The Supreme Court of Illinois has announced amendments to existing lawyer trust account guidelines. The new amendments to Rule 1.15 of the Illinois Rules of Professional Conduct help clarify the obligations that all lawyers have to manage and protect client funds. A copy of the recent rule changes can be viewed at: HTTP://WWW.STATE.IL.US/COURT/SUPREMCOURT/RULES/ART_VIII/ARTVIII_NEW.HTM#1.15

A lawyer has always been required to hold the money or property of clients or third persons that come into a lawyer’s possession separate from the lawyer’s own property. This is because a lawyer is a professional fiduciary who must safeguard client funds.

Beginning September 1, 2011, new trust account rules provide for three essential changes from current practice. The changes serve to benefit both the public and the profession.

First, lawyers will have to continue to segregate client funds, but the rule clarifies that they will have only two banking options as to where they hold client money. Beginning September 1st, client funds can only be deposited into either:

- An IOLTA (Interest on Lawyers Trust Account) account. An IOLTA account is a pooled interest or dividend-bearing client trust account established with an eligible financial institution used for the deposit of nominal or short term client funds. The interest on an IOLTA account is paid to the Lawyers Trust Fund of Illinois (LTF). LTF is a tax-exempt, not-for-profit organization that uses the interest generated by IOLTA accounts to make charitable contributions to not-for-profit agencies that provide legal aid to the poor; or

- A separate, interest-bearing non-IOLTA client trust account established to hold the funds of a specific client or third person with that specific client designated as the income beneficiary.
Funds of clients or third persons cannot be deposited in a non-interest or non-dividend-bearing account. Further a non-IOLTA account cannot be a pooled account.

A lawyer is required to exercise reasonable judgment in determining whether to place client funds in either an IOLTA account or a non-IOLTA trust account and no charge of ethical impropriety will attend to a lawyer's exercise of reasonable judgment.

A change to the Comments in Rule 1.15 also provides additional clarity regarding the appropriate use of advance payment retainers.

Second, the Supreme Court has adopted specific recordkeeping requirements for lawyers. Such recordkeeping rules are common nationally. In the future, Illinois lawyers will be required to: prepare and maintain receipt and disbursement journals for all client trust accounts; prepare and maintain contemporaneous ledger records; maintain copies of all accountings made to clients or third persons; and maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits. Further, lawyers must reconcile their client trust accounts on at least a quarterly basis. Lawyer business records are to be maintained for seven years. Those records may be maintained by electronic, photographic, or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

Third, the Supreme Court will require all banks where client trust funds are held to notify the Attorney Registration and Disciplinary Commission (ARDC) when a client trust account is overdrawn. The ARDC is a Supreme Court agency that investigates alleged wrongdoing by Illinois attorneys, holds hearings on specific charges, and recommends professional discipline to the Supreme Court where warranted. An overdraft notification law has already been adopted in 42 jurisdictions. A bounced check drawn on a client trust account can be an early warning that a lawyer is engaging in conduct that could injure clients. Experience in other states demonstrates, however, that most lawyer regulatory action under an overdraft notification rule does not result in lawyer disciplinary charges. Instead, the rule helps identify those lawyers who simply need education on managing their client trust accounts.

Questions about the rule amendments can be directed to either the ARDC or the LTF. More information about the rule changes, as well as a Frequently Asked Questions (FAQ) page, can be found at either organization's website. Both LAF and ARDC will be coordinating educational efforts to the lawyers of Illinois to familiarize them with the new requirements.

There are approximately 89,500 attorneys in Illinois. No tax dollars are used to support either the LTF or the ARDC.

For additional information concerning these amendments contact:

James J. Grogan, Attorney Registration and Disciplinary Commission, Chicago.
312.565.2600 or 800.826.8625

or

David Holtermann, the Lawyers Trust Fund of Illinois, Chicago
312.938.2906 or 800.624.8962

The ARDC Website is: www.iardc.org
The LTF Website is: www.ltf.org