

Steve Van Goor's answers to substantive questions as received April 9, 2014:

Can the waiver the attorney is required to send be faxed to the bar or must it be mailed?

Yes, the waiver may be faxed.

Does the Bar have a list from the bank that it has sent in its required documents so I can be assured my bank (FNBA) has done that? And also properly labeled my account a trust account?

First National Bank Alaska is on the list of participating financial institutions.

You've answered the first part of my last question but I'm still concerned whether FNBA has properly labeled my Trust account?

You should check with your institution to be sure that they have properly labeled your account.

Is the requirement to keep records for 5 years retroactive, or does it start on April 15th as well?

From 1993 to 2009, Alaska Rule of Professional Conduct 1.15 required that trust account records be kept for six years. In April 2009, the requirement was reduced to five years. However, I strongly encourage all lawyers to treat trust account records as permanent records.

Does the rule apply if sole office and IOLTA is in Washington State?

If a lawyer admitted in Washington and Alaska has only Washington clients and a Washington IOLTA account, the rule would not apply to that lawyer. Under Alaska RPC 8.5 on jurisdiction and choice of law, Washington's rules would govern the lawyer's conduct.

What about attorneys out of state, e.g. Washington?

The rule applies to a lawyer admitted in Alaska and another jurisdiction if the lawyer has Alaska clients.

For out-of-state law firms, do all members of the law firm need to sign the waiver even if they are not members of the Alaska state bar?

Under Alaska RPC 8.5 regarding jurisdiction and choice of law, lawyers who are not members of the Alaska Bar Association would ordinarily not be subject to Alaska's rules but, rather, the rules of the jurisdiction in which they are admitted.

Would an Associate at a law firm need to inform the financial institution of the purpose for its law firm's account?

If the law firm has not already identified the purpose of the firm's account, the associate should bring that issue to the attention of the managing partner or shareholder who would ultimately have the responsibility on behalf of the firm.

I'm out of state. Is it acceptable to have an out of state Wells Fargo branch execute the form?

Wells Fargo has already signed an Overdraft Notification Agreement, so there is no requirement for you to obtain another agreement.

If an associate changes firms, do they have to sign a new waiver?

No, one waiver is enough.

Or can a new lawyer sign one waiver of confidentiality when they are sworn in, and have it be in place for the rest of the lawyer's career, regardless of where they work?

Excellent suggestion. We will include a waiver in the paperwork given to new admittees.

What is the implementation deadline, esp. if the lawyer's bank is not immediately responsive? Will it be sufficient if lawyer REQUESTS the bank's Overdraft Notification Agreement by 4/15/14?

So long as the lawyer is making good faith efforts to obtain an Overdraft Notification Agreement from the lawyer's financial institution, the lawyer may continue to make those efforts after April 15, 2014. However, if the financial institution decides not to sign an Overdraft Notification Agreement, the lawyer must choose a participating financial institution as soon as possible.

Does the Bank form for Northrim and Wells Fargo also need to be signed for each attorney, or just one form per law firm?

No, the form does not need to be signed by each attorney in the firm. One form is sufficient.

If our banks have not provided a form, like Northrim and Wells Fargo did, is there something else we should do to notify our banks?

Feel free to use the form found under "this form" link after the Wells Fargo listing on the list of participating financial institutions.

May we keep some money of our own (earned fee) in the trust account to keep it "active" if that is necessary?

Yes, you may keep no more than the amount required to keep the trust account open.

FNBA has suddenly put trust account back on the IOLTA accounts

An IOLTA account meets the requirements of the rule.

Is a stop payment request equivalent to a "notice of dishonor"

No, a stop payment is an action initiated by the lawyer or law firm and is not equivalent to an overdraft notification or notice of dishonor. However, the lawyer or law firm must have a good reason for initiating the stop payment if there is a later question from a client.

When you say Wells Fargo, does that include Wells Fargo Bank in Washington?

The rule applies to all branches of a participating financial institution.

Dealing with Alaska client, with client permission

Money being held for an Alaska client may be held in a financial institution outside of Alaska with client permission under Alaska RPC 1.15(a).

Can you name a bank doing business in Washington state that is willing to sign the agreement?

Thus far, The Commerce Bank of Washington has signed an agreement. I presume the branches of national banks who have signed Overdraft Notification Agreements for Alaska which are located in other states will provide the required notification.

For those banks requiring an additional form for overdraft notification (such as Wells Fargo), do those banks want a separate form for each attorney in a firm, or is one form per account sufficient?

One form is sufficient.

For banks listed as having provided overdraft notification agreements, can lawyers assume those agreements cover all branches, unless otherwise stated on the bar's list?

Yes.

If a trust account was open on January 1, 2014 for a firm that is no longer in existence but is closed prior to April 15, 2014, does the lawyer need to file the Waiver?

The lawyer needs to sign a waiver if the lawyer is subject to Alaska RPC 1.15 no matter what firm or office the lawyer is in.

If out of state bank IOLTA holds no money of Alaska clients, do we still need the bank to complete and return the form to the Alaska Bar 27.

No.

If an Alaska lawyer sponsors an out-of-state attorney pro hac vice, does the sponsoring attorney need the attorney appearing pro hac vice sign a waiver of confidentiality

The rule doesn't specifically address this question, but since the lawyer participating pro hac vice is submitting to Alaska's disciplinary jurisdiction, the lawyer should sign and submit a waiver.