

UNDERSTANDING CLIENT FEES, RETAINERS & TRUST
ACCOUNTS UNDER AMENDED RULES 1.5 & 1.15

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OBJECTIVES

- Background on Lawyers Trust Fund & IOLTA in Illinois
- Conceptual review of requirements regarding IOLTA and unidentified funds
- Address amended rules with focus on Rule 1.15B
- Deep dive into IOLTA-related requirements

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WHAT IS THE LAWYERS TRUST FUND?

- 1981: CBA and ISBA task force
- 1983: LTF incorporated, IOLTA program approved
- Conversion to mandatory requirement in 1987
- 501(c) charitable foundation
- Nine-member board of directors (Three each from CBA, ISBA, IL Supreme Court)
- Three revenue sources: IOLTA, Legal Aid Fee, Unidentified Funds

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LTF & LEGAL AID IN ILLINOIS

- LTF's mission: support the provision of direct legal aid services to low-income Illinoisans with civil legal problems
- 2024: Grants to 49 non-profit agencies – more than \$20 million in annual funding
- FY 2023: 117,832 cases closed
- 89% closed by legal aid staff; 11% pro bono
- More than 1,400 FTE staff including 850+ front-line attorneys, paralegals, or advocates

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INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

- Pre-IOLTA era: client trust accounts pooled, did not generate interest
- Goal: make accounts productive for charitable purposes
- British Columbia, Florida (1979)
- Movement to expand after cuts to Legal Services Corporation budget
- Support by ABA and state bars; today every state (plus DC and Puerto Rico) has an IOLTA requirement

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INTEREST ON LAWYERS' TRUST ACCOUNTS (IOLTA)

- Operating principles
 - For deposit of client and third-party funds
 - IOLTA eligible funds = not capable of generating net interest for individual client
- Rules designate IOLTA program as “beneficial owner” of interest
- Tax rulings – interest directed to charitable purpose is tax exempt

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UNIDENTIFIED FUNDS REQUIREMENT

- Adopted in Illinois in 2015
- Addresses situations where lawyers have accumulated balances in IOLTA account
 - Can't document as belonging to a client or law firm
 - After due diligence, lawyers remit unidentified funds
- Helps manage IOLTA accounts with balances that can't be explained

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RULE 1.15B IN DEPTH

- 1.15B(a) Use of IOLTA Accounts
 - Successor to Rule 1.15(f)
 - Foundational IOLTA requirement
 - All client funds deposited in IOLTA or non-IOLTA
 - Key factor: Net income
 - No funds may be held in a non-interest bearing account

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IN FOCUS: NET INCOME

- Net income = gross interest on deposit minus costs establishing and maintaining separate account
- Are funds capable for generating net income for the client?
 - Yes → Deposit in non-IOLTA client trust account
 - No → Deposit in IOLTA account

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RULE 1.15B IN DEPTH

- 1.15B(b) Account determination
 - Successor to Rule 1.15(g)
 - Itemizes factors in determination: amount deposited, expected duration, rate of interest
 - Core principle: net interest
 - Role of reasonable judgement
 - Not subject to discipline

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TRUST ACCOUNT DETERMINATION

- Net income expectations must account for:
 - **Gross interest:** deposit amount, duration, interest rates
 - **Costs:** account fees, check fees, lawyer time, tax reporting
- Based on expectations at time of deposit
- Lawyer reviews determination at reasonable intervals
- Determinations made in exercise of reasonable judgement are not subject to discipline

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RULE 1.15B IN DEPTH

- 1.15B(c) Eligible Financial Institutions
 - Successor to Rule 1.15(f)
 - Requirements for eligibility to hold IOLTA funds
 - Interest rate comparability – bank can't pay lesser rates on IOLTA deposits
 - Critically important to IOLTA
 - Requirement addresses lawyer selection of bank holding IOLTA deposits

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RULE 1.15B IN DEPTH

- I.15B(d) Unidentified Funds
 - Successor to Rule 1.15(i)
 - Some language updated but basic elements remain in place
 - Ownership can't be ascertained
 - 12 months of due diligence
 - Funds remitted to LTF
 - Reasonable judgement of lawyer (“no charge of ethical impropriety”)
 - Refund provision

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RULE 1.15B IN DEPTH

- I.15B(e) Overdraft Notification
 - Successor to Rule 1.15(h)
 - Trust account overdraft notification
 - Eligible banks must complete agreement with ARDC to notify when accounts are overdrawn
 - Reporting requirement for banks

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RULE 1.15B IN DEPTH

- 1.15B(f) Disbursement of Real Estate Transaction Funds
 - Limited application to real estate closings
 - Unmodified from former Rule 1.15(j)

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OTHER TIPS

- Read the comments
- Read Rule 1.15C – Definitions for Rules 1.15, 1.15A & 1.15B
- Look at ARDC resources:
www.iardc.org/EducationAndOutreach/ClientTrustAccounts
- Look at LTF resources:
<https://www.ltf.org/lawyers/iolta-basics/>

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REACH OUT FOR ANSWERS

- IOLTA, unidentified funds, and rule-related questions:
 - David Holtermann, Deputy Director for Grants & Policy: General Counsel: 312-938-3076, david@ltf.org
- IOLTA & banking questions:
 - Terri Smith, LTF Director for Finance & Operations: 312-938-3001, tsmith@ltf.org

