



# Rules Governing Attorney Trust Accounts

## Idaho Bar Commission Rule 302:

**\*RULE 302. Right to Practice After Admission; Maintenance of Membership.** Following admission as a member of the Idaho State Bar, an attorney may maintain membership in the Bar as follows:

**\*(a) Active Member.** The right to engage in the active practice of law in the State of Idaho, after admission, shall be dependent upon:

**\*(1)** Payment of the annual license fee required by Rule 303; and

*\*(Section (1) amended 6-10-98 - effective 7-1-98)*

**(2)** Establishment of a trust account in a financial institution in the state of Idaho for the safekeeping of the monies and properties of the member's Idaho clientele.

**(A)** All trust accounts maintained by members of the Idaho State Bar shall be clearly identified as such

**(i)** Lawyers who practice in Idaho shall deposit all funds held in trust in this jurisdiction in accordance with Rule 1.15(a) of the Idaho Rules of Professional Conduct in accounts clearly identified as "trust" or "escrow" accounts, referred to herein as "trust accounts", and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts.

**(ii)** Funds held in trust include funds held in any fiduciary capacity, whether as trustee, agent, guardian, executor or otherwise. Attorney trust accounts shall be maintained only in financial institutions approved by the Idaho Supreme Court or the Idaho State Bar.

**(B)** As a condition of licensing, all active members shall be required to consent to disclosure of trust account overdrafts.

**(i)** Because the consent of depositors is required to permit financial institutions to comply with this Rule, every lawyer practicing or admitted to practice in Idaho shall, as a condition thereof, be required to consent to the reporting and production requirements mandated by this Rule.

**(ii)** Consent shall be acknowledged as part of every lawyer's annual licensing form.

**(iii)** Lawyers practicing in Idaho by virtue of Rule 221, Rule 222, or under any other authority which does not require completion of the annual licensing form shall be deemed to have given their implied consent to the requirements of this rule as condition of their right to practice in Idaho.

**(C)** Financial institutions acting as depositories for trust accounts shall be required to consent to provide notification.

**(i)** A financial institution shall be approved as a depository of attorney trust accounts if it shall file with the Idaho State Bar an agreement, in a form provided by the Bar, to report to Bar Counsel in the event any properly payable instrument is presented against an attorney trust account containing funds insufficient to honor the instrument in full, irrespective of whether or not the instrument is honored.

**(ii)** The Supreme Court shall establish rules governing approval and termination approved status for financial institutions, and the Bar shall annually publish a list of approved financial institutions.

**(iii)** No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon [30] days notice in writing to the Idaho State Bar.

**(D)** The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

**(i)** In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor.

**(ii)** In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

**(iii)** Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within [5] banking days of the date of presentation for payment against insufficient funds.

**(E)** Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable cost of producing the reports and records required by this rule.

**(F)** Any disclosure made pursuant to this Rule shall be subject to the confidentiality requirements of Rule 521.

**\*(G)** As used in the above subsections, the following definitions apply:

**(i)** "Financial institution" - includes any bank, savings and loans association, credit union, savings bank or other entity, located within the state of Idaho, which accepts for deposit funds in accounts in which the principal is not at risk. Money deposited in such accounts must be fully insured by federal depositor insurance, including but not limited to FDIC, FSLIC, NCUA, or SIPC.

**(ii)** "Properly payable" - refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under laws of Idaho.

**(iii)** "Notice of dishonor" - refers to the notice which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument which the institution dishonors.

*\*(Section (G) amended 3-31-00)*

**(3)** Provision of a certificate of maintenance of trust account as required by the Idaho Rules of Professional Conduct; and

**(4)** Compliance with the requirements of Rule 402 or Rule 410 relating to continuing legal education; and

(5) Active members who are not residents of the State of Idaho shall be required to file with the Office of Bar Counsel of the Idaho State Bar the name and address of an agent within this state for the purpose of receiving service of process or any other document intended for the lawyer as a party, arising from the lawyer's practice of law. Service or delivery to such agent shall be deemed service upon or delivery to the lawyer. Nothing in this section is intended to conflict with service of process provisions set forth in the *Idaho Rules of Civil Procedure*; and

\*(6) Completion of the practical skills seminar, as set forth by Rule 402(f).

\*(Section (6) added as then Section (8) 2-13-92 - Effective 7-1-92.

\*(7) **Disclosure of Professional Liability Insurance.** Each lawyer admitted to the active practice of law shall certify to the Idaho State Bar on or before February 1 of each year (1) whether the lawyer represents private clients; (2) if the lawyer represents private clients, whether the lawyer is currently covered by professional liability insurance; and (3) whether the lawyer intends to maintain insurance during the next twelve months. Each lawyer admitted to the active practice of law in this jurisdiction who reports being covered by professional liability insurance shall identify the primary carrier and shall notify the Idaho State Bar in writing within 30 days if the insurance policy providing coverage lapses, is no longer in effect, or terminates for any reason, unless the policy is renewed or replaced without substantial interruption.

\*(Section (7) added 6-5-06 – Effective 10-1-06)

\*(Section (a) amended 2-7-97 - Effective 7-1-97.)

\*(b) **Affiliate Member.** A member of the Idaho State Bar who indicates he or she will not meet the requirements for active membership during the current licensing year may maintain an affiliate membership by payment of the annual membership fee as required by Rule 303.

\*(Section (b) amended 6-10-98 - effective 7-1-98)

(c) **House Counsel.** A person to whom a house counsel license has been issued may maintain such license by meeting the requirements established by Subsection (a) of this Rule.

\*(d) **Emeritus Member.** A person who meets the requirements of IBCR 223 may maintain an emeritus membership by payment of the annual membership fee as required by Rule 303.

\*(Section (d) 6-10-98 - effective 7-1-98)

(e) **Inactive Member.** Any member of the Idaho State Bar who advises the Idaho State Bar, in writing, that he or she does not intend to meet the licensing requirements for the current licensing year, or who fails to meet the licensing requirements for the current licensing year shall be considered an inactive member of the Bar.

\*(Rule 302 rescinded and replaced 3-15-90)

## Idaho Rule of Professional Conduct 1.15:

### RULE 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 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.

(c) 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 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, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(d) When in the course of representation a lawyer is in possession of 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 until the dispute is resolved. The lawyer shall distribute all portions of the property as to which the interests are not in dispute.

(e) Nothing in these Rules shall prohibit a lawyer or law firm from placing clients' funds which are nominal in amount or to be held for a short period of time in one or more interest-bearing accounts for the benefit of the charitable purposes of a Court-approved Interest on Lawyer Trust Accounts (IOLTA) program.

\*(f) Unless an election not to do so is submitted in accordance with the procedure set forth in subsection (j) of this Rule, a lawyer or law firm with which the lawyer is associated who receives client funds shall maintain a pooled interest-bearing depository account for disposition of client funds that are nominal in amount or expected to be held for a short period of time. Such an account shall comply with the following provisions:

(1) The account shall include all clients' funds which are nominal in amount or are expected to be held for a short period of time.

(2) No interest from such an account shall be made available to a lawyer or law firm.

(3) The determination of whether clients' funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each lawyer or law firm.

(4) Notification to clients whose funds are nominal in amount or to be held for a short period of time is not required.

*\*(Section (f) amended 6-5-06)*

(g) An interest-bearing trust account established pursuant to subsection (a) of this Rule shall be established in accordance with I.B.C.R. 302(a)(2).

(h) Lawyers or law firms depositing clients' funds which are nominal in amount or to be held for a short period of time in an interest-bearing depository account under subsection (f) of this Rule shall direct the depository institution:

(1) to remit interest or dividends, net of reasonable service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, at least quarterly, to the Idaho Law Foundation;

(2) to transmit with each remittance to the Idaho Law Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the average account balance of the period for which the report is made; and

(3) to transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(i) Interest transmitted to the Idaho Law Foundation shall, after deduction for the necessary and reasonable administrative expenses of the Idaho Law Foundation for operation of the IOLTA program, shall be distributed by that entity in proportions it deems appropriate, for the following purposes:

(1) to provide legal aid to the poor;

(2) to provide law related education programs for the public;

(3) to provide scholarships and student loans;

(4) to improve the administration of justice; and

(5) for such other programs for the benefit of the public as are specifically approved from time to time by the Supreme Court of Idaho.

*\*(j) A lawyer or law firm that elects to decline to maintain accounts described in subsection (e) of this Rule shall submit a Notice of Declination in writing to the Executive Director of the Idaho State Bar or designee by February 1 of the year to which the Notice of Declination will apply.*

(1) Notwithstanding the foregoing, any lawyer or law firm may petition the Court at any time and for good cause shown may be granted leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

(2) A lawyer or law firm that does not file with the Executive Director of the Idaho State Bar a Notice of Declination in accordance with the provisions of this Rule shall be required to maintain account in accordance with subsection (f) of this Rule.

*\*(Section (j) amended 6-5-06)*

(k) Each active member of the Idaho State Bar shall certify, each year, upon making application for licensure the following year that he or she has and intends to keep in force, in the state of Idaho, a separate bank account or accounts for the purpose of keeping money in trust for his or her clients, which account conforms to the requirements of this disciplinary rule, or that because of the nature of his or her practice no client funds are received. Certification shall be upon a form to be provided by the Idaho State Bar and shall include the following:

(1) The name and address of the lawyer or law firm filing the certification;

(2) The name and address of each financial institution in which the account or accounts are maintained;

(3) The number of each account maintained pursuant to this rule;

(4) The dates covered by the certification; and

(5) The signature, under penalty of perjury, of the lawyer making the certification.

## *Commentary*

[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 that 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, e.g., ABA Model Financial Recordkeeping Rule.

[2] While some jurisdictions permit lawyer so keep a minimal balance in the trust account to cover bank service charges, Idaho does not permit this practice.

[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] Paragraph (d) also recognizes that third parties may have lawful 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 is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, 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] The Client Assistance Fund (Section VI of the Idaho Bar Commission Rules) refers to the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer.

[7] Paragraphs (e) through (j) of this Rule set forth the provisions of Idaho's Interest on Lawyer Trust Accounts (IOLTA) rule.

[8] Paragraph (k) notes the requirement in the Idaho Bar Commission Rules that lawyers certify compliance with trust account practices on the annual license form.