



***A Guide to New Bar Rule 15.1
Maintenance of Trust Funds in
Financial Institutions That Agree
to Provide Overdraft Notification***

*Alaska Bar Association
Webinar
April 9, 2014*

Bar Rule 15.1 Overdraft Notification

(a) Clearly Identified Trust Accounts in Financial Institutions Required.

(1) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall deposit all funds held in trust in accounts clearly identified as “trust” or “escrow” accounts, referred to herein as “trust accounts,” and shall take all steps necessary to inform the

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the depository institution of the purpose and identity of the accounts. Funds held in trust include funds held in any fiduciary capacity in connection with a representation, whether as trustee, agent, guardian, executor, or otherwise.

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(2) Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall maintain and preserve for a period of at least five years after termination of the representation, the records of the accounts, including checkbooks, canceled checks, check stubs, vouchers, ledgers, journals, closing statements, accountings or other statements of



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disbursements rendered to clients or other parties with regard to trust funds or similar equivalent records clearly and expressly reflecting the date, amount, source, and explanation for all receipts, withdrawals, deliveries, and disbursements of the funds or other property of the client.

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(b) Overdraft Notification Agreement Required. A financial institution may be a depository for lawyer trust accounts if it agrees in a form provided by the Bar Association to report to Bar Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds,

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irrespective of whether the instrument is honored. No trust account shall be maintained in any financial institution that does not agree to so report. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon 30 days' notice in writing to Bar Counsel.

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(c) Overdraft Reports. The overdraft notification reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy

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a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) In the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of

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presentation for payment, and the date paid, as well as the amount of the overdraft created thereby.

*(d) **Timing of Reports.** Reports under subsection (c) shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument*

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presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(e) Consent by Lawyers. Lawyers subject to Alaska Rule of Professional Conduct 1.15 shall be conclusively deemed to have consented to the

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reporting and production requirements mandated by this rule. A lawyer shall sign a waiver of confidentiality under AS 06.01.028.

*(f) **Costs.** Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.*

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(g) Definitions. For purposes of this rule:

(1) “Financial institution” includes a bank, savings and loan association, credit union, savings bank, and any other business or person that accepts for deposit funds held in trust by lawyers.



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(2) *“Properly payable” refers to an instrument which, if presented, in the normal course of business, is in a form requiring payment under the laws of this jurisdiction, and*

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(3) *“Notice of dishonor” refers to the notice that a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.*



Questions?

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.

**Important Requirements in New Alaska Bar Rule 15.1
Effective April 15, 2014**

- **All lawyers practicing in Alaska who are required to have trust accounts under Alaska Rule of Professional Conduct 1.15 may only have those trust accounts in financial institutions that agree to provide trust account overdraft notification.**
- The lawyer must contact the financial institution to determine whether the financial institution will sign an Overdraft Notification Agreement regarding the lawyer's trust account(s).
- If the financial institution agrees to provide trust account overdraft notification, the financial institution must sign an Overdraft Notification Agreement and send it to:

Bar Counsel
Alaska Bar Association
840 K Street, Suite 100
Anchorage, AK 99501

- If the financial institution does not agree to provide trust account overdraft notification, the lawyer must close the lawyer's trust account(s) with that institution and find an institution that will sign the Overdraft Notification Agreement and provide trust account overdraft notification.
- **All lawyers subject to Alaska RPC 1.15 must sign a Waiver of Confidentiality and send it to:**

Bar Counsel
Alaska Bar Association
840 K Street, Suite 100
Anchorage, AK 99501.

- The account(s) must be labeled as "trust" account(s) or "escrow" account(s).
- The rule specifies the records a lawyer is required to keep for trust or escrow account(s) and the time period for keeping those records.
- Copies of the Overdraft Notification Agreement, Waiver of Confidentiality, and new Alaska Bar Rule 15.1 are available on line at: <https://www.alaskabar.org>.
- Contact the Bar Association at 907-272-7469 or info@alaskabar.org with any questions.