Rule 42 ER 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

1. to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account; or
2. to pay any merchant fees or credit card transaction fees or to offset debits for credit card chargebacks.
3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, 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, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer. The lawyer shall promptly distribute any portions of the property as to which there are no competing claims. Any other property shall be kept separate until one of the following occurs:

1. the parties reach an agreement on the distribution of the property;
2. a court order resolves the competing claims; or
3. distribution is allowed under section (f) below.

(f) Where the competing claims are between a client and a third party, the lawyer may provide written notice to the third party of the lawyer's intent to distribute the property to the client, as follows:

1. The notice shall be served on the third party in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure, and must inform the third party that the lawyer may distribute the property to the client unless the third party initiates legal action and provides the lawyer with written notice of such action within 90 calendar days of the date of service of the lawyer's notice.
2. If the lawyer does not receive such written notice from the third party within the 90-day period, and provided that the disbursement is not prohibited by law or court order, the lawyer may distribute the funds to the client after consulting with the client regarding the advantages and disadvantages of
disbursement of the disputed funds and obtaining the client's informed consent to the distribution, confirmed in writing.

(3) If the lawyer is notified in writing of an action filed within the 90-day period, the lawyer shall continue to hold the property separate unless and until the parties reach an agreement on distribution of the property, or a court resolves the matter.

(4) Nothing in this rule is intended to alter a third party's substantive rights.

CREDIT(S)


COMMENT [2003 AMENDMENT]

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. See Supreme Court Rules 43(i) and 44.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] [Effective December 1, 2004] The Rule also recognizes that third parties may have just claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim has become a matured legal or equitable claim, and unless distribution is otherwise allowed under this rule, the lawyer must refuse to surrender the property to the client until the claims are resolved. In addition to the procedures described in this rule, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyer's fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate. Every lawyer has a professional obligation to participate in the collective efforts of the bar to reimburse clients and escrow beneficiaries who have lost money or property as the result of dishonest conduct in the practice of law. A lawyer's financial contribution to a lawyers' fund for client protection is an acceptable method of fulfilling this obligation.
For further obligations regarding client property and trust accounts, see Supreme Court Rule 43 ("Trust Account Verification") and Rule 44 ("Trust Accounts; Interest Thereon").

COMMENT [2009 AMENDMENT]

[1] The 2009 amendments to E.R. 1.15 correspond with the 2009 amendments to Supreme Court Rule 43 on Trust Accounts. Supreme Court Rule 43 and the 2009 comments thereto contain additional requirements and procedures governing credit card transactions.

[2] For purposes of this rule, “merchant fees” and “credit card transaction fees” are fees that are deducted from the amount of the credit card charge to pay the company that issued the client’s credit card, the lawyer or law firm’s credit card processing service, and the credit card association (e.g., Visa, MasterCard), and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client’s account. A “chargeback” (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer’s or law firm’s account is debited an amount equal to the disputed amount, plus a chargeback fee.

[3] Lawyers and law firms are permitted, and in some cases may be required, to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all merchant and credit card transaction fees, chargeback fees and related charges. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to cover those charges, since no client or third-party funds will be at risk due to debits from the trust account. Lawyers should consult Rule 43 on the circumstances when lawyer funds are required to be maintained in a trust account to avoid misappropriation or conversion of client or third-party funds.

COMMENT [2014 AMENDMENT]

[1] New paragraph (f) allows a lawyer to distribute funds or property in the lawyer's possession after providing notice to third persons known to claim an interest. Notice under paragraph (f) must be sufficient to allow the third person to take appropriate action to protect its interests. Although there is no one form of notice that will be acceptable, the notice should generally include at least the following: (a) a description of the funds or property in the lawyer's possession; (b) the name of the client claiming an interest in the funds and other information reasonably available to the lawyer that would allow the third person to identify the claim or interest; (c) a mailing address, telephone number, and email address where the third party can provide notice to the lawyer of the commencement of an action asserting an interest in the funds or property; and (d) the proposed distribution of the funds or property. The notice shall be served in the manner provided under Rules 4.1 or 4.2 of the Arizona Rules of Civil Procedure.

[2] Apart from their ethical obligations, lawyers may have legal obligations to safeguard third-party funds under applicable case and statutory law. The notice provisions of paragraph (f) do not alter a lawyer's legal obligations and duties to third persons with respect to funds or property in the lawyer's possession. A lawyer who proposes to distribute funds under this paragraph should carefully evaluate the underlying law governing the lawyer's obligations to safeguard funds in which third persons claim an interest, which may expose the lawyer to a risk of civil or other liability even if the notice provisions of paragraph (f) are satisfied.
[3] Before making any distribution of funds or property pursuant to paragraph (f), a lawyer should explain to the client that the client may remain responsible to satisfy valid claims of third persons, and that the third person's failure to commence an action within the 90-day period of paragraph (f) will not by itself operate to waive, reduce or extinguish the third person's claim, if any, against the client or the funds or property received by the client. Before making any distribution under paragraph (f), the lawyer must obtain the client's informed consent, confirmed in writing, to the distribution.
Rule 43. Trust Accounts

(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer. Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer or law firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. Funds to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account, but only in an amount reasonably estimated to be necessary for that purpose may be deposited therein.

2. Funds to pay merchant fees or credit card transaction charges or to offset debits for credit card chargebacks, but only in an amount reasonably estimated to be necessary for those purposes may be deposited therein.

3. Earned fees and funds for reimbursement of costs or expenses may be deposited into a trust account if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses and the lawyer does not use a credit card processing service that permits the lawyer to direct such funds to the lawyer's separate business account. Any such earned fees and funds for reimbursement of costs or expenses must be withdrawn from the trust account within a reasonable time after deposit.

4. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the lawyer shall comply with ER 1.15(e).

(b) Trust Account Requirements.


A. Due professional care must be exercised in the performance of the lawyer's duties under this rule.

B. Employees and others assisting the attorneys in the performance of such duties must be competent and properly trained and supervised.

C. Internal controls within the lawyer's office must be adequate under the circumstances to safeguard funds or other property held in trust.

2. Trust Account Records.

A. Every active member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of final disposition by the lawyer of all such funds, securities and other property. The lawyer shall preserve these records for a period of five years after termination of the representation.

B. A lawyer shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

(i) the date, amount and payor of each receipt of funds;

(ii) the date, amount and payee of each disbursement; and
(iii) any unexpended balance.

C. A lawyer shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

3. Deposits from Credit Card Transactions. A lawyer or law firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if:

A. the lawyer has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges;

B. within three business days of receipt of notice or actual knowledge that a chargeback has been made, the lawyer deposits into the trust account his or her own funds in an amount equal to the amount of the chargeback that exceeds the client's credit card funds remaining in the trust account, and any fees or charges associated with the chargeback; and

C. the trust account contains sufficient funds of the lawyer or law firm at the time of the transaction to pay all merchant and credit card transaction fees, except to the extent such fees are paid by the client as part of the transaction.

4. Disbursement Against Uncollected Funds. A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, “collected funds” means funds deposited, finally settled by the issuer's bank, and credited without recourse to the lawyer's trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

(i) when the deposit is made by certified check or cashier's check;

(ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;

(iii) when the deposit is made by a check issued by the United States, the State of Arizona, or any agency or political subdivision of the State of Arizona; or
(iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Arizona.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered to have committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

5. Methods of Disbursement. All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

(c) Certificate of Compliance. Every active member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

I have read Rule 43, Rules of the Supreme Court, and ER 1.15, Arizona Rules of Professional Conduct, and certify that I am in compliance with the provisions thereof, or am exempt from such provisions as therein provided.

Dated: ____________________________________________________________________________
                                                                                           
Signature: __________________________________________________________________________
                                                                                           
Type or print name: __________________________________________________________________
                                                                                           
As an alternative to filing a written certificate, the board may allow certification to be filed electronically in a method and form as approved by the board.

(d) Trust Account Examination; Random Examination.

1. Authority. The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.
2. **Scope of Examination.** The state bar may verify all funds, securities and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other form of maintaining trust funds, securities or property, together with deposit slips, cancelled checks, and all other records pertaining to transactions concerning trust funds, securities and property.

3. **Rebuttable Presumption.** If a lawyer fails to maintain trust account records required by this rule or ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. **Limited Exception for Out-of-State Members.** All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer whose law office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. **Trust Account Examination and Verification Expenses.** A member whose trust account has been examined or verified pursuant to this rule shall not be responsible for the costs and expenses related to the examination or verification, unless such costs and expenses are imposed pursuant to an order of diversion as set forth in Rule 55(a) or in conjunction with imposition of a disciplinary sanction as set forth in Rule 54(b) or Rule 60(b).

(e) **Confidentiality.** The provisions of Rule 70(b) of these rules shall apply to records acquired during examinations conducted pursuant to this rule. In those instances where the state bar conducts a random examination of a member's trust account(s) that does not result in a disciplinary charge, all information received as a result of that examination shall be kept strictly confidential and shall not be released to any person(s).

(f) **Establishment of Trust Accounts; State Bar Oversight.**

1. A lawyer or law firm receiving funds belonging in whole or in part to a client or third person in connection with a representation must hold the funds in one of the following types of accounts:

   A. a pooled interest-bearing or dividend-earning trust account ("IOLTA account") on which the interest or dividends accrue for the benefit of the Arizona Foundation for Legal Services and Education ("Foundation");

   B. a separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

   C. a pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer or the law firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

2. In determining which type of account provided for in section (f)(1) to use, a lawyer or law firm shall take into consideration the following factors:

   A. the amount of 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 financial institutions where the funds are to be deposited;
D. the cost of establishing and administering a separate non-IOLTA account for the client’s benefit, including service charges, the costs of the lawyer’s services, and the costs of preparing any tax reports required for income accruing to the client’s benefit;

E. the capability of financial institutions to calculate and pay income 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.

Funds should be deposited in an IOLTA account as provided for in section (f)(1)(A) if the interest does not cover the cost of opening and maintaining a separate interest-bearing or dividend-earning account. The State Bar shall not pursue a disciplinary matter against any lawyer or law firm solely based on the good-faith determination of the appropriate account in which to deposit or invest client funds.

3. A lawyer or law firm must maintain any client trust account provided for in section (f)(1) only at a regulated financial institution, which is either (i) a financial institution authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers and is insured by the Federal Deposit Insurance Corporation or any successor insurance corporation(s) established by federal or state laws or (ii) any open-ended investment company registered with the Securities and Exchange Commission that is authorized by federal or state law to take deposits and conduct financial transactions with Arizona lawyers. A regulated financial institution must agree to comply with the requirements of section (f)(4) below and agree to pay IOLTA interest to the Foundation. The lawyer or law firm must ensure that:

A. withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation, and

B. the deposited funds are invested in the higher earning return of:

i. an interest-bearing checking account;

ii. a money-market deposit account with or tied to checking;

iii. a sweep account, which is a money-market fund or daily (overnight) financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or

iv. an open-end money-market fund solely invested in or fully collateralized by U.S. Government Securities.

A daily financial institution repurchase agreement may be established only with a regulated institution that is “well capitalized” or “adequately capitalized” as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must be invested solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities, must hold itself out as a “money-market fund” as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and at the time of the investment must have total assets of at least $250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

C. All service charges to the account are reasonable, related to the cost of maintaining the account, and computed in accordance with the financial institution’s standard accounting practices.

D. The financial institution sends notification immediately to the State Bar chief bar counsel of any properly payable instrument that is presented for payment against a client trust account containing insufficient funds, uncollectible funds, or a negative available balance, regardless of whether the financial institution honors the instrument. All occurrences shall be reported to the State Bar regardless of the cause.
If a financial institution ceases to operate as a regulated financial institution and has no successor operating as a regulated financial institution, a lawyer or law firm that maintains an account listed under section (f)(1) at that financial institution must, upon receiving notice of the financial institution's change in status, promptly notify any clients whose funds may be affected by the change in status, promptly transfer, to the extent possible, any client trust account funds from that financial institution into another account provided for in section (f)(1), and promptly deposit into the other account provided for in section (f)(1) any insurance, collateral, or proceeds resulting from the financial institution's change in status.

4. In addition to the requirements of section (f)(3), a lawyer or law firm may only maintain an IOLTA account as provided for in section (f)(1)(A) at an authorized regulated financial institution. To be designated as authorized, a regulated financial institution must sign a participation certification before the fiscal year beginning July 1, with the State Bar as representative of its members, and the Foundation as a third-party beneficiary and administrator of the interest or dividends.

A. The participation certification must:

i. define a reasonable charge for managing IOLTA accounts, which may include fees for reporting and recordkeeping;

ii. direct that interest or dividends, net of any reasonable service charges or fees, be remitted at least quarterly to the Foundation;

iii. provide that the financial institution transmit, with each remittance to the Foundation, a statement, as directed by the Foundation, showing information including the name of the lawyer or law firm on whose account the remittance is sent, the period for the remittance submitted, the account number, the account status, the rate of interest applied or the dividends earned, and the charges imposed against the interest remitted;

iv. provide that the financial institution transmit a report on each separate account, similar to the report required by section (f)(4)(a)(iii), to the lawyer or law firm opening said trust account;

v. direct that if the financial institution receives a subpoena duces tecum requesting documents pertaining to a lawyer's IOLTA account with the financial institution, the financial institution shall provide the documents specified in the subpoena duces tecum;

vi. provide that the terms apply to all branches of the regulated financial institution holding Arizona IOLTA accounts;

vii. provide that the financial institution be allowed to charge a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule;

viii. provide that the participation certification may not be cancelled by the regulated financial institution except upon 30 days' advance written notice to the State Bar and the Foundation;

ix. provide that the participation certification may not be cancelled or revoked except upon 30 days' advance written notice to the regulated financial institution;

x. provide for an annual approval period; and

xi. provide that any participation certification continues in existence during any time the authorized regulated financial institution is attempting to become reauthorized.

B. If an authorized regulated financial institution does not sign the participation certification for the fiscal year beginning July 1 during which the regulated financial institution wishes to be re-authorized:

i. The matter will be referred to a mediator selected by the Court.

ii. The mediator will have 60 days to meet with the parties and attempt to reach a settlement.
iii. If after 60 days with mediation the parties do not reach a participation certification as provided for in section (f)(4)(A) above, the State Bar shall:

(a) notify the Supreme Court that the financial institution has failed to sign a participation certification for the following fiscal year;

(b) notify members who maintain trust accounts at that regulated financial institution that the regulated financial institution has failed to sign a participation certification for the following fiscal year; and

(c) notify other members that the regulated financial institution is not in compliance and that no new trust accounts may be opened at that financial institution for the following fiscal year.

iv. Upon receiving the State Bar's request provided for in section (f)(4)(B)(iii)(a), the Court may issue an order de-authorizing a previously authorized regulated financial institution that is seeking to become reauthorized.

C. The State Bar and the Foundation shall ensure the maintenance of a website listing of authorized regulated financial institutions' status.

5. If the State Bar and the Foundation become aware of information indicating that an authorized regulated financial institution has not complied with the duties provided for in section (f), the State Bar shall notify the regulated financial institution of its failure to comply and that it has 90 days to cure its noncompliance.

A. If, after 45 days, the noncompliance has not been cured, then the State Bar shall:

i. notify members who maintain trust accounts at that regulated financial institution that the regulated financial institution had been given 90 days to cure its noncompliance and to date it has not complied;

ii. notify other members that the regulated financial institution is not in compliance and that no new trust accounts may be opened at that financial institution;

iii. notify the Supreme Court that the financial institution is in noncompliance and had been given 90 days to cure its noncompliance.

B. If the financial institution cures its noncompliance, the State Bar shall promptly notify its members and the Supreme Court.

C. If the financial institution fails to cure the noncompliance, the State Bar shall file with the Court a request for termination of authorized status of that financial institution.

D. The Court may issue an order terminating the authorized status of the financial institution and instructing the State Bar to:

i. assure removal of the institution from the list of authorized financial institutions, and

ii. notify all members of the removal.

E. Upon receiving the notice provided for in section (f)(5)(D):

i. Members who maintain trust accounts at the de-authorized financial institution shall:

(a) have 90 days to transfer their accounts to an authorized financial institution, and

(b) by the end of 90 days, notify the State Bar that their trust accounts have been transferred and provide pertinent account information.
ii. Members who continue to maintain trust accounts at the de-authorized financial institution more than 90 days after notice or who fail to tell the State Bar that they have done so shall be referred to the State Bar Lawyer Regulation Office.

6. Interest or dividends generated on accounts specified in section (f)(1)(A) shall be paid by the financial institution or investment company to the Foundation. The Foundation shall use the interest or dividends solely to:

A. support programs designed to assist in the delivery of legal services to the poor and law-related education programs designed to teach young people, educators and other adults about the law, the legal process and the legal system;

B. fund studies or programs designed to improve the administration of justice;

C. maintain a reasonable reserve; and

D. pay the actual costs of administering this rule and the activities set forth above.

7. In addition to other obligations under section (f) of this rule, all lawyers admitted to practice in this state shall:

A. as a condition thereof, consent to the reporting and production requirements set forth in this rule, and

B. provide information requested by the State Bar on the annual dues statement regarding any and all client trust accounts they maintain.

(g) [Reserved].

(h) Suspension of Member. Any active member who fails to comply with requirements of this rule shall be suspended summarily by order of the board upon notice by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

(i) Reinstatement of Member. A lawyer who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

(j) Applicability of Rule. Every lawyer admitted to practice law in Arizona shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.

CREDIT(S)


NOTES TO 2008 AMENDMENTS
This rule replaces former Rule 43 and 44 and authorizes the state bar to conduct random examinations of a member's trust account, in accordance with guidelines approved by the supreme court.

COMMENT [2009 AMENDMENT]
In an attempt to balance the need to safeguard client and third-party property and encourage access to legal services to those who need them, lawyers may allow funds from credit card transactions to be deposited into their client trust accounts for advance fees, costs or expenses, and merchant or credit card transaction fees related thereto. Lawyers who choose to accept credit card payments for advance fees, costs or expenses must comply with the procedures and requirements in this rule. Permitting the deposit of funds from a credit card transaction into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees is at the risk of the lawyer permitting the deposit.

For purposes of this rule, “merchant fees” and “credit card transaction fees” are fees that are deducted from the amount of the credit card charge to pay the company that issued the client’s credit card, the lawyer or law firm's credit card processing service, the credit card association (e.g., Visa, MasterCard) and related charges. Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client's account. A “chargeback” (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

The rule prohibits funds belonging to the lawyer or law firm from being deposited into a trust account except in limited circumstances. The rule allows earned fees and funds for reimbursement of costs or expenses to be deposited temporarily into the trust account only when those funds are part of a single credit card transaction that includes payment of advance fees, costs and expenses, and the lawyer does not use a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction should be deposited. Nothing in this rule prohibits lawyers from using one credit card account for the payment of earned fees and reimbursement of costs or expenses (with deposits made into an operating or business account) and another credit card account for the payment of advance fees, costs or expenses (with deposits made into the trust account).

To further protect client and third-party funds, lawyers and law firms should strive to use a credit card processing service that, at the lawyer's direction, will deposit advance fees, costs and expenses into the trust account and will debit the operating or business account for all fees and charges related to credit card transactions.

Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain sufficient funds of their own in their trust accounts to ensure that no bank or credit card fees or charges results in the conversion or misappropriation of funds belonging to clients or third parties. A lawyer violates this rule by failing to make the required deposit within three business days of receipt of notice or actual knowledge that a chargeback has been made to the trust account.

When credit card funds are appropriately deposited into a trust account, any merchant or credit card transaction fees paid by the client as part of the credit card transaction must remain in the trust account until those funds are debited from the account. A lawyer or law firm, however, may agree to pay merchant or credit card transaction fees for the client. In that event, the lawyer or law firm must have funds of their own in their trust account in an amount at least equal to the merchant or credit card transaction fees before conducting the transaction. A failure to do so will result in the conversion or misappropriation of client or third-party funds when the merchant or credit card transaction fees are debited from the trust account. Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay such fees and charges. Lawyers who maintain an unreasonable amount of their own funds in their trust accounts may be subject to a finding of misconduct.

Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts to pay such fees and charges, as no client or third-party funds will be at risk due to debits from the trust account.