

Ethics & Issues

by Carole R. Richelieu, Chief Disciplinary Counsel

In 2002, we received an alarming 50 reports from banks regarding attorneys' client trust accounts. We have received 14 such reports as of January 2003.

A client trust fund account check should never be dishonored or returned for insufficient funds, unless the bank has made a mistake (which is rare). An attorney's mistake is an explanation, but not an excuse when HRPC 1.15 is violated.

We have previously explained that a number of our investigations have revealed violations of HRPC 1.15, which could have been avoided by simply referring to the rule. Mishandling of client funds can result in disbarment. Every Hawai'i attorney in private practice who receives or handles client funds, no matter how infrequently or what amount, must maintain a trust account. See HRPC 1.15(a). The trust account must be at a bank or savings and loan association. The trust account must be in the attorney's own name, the name of the attorney's partnership, the name of the professional corporation of which the attorney is a member, or the name of the lawyer or partnership of lawyers by whom the attorney is employed. The trust account cannot be in the name of a lawyer who is not so affiliated with the attorney. The trust account cannot be in the name of any other business, company, partnership, or person.

Each trust account, as well as deposit slips and checks drawn thereon, must be prominently labeled "client trust account." HRPC 1.15(b). There are no permissible substitute phrases or words (not even "clients" or "client's"). Any additional descriptive designation, however, for a specific trust account is permissible, such as "IOLTA" where applicable. Client trust account checks must bear preprinted

consecutive numbers, and only a Hawai'i-licensed attorney can be an authorized signatory. See HRPC 1.15(b) and (e).

The trust account must be completely separate from the attorney's business and personal accounts. See HRPC 1.15(a)(1). Into this trust account, the attorney must deposit, intact, all funds entrusted to the attorney's care, including funds belonging to clients and others. See HRPC 1.15(a)(1) and (d). Retainers and fee and cost advances must be deposited into the trust account. Such funds must never be deposited into any other account. The deposit slip for each transaction must be sufficiently detailed to identify each item. See HRPC 1.15(d). The funds must remain in the trust account until earned (the work is performed). See HRPC 1.15(d). "Non-refundable retainers" are absolutely prohibited.

No funds of the attorney may be deposited into the trust account except funds reasonably sufficient to pay or to avoid paying bank charges (including minimum deposit service fees) and checks made payable jointly to the attorney and the client (fees and expenses owed to the attorney must then be promptly withdrawn after deposit to avoid commingling). See HRPC 1.15(c). In all other cases, an attorney may not deposit earned fees into a trust account.

In situations involving a joint check, should the client disagree with the attorney's claim to a portion of the funds, the attorney must pay to the client any undisputed sums owed to the client, withdraw any undisputed sums attributable to the attorney's fees and expenses, and keep the disputed sums in the trust account until the disagreement is resolved. See HRPC 1.15(c).

Trust account funds cannot be commingled with the attorney's own; nor can an attorney

misappropriate the funds. "Borrowing" client and third party funds is conversion, no matter the amount or the reason.

All trust account withdrawals must be made only by authorized bank transfer or by check to a named payee. See HRPC 1.15(e). Trust account checks cannot be made to "cash." Earned fees must be withdrawn by check from the trust account and payable only to the lawyer, law partnership, or professional law corporation. No personal or non-client business expenses of the lawyer or law firm can be paid directly from the trust account. Non-client business expenses include rent, payroll, utilities, and supplies.

Finally, a trust account should never be used for personal purposes. Using an account labeled a trust account, which contains no client funds and is used primarily as an operating or personal account, is unethical. Unfortunately, no matter how well-intentioned you or your staff may be, even technical, unintentional violations of Rule 1.15 require an investigation and the institution of penalties by ODC. Attorneys are responsible for all client trust funds and cannot delegate such responsibility to their staff members. Be sure to review your firm's procedures regarding your client trust accounts to insure strict compliance.

Notice of Reinstatement

The Supreme Court of Hawai'i has reinstated JEROME K. MULLER to the practice of law effective January 17, 2003.

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