

## **CHAPTER 45**

### **CLIENT TRUST ACCOUNT RULES**

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## CHAPTER 45 CLIENT TRUST ACCOUNT RULES

**Rule 45.1 Requirement for client trust account.** Funds a lawyer receives from clients or third persons for matters arising out of the practice of law in Iowa shall be deposited in one or more identifiable interest-bearing trust accounts at a financial institution with a branch geographically located in Iowa. The trust account shall be clearly designated as “Trust Account.” No funds belonging to the lawyer or law firm may be deposited in this account except:

1. Funds reasonably sufficient to pay or avoid imposition of fees and charges that are a lawyer’s or law firm’s responsibility, including fees and charges that are not “allowable monthly service charges” under the definition in rule 45.5, may be deposited in this account; ~~or.~~

2. Funds belonging in part to a client and in part ~~presently-currently~~ or potentially to the lawyer or law firm must be deposited in this account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

3. Other property of clients or third persons shall be identified as such and appropriately safeguarded.

### **Rule 45.2 Action required upon receiving funds; ~~accounting, and;~~ records.**

**45.2(1) Authority to endorse or sign client’s name.** Upon receipt of funds or other property in which a client or third person has an interest, a lawyer shall not endorse or sign the client’s name on any check, draft, security, ~~or~~ evidence of encumbrance, ~~or~~ transfer of ownership of realty or personalty, or any other document without the client’s prior express authority. A lawyer signing an instrument in a representative capacity shall so indicate by initials or signature.

**45.2(2) Accounting and returning funds or property.** Except as stated in this chapter or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and shall promptly render a full accounting regarding such property.

#### **45.2(3) Maintaining records.**

a. A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these rules and required by Iowa ~~R. of Prof.~~ Rule of Professional Conduct 32:1.15 and shall retain the following records for a period of six years after termination of the representation:

(1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee, and purpose of each disbursement; ~~;~~

(2) Ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed; ~~;~~

(3) Copies of retainer and compensation agreements with clients as required by Iowa ~~R. of Prof.~~Rule of Professional Conduct 32:1.5;

(4) Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(5) Copies of bills for legal fees and expenses rendered to clients;

(6) Copies of records showing disbursements on behalf of clients;

(7) The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;

(8) Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient, and the trust account name or number from which money is withdrawn;

(9) Copies of monthly trial balances and monthly reconciliations of the client trust accounts maintained by the lawyer; ~~and,~~

(10) Copies of those portions of client files that are reasonably related to client trust account transactions.

b. With respect to trust accounts required by Iowa ~~R. of Prof.~~Rule of Professional Conduct 32:1.15:

(1) Only a lawyer admitted to practice law in this jurisdiction or a person under the direct supervision of the lawyer ~~shall~~may be an authorized signatory or authorize transfers from a client trust account;

(2) Receipts ~~shall~~must be deposited intact and records of deposit should be sufficiently detailed to identify each item; ~~and,~~

(3) Withdrawals ~~shall~~must be made only by check payable to a named payee and not to cash, or by authorized bank transfer.

c. Records required by this rule may be maintained by electronic, photographic, computer, or other media provided that the records otherwise comply with these rules and that printed copies can be produced. These records ~~shall~~must be accessible to the lawyer.

d. Upon dissolution of a law firm or of any legal professional corporation, the partners ~~shall~~must make reasonable arrangements for the maintenance of the records specified in this rule.

e. Upon the sale of a law practice, the seller ~~shall~~must make appropriate arrangements for the maintenance of the records specified in this rule.

**Rule 45.3 Type of accounts and institutions where trust accounts must be established.** Each trust account referred to in rule 45.1 ~~shall~~must be an interest-bearing account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence. The financial institution must be authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Interest-bearing trust funds may be placed in accounts at credit unions only to the extent that each individual client's funds are eligible for insurance. Interest-bearing trust funds ~~shall~~must be placed in accounts from which withdrawals or transfers

can be made without delay when such funds are required, subject only to any notice period which the depository institution is required to observe by law or regulation.

**Rule 45.4 Pooled interest-bearing trust account.**

**45.4(1)** *Deposits of nominal or short-term funds.* A lawyer who receives a client's or third person's funds ~~shall~~must maintain a pooled interest-bearing trust account for deposits of funds that are nominal in amount or reasonably expected to be held for a short period of time. A lawyer ~~shall~~must inform the client or third person that the interest accruing on this account, net of any allowable monthly service charges, will be paid to the Lawyer Trust Account Commission established by the supreme court.

**45.4(2)** *Exceptions to using pooled interest-bearing trust accounts.* All client or third person funds ~~shall~~must be deposited in an account specified in rule 45.4(1) unless they are deposited in:

a. A separate interest-bearing trust account for the particular third person, client, or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

b. A pooled interest-bearing trust account with subaccountings that will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client or third person.

**45.4(3)** *Accounts generating positive net earnings.* If the client's or the third person's funds could generate positive net earnings for the client or third person, the lawyer ~~shall~~must deposit the funds in an account described in rule 45.4(2). In determining whether the funds would generate positive net earnings, the lawyer ~~shall~~must consider the following factors:

a. The amount of the funds to be deposited~~;~~;

b. The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held~~;~~;

c. The rates of interest or yield at the financial institution in which the funds are to be deposited~~;~~;

d. The cost of establishing and administering the account, including service charges, the cost of the lawyer's services, and the cost of preparing any tax reports required for interest accruing to a client's benefit~~;~~;

e. The capability of financial institutions described in rule 45.3 to calculate and pay interest to individual clients~~;~~; ~~and.~~

f. Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

**45.4(4)** *Directions to depository institutions.* As to accounts created under rule 45.4(1), a lawyer or law firm ~~shall~~must direct the depository institution:

a. To remit interest or dividends, net of any allowable monthly service charges, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission~~;~~;

b. To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of allowable monthly service charges deducted, if any, and the account balance(s) for the period covered by the report~~;~~; ~~and.~~

c. To report to the Client Security Commission in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds. In the case of a dishonored instrument, the report ~~shall~~must be identical to the overdraft notice customarily forwarded to the depositor, and ~~shall~~must include a copy of the dishonored instrument, if such a copy is normally provided to depositors. In the case of instruments that are honored when presented against insufficient funds, the report ~~shall~~must identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, and the amount of overdraft. If an instrument presented against insufficient funds is not honored, the report ~~shall~~must be made simultaneously with, and within the time provided by law for, any notice of dishonor. If the instrument is honored, the report ~~shall~~must be made within five banking days of the date of presentation for payment against insufficient funds.

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**Rule 45.6 Lawyer certification.** Every lawyer required to have a client trust account ~~shall~~must certify annually, in such form as the supreme court may prescribe, that the lawyer or the law firm maintains, on a current basis, records required by Iowa ~~R. of Prof'l~~Rule of Professional Conduct 32:1.15(a).

**Rule 45.7 Advance fee; ~~and~~ expense payments.**

**45.7(1) Definition of advance fee payments.** “Advance fee payments” are payments for contemplated services that are made to the lawyer prior to the lawyer’s having earned the fee.

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**Rule 45.9 Special retainer.**

**45.9(1) Definition.** A “special retainer” is a fee that is charged for the performance of contemplated services rather than for the lawyer’s availability. Such a fee is paid in advance of performance of those services.

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**Rule 45.10 Flat fee.**

**45.10(1) Definition.** A “flat fee” is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

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**Rule 45.11 Designation of successor signatories.** A lawyer who is the sole lawyer signatory on an attorney trust account may designate, in an instrument acceptable to the depository for the trust account, a successor signatory, who ~~shall~~must be a member of the bar in good standing and admitted to the practice of law in Iowa, and whose authority ~~shall~~must become effective upon the occurrence of an event or events described in the instrument. The event or events described in the instrument may include death, disappearance, abandonment of law practice, temporary or permanent incapacity, suspension, or disbarment.