



E-Alert - July 29, 2015

## Do You Have Unidentified Funds in Your IOLTA Account?

Beginning July 1, 2015, Illinois lawyers who discover unidentified funds in their IOLTA accounts must follow new requirements under Rule of Professional Conduct 1.15 regarding the handling of such funds. **Under Rule 1.15(i), a lawyer must make efforts to account for and return the funds. If further efforts after a period of 12 months are not likely to be successful, the lawyer must remit the unidentified funds to the Lawyers Trust Fund of Illinois.**

### **What are unidentified funds?**

Rule 1.15 defines unidentified funds as “amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.” Lawyers, particularly those who have been in practice for a long time, may discover accumulated balances that cannot be traced to a particular owner. These balances may result from past recordkeeping errors, failure to collect earned fees in a timely manner, or mistakes by the bank. Unidentified funds are not the same as unclaimed funds, whose owner is known but cannot be located or does not accept payment of the funds.

### **When should I remit unidentified funds?**

After 12 months of periodic efforts to identify and return the funds, if the lawyer determines that further efforts will not succeed, the funds must be remitted to the Lawyers Trust Fund (LTF).

### **May I remit unidentified funds discovered before July 1, 2015?**

A lawyer who has made periodic efforts to identify and return funds over at least a 12-month period may remit those funds to LTF at any time on or after the July 1, 2015 effective date of this rule. However, no lawyer is **required** to begin efforts to identify and return previously discovered funds prior to the July 1, 2015 effective date.

### **How do I remit unidentified funds?**

Lawyers should complete the [Unidentified Funds Remittance Report \(PDF\)](#) and mail it to the Lawyers Trust Fund along with a check for the amount of the unidentified funds. A complete, signed reporting form is required in all cases. LTF cannot accept remittances made via ACH or wire transfer.

### **The role of reasonable judgement**

Paragraph (i) leaves the determination of when funds are unidentified and when they should be remitted to the reasonable judgement of the lawyer. The rule states “[n]o charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer’s exercise of reasonable judgement” under paragraph (i).

### **What do I do with unclaimed funds?**

Unclaimed funds should be handled according to applicable statutes including the Uniform Distribution of Unclaimed Property Act (765 ILCS 1025 et seq.) Typically this requires holding the funds in question for five years, and then remitting them to the Illinois treasurer through the [I-Cash program](#).

### **Resources**

For more information and assistance regarding the unidentified funds requirement, consult these resources:

- **Rule of Professional Conduct 1.15**  
The amended rule that took effect July 1 is available here (PDF): <http://www.illinoiscourts.gov/SupremeCourt/Rules/Amend/2015/040715.pdf>
- **The Lawyers Trust Fund**  
Additional information about unidentified funds, including the remittance report, is available online at <http://ltf.org/lawyers/unidentified-funds/>. If you have a specific question please contact LTF Director of Banking Terri Smith-Ashford or General Counsel David Holtermann through this page: <http://ltf.org/contact>.
- **Attorney Registration & Disciplinary Commission**  
The ARDC’s [Client Trust Account Handbook \(PDF\)](#) is an in-depth guide to client trust account issues, including unidentified funds. Lawyers can also seek assistance through the [ARDC Ethics Inquiry Program](#).
- **Illinois State Bar Association**  
The ISBA has published advisory ethics opinions related to unidentified and unclaimed client funds, including [Opinion 15-02 \(PDF\)](#) regarding the recent changes to Rule 1.15.