

Session Four
Successful Small Firm
Practice Course

Fees & Handling Money
October 4, 2021

District of Columbia Bar

The primary rules . . .

[Rule 1.5](#)

[Rule 1.15](#)

[Rule 1.16](#)

The Rules . . .

- DC Rule 1.5 Fees need to be reasonable -
Elements: Effort you make, the demand, the market, the stakes & result, the client & the lawyer, nature of the fee

The Rules . . .

- Rule 1.15 Keeping property safe & separate - trust account, IOLTA, complete records, fiduciary duty, the interaction between the trust account & operating account.

The Rules . . .

- Rule 1.16(d) The lawyer shall return any fee or expense that has not been earned or incurred.

The issues . . .

- Setting & collecting reasonable fees
- Profiting while being competitive & affordable
- Managing money & keeping track
- Walking the talk - consistency between the fee agreement your practice
- Creating & managing good systems

Fees . . .

- Your market analysis - Section IV Plan & page 12, Fee Setting
- The Productive Hour calculation (Session One, slides 58-68)
- Profit is a conscious choice
- Innovate with fees
- Practice talking about money

The moment . . .

- When is your prospective client's need for your problem solving skill at its peak?
- This is when you talk about and agree on the money and all money related issues.

The moment . . .

- When is your client's need for your service at its lowest?
- When you have solved the problem, where is the need for you now?
- An account receivable can be tough to collect when the problem is solved or minimized.

Managing money . . .

- The operating account;
- The DC IOLTA, a special trust account;
- The trust account for a single fund.

IOLTA issues . . .

- The two exceptions in Rule 1.15(b);
- Informed consent for the “different arrangement” in Rule 1.15(e).

Keeping track of money . . .

- Paper ledgers can work just fine;
- [Quickbooks](#), [Xero](#) or [FreshBooks](#) can be better.
Consider [TrustBooks](#);
- Outsource some or all of the process;
- Using a cutting-edge bank & having “complete records” (Rule 1.15(a)).

Walking the talk . . .

- Consistency between the Fee Agreement and the way things really work;
- The complex system - hourly evergreen;
- The simple system - invoice after the work is performed.

Tracking time & work . . .

- Manually or by spreadsheet;
- Time59.com, TimeSlips, RocketMatter, [Clio](#), Bill4Time
- [Management Software Comparison Chart](#)

Credit card issues . . .

- Understanding the process;
- LawCharge & [LawPay](#)
- Square & PayPal
- [LEO 348](#) & charge backs

The risks . . .

- Pricing & value issues;
- Ignoring your fee agreement;
- Working for free & chasing receivables;
- Co-mingling & misappropriation.

The rewards . . .

- Innovation & market share;
- Managing & reducing the moving parts;
- The innate protection of sound management;
- Operating at a profit.

What checking accounts do I need?

- Operating (business) checking account - a commercial checking account for your firm**
- IOLTA Trust Account (assuming you have IOLTA eligible funds) Create with the IOLTA Registration Form**
- Trust Account for a single client or case (only if you have a non-IOLTA eligible fund that will generate interest for its owner)**

IOLTA eligible funds . . .

- **Must be held in an approved IOLTA bank;**
- **Are funds that are nominal in amount, or**
- **Held for a short period of time;**
- **Such that effort to administer consumes interest income.**
- **Example of an account name: *Daniel M. Mills DC IOLTA Account;***
- **Interest goes to the DC Bar Foundation for pro bono legal services.**

Three exceptions in Rule 1.15(b) & (e)

- **“ . . . when the lawyer is otherwise compliant with the contrary mandates of a tribunal . . . ”;**
- **If you are licensed and principally practice in another jurisdiction and are IOLTA compliant there; Rule 1.15(b);**
- **“unless the client gives informed consent to a different arrangement.” Rule 1.15(e)**

Trust Account Records

- **What are you required to keep? *Complete records* - Rule 1.15(a);**
- **How long? . . . *for a period of five years after termination of the representation.* Rule 1.15(a);**
- **But is it ever safe to destroy trust account records when there is no statute of limitation on a Bar Complaint?**

Complete records?

- **What are complete records of a trust account transaction?**
- **If Disciplinary Counsel cannot figure it out from your records, then your records are not complete.**
- ***In re Donald A. Clower*, 831 A.2d 1030, DCCA 2003.**

- **“Complete records” tell the full story of how the lawyer handled the money and whether the lawyer followed the Rules;**
- **If the records show what happened and that you complied with the Rules, then they are complete;**
- **“The reason for requiring complete records is so that any audit of the attorney’s handling of clients funds by Bar Counsel can be completed even if the attorney or the client, or both, are not available.” *In re Clower* at 1034.**

Managing Money



When the lawyer comes into possession of an IOLTA eligible fund



IOLTA account



Operating account

So where does the money go?

If the Fee is an ...



Advance Fee



It goes in your...

IOLTA Account

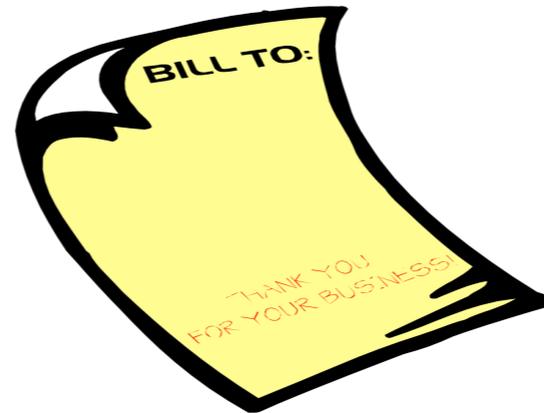
Then you....



Perform the work

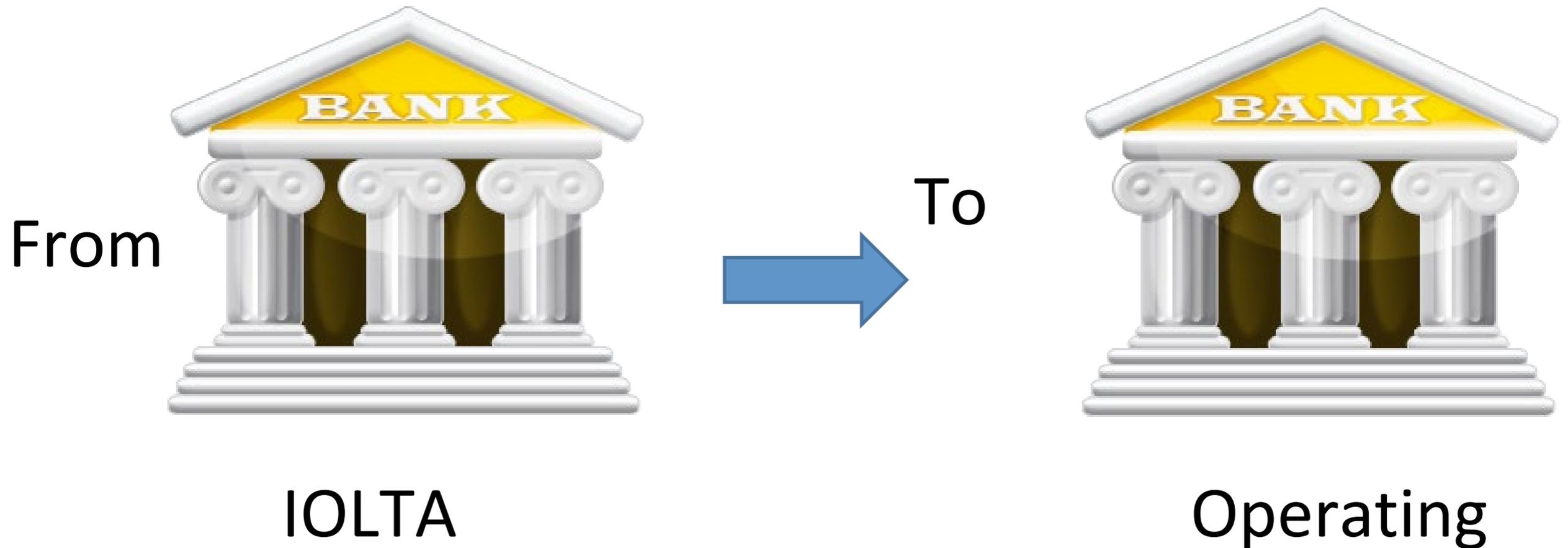


And then...



Send invoice

Move the money per your fee agreement ...



These separate accounts can be at the same bank or different banks

What if you get paid after the work is performed?

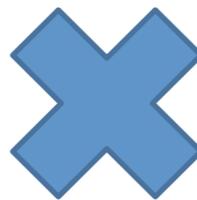


Then you deposit straight to...



Operating Account



NEVER 

Advance Fee



Operating Account

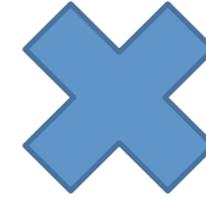
UNLESS.....

You obtain the client's "Informed Consent" to deposit their money into your operating account - Rule 1.15(e).

Best Practice Tip: Don't Do This!



NEVER



Your Money



IOLTA Account

Except....

You can put your own money into an IOLTA Account pursuant to D.C. Rule 1.15(f) which says...

Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

In Re Mance

980 A.2d 1196 (D.C. 2009)

- **A flat fee is now an advance fee when it is paid before work begins**
- **Rule 1.15(e) applies - it must be entrusted**
- **Flat fees go into the IOLTA Trust Account**
- **The fee agreement determines how and when you earn the fee**
- **A lawyer cannot earn a fee for doing nothing.**
In re Sather, 3 P.3d at 414

When does a flat fee go into the operating account?

- When the work is done and the fee is earned.
- If a flat fee is paid after the work is performed, it goes into the operating account.

Availability - What's that?

- **Flat fee for work is not an *engagement retainer* (classic definition)**
- **Engagement retainer refers to availability, if required**
- **Flat fee for a task-based matter covers all the work to be done**
- **LEO 355 - Flat Fees & Trust Accounts**
- **Availability gigs are rare and unique**

Rule 1.15(e) informed consent - what is needed?

- **Flat fees normally are entrusted**
- **Un-entrusted fee will be treated as the lawyer's property**
- **Lawyer must work for the fee to keep it**
- **Lawyer must explain the benefit or service**
- **Lawyer must refund any fee not earned**
- **Fee is subject to the lawyer's creditors**

What is the message sent by this?

IN RE KENNETH A. MARTIN

NO. 11-BG-775 DCCA February 13, 2014

- **If a client, *with reasonable promptness*, disputes a lawyer's fee after it has been withdrawn from the trust account, the lawyer must return the disputed sum to the trust account;**
- **Unearned fees that must be returned to the client under Rule 1.16(d) include an arbitration award in favor of the client.**

Be alert for the scam

- It's very sophisticated now;**
- It involves a check to deposit in your trust account and fees for you;**
- The scammer will want funds wired;**
- Wait for the check to clear. That is the only way to know if it is a fake check.**
- And use a unique procedure under the UCC for added protection.**

And if you want to be safe . . .

- **Ask the bank to send the check for “collection” (UCC 4-501);**
- **Allows for positive confirmation the check has been paid before any funds are disbursed.**

Ethics help . . .

- **From the DC Bar, it is free & confidential;**
- **Hope Todd, Saul Singer, Erika Stillabower & Nakia Matthews;**
- **202-737-4700 / ext. 1010**
- **ethics@dcbar.org**
- **The best ethics guidance comes in a conversation.**

Practice Management

- **Dan Mills / 202-780-2762 voice / 571-213-3401 mobile**

dmills@dcbar.org

Next session . . .

- October 18, 2021, Noon – 2 pm, Fee Agreements;
- Create a Concept Map of the elements of your fee agreement for your highest profit service.
- Read [In Re Mance](#) & [In Re Martin](#)