printed locally utilizing a MICR (magnetic ink character recognition) printer. The check is then presented to an authorized signatory, along with all supporting documentation regarding the transaction, for review and execution. After review, if the documentation complies, the authorized person manually signs the check (sometimes referred to as a "wet ink signature"). The check and supporting documentation is then given to a second authorized signatory for review and execution. Presently, all checks from the account are signed in ink by two authorized signatories.

3. The firm would like to move to an electronic approval and signing process. In the new process, the firm would notify the authorized signatories electronically of one or more pending checks to be issued from the attorney special or trust account. The authorized signatories would be provided with all supporting documentation and would conduct the same review that is currently being conducted with respect to wet ink checks. However, rather than signing the checks manually in ink, the authorized signatory would electronically approve the issuance of the check. After an authorized signatory approves, the check will be printed. Just as with the current process, checks would be printed in the firm's local office (here, the New York office) utilizing the MICR printer. The printed checks would also contain the electronically-affixed digitized (machine readable) signature of each authorizing signatory.

QUESTIONS

4. A. May a law firm utilize MICR (magnetic ink character recognition) digitized signatures on checks issued from its IOLA account in lieu of manual (wet ink) signatures?

B. May the approval process for checks issued from the law firm's IOLA account utilize a batch process to authorize the MICR signatures?

OPINION

<u>MICR Signatures on IOLA Checks</u>

5. Rule 1.15(b) requires a lawyer who is in possession of funds belonging to another person incident to the lawyer's law practice to maintain those funds in a "special account", also known as "trust account." Under Judiciary Law Section 497(4)(b), where the lawyer receives moneys incident to the

lawyer's practice that the lawyer believes are too small in amount (or will be held for too short a time) to generate sufficient interest income to justify a separate account, the lawyer is required to place them in an interest-bearing account, also known as an Interest on Lawyers Account or IOLA Account. Court rules contain several requirements regarding IOLA Accounts. *See* 21 NYCRR Part 7000. However, that rule contains no requirement regarding authorized signatories of special account checks. Only Rule 1.15(e) governs authorized signatories.

6. Rule 1.15(a) specifies that an attorney who possesses client funds has a fiduciary obligation with respect to those funds. Moreover, Rule 1.15(e) states that "[o]nly a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account." The answer to the question here thus hinges on what is encompassed by the term "signatory."

7. Recently, the State of North Carolina amended its version of Rule 1.15 to include a provision that specifically prohibits trust account checks from being signed utilizing "signature stamps, preprinted signature lines, or electronic signatures". *See* North Carolina Rules of Professional Conduct, 1.15(s). New York, however, has no such prohibition.

8. Rule 1.15(e) in New York provides that only a New York attorney may be an authorized signatory, but it does not specify how a trust or special account check may be signed. Rule 1.0(x) defines what constitutes a writing for purposes of Rules that require the client's written consent. It was amended effective January 1, 2017 to include electronic records within the meaning of a writing. As amended, Rule 1.0(x) provides: "A 'signed' writing includes an electronic . . . process attached to . . . a writing and executed or adopted by a person with the intent to sign the writing." (Emphasis added.) As the New York State Bar Association's Committee on Standards of Professional Conduct ("COSAC") explained when it proposed this change, "COSAC recommends clarifying the definition of 'writing' to make clear that it encompasses evolving forms of*electronic* communications." However, the term we must interpret here is not "writing" but "signatory." Consequently, the recent amendment is instructive but not dispositive.

9. In N.Y. State 693 (1997), this Committee stated that it was permissible for a lawyer, as part of a real estate closing, to delegate to a paralegal the task of signing the lawyer's name on an escrow account check utilizing a rubber stamp, as long as the lawyer supervised the delegated work closely. The rationale underpinning that opinion was that it was the attorney, not the paralegal, who ultimately approved the transaction – the attorney was merely delegating the task of affixing the signature for a discrete and limited purpose.

10. Here, no delegation would be involved. Therefore, if the law firm's procedures for authorizing checks from the special or trust account and for affixing the digitized signature of each authorized signatory assure that only an authorized signatory or signatories may initiate these steps, and if using the MICR signature renders the check negotiable within the meaning of banking laws and regulations, then Rule 1.15 neither requires a law firm to use a "wet ink signature" nor prohibits a law firm from using electronic or digitized signature media such one affixed by an MICR printer.

11. The law firm also must ensure that the electronically-generated records of the special or trust account are maintained in accordance with Rule 1.15(d).

Batch Processing of IOLA Checks

12. The inquirer also asks whether the firm may utilize a "batch process" to authorize the MICR signatures. The inquiry does not define "batch processing," but we understand that the term can mean two different things. The first involves running a series of computer steps with minimum human interaction. The second involves scheduling a series of activities for the same time, so as to use computer time most efficiently. As this Committee has stated, "*responsibility* for client funds may not be delegated…." *See* N.Y. State 693 (emphasis added). As long as (i) the firm's

authorized signatories approve the issuance of each individual check from the firm's special or trust account, and (ii) the firm's computer system saves information about authorization of checks to be printed and signed digitally and prints out the digitally signed checks in a single batch, the firm would be in compliance with Rule 1.15.

CONCLUSION

13. A law firm may issue electronically signed and approved checks from its trust account provided that an authorized signatory who meets the requirements of Rule 1.15(e) personally reviews and approves the issuance of each check.

(36-16)