Garden State CLE
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Video Course Evaluation Form

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Name of Course You Just Watched_____

Please Circle the Appropriate Answer

Instructors:	Poor	Satisfactory	Good	Excellent
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CLE Rating:	Poor	Satisfactory	Good	Excellent

Required: When you hear the bell sound, write down the secret word that appears on your screen on this form.

Word #1 was: _____ Word #2 was: _____

Word #3 was: _____ Word #4 was: _____

What did you like most about the seminar?

_____

_____

_____

What criticisms, if any, do you have?

_____

_____

I Certify that I watched, in its entirety, the above-listed CLE Course

Signature _____ Date _____

Garden State CLE

Presents:

Protect Your Practice

Lesson Plan

Protect Your Practice

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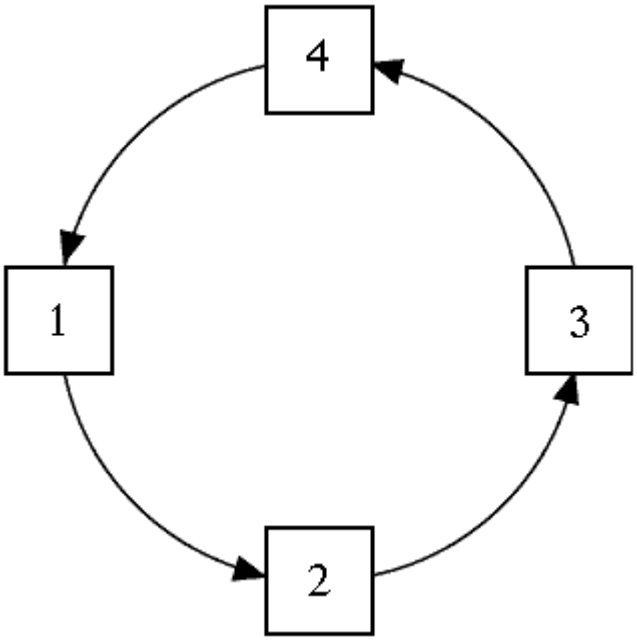
Introduction – Terrible Decisions: Common Causes of Attorney Discipline

The Goal of Every for profit Law Firm – an efficiently run

"Client-to-Client Cycle"



1. Client Acquisition

2. Client Maintenance

3. Client Preparation

4. Client Advocacy

5. Role Reversal

Imposition of final discipline by Supreme Court in 2009 by frequency:

Gross Neglect/Pattern
Money Offenses
Knowing Misappropriation
Sundry - Other Offenses
Ineligible to Practice law
Criminal Conduct
Fraud & Misrepresentation
Administration of Justice
Fees
Communications
Conflicts

Common Reasons underlying why Inquires & Grievances are filed:

Establishing the Attorney-Client Relationship

Communications (lack thereof, sexual harassment, unprofessional)

Conflicts of interest - (Business – Family members- Personal – Litigation – Loans – Joint Business Ventures – Sharing Fees)

Pattern of Neglect & Gross Negligence

Trust Account Issues

Fee Disputes

Termination of Attorney/Client Relationship

Law Office Management (Taxes, required books & records)

Greed & Laziness & Extreme Stupidity (Forgeries, improper *jurat*, overreaching, etc)

Candor before the tribunal

Personal Misconduct (domestic violence, school loans, security fund, child support)

Part I - Trust Account Issues

1. Knowing Misappropriation

In re Wilson, 81 NJ 451 (1979)

Public Policy

What are the merits in these cases? The attorney has stolen his clients' money. No clearer wrong suffered by a client at the hands of one he had every reason to trust can be imagined. The public is entitled, not as a matter of satisfying unjustifiable expectations, but as a simple matter of maintaining confidence, to know that never again will that person be a lawyer. That the moral quality of other forms of misbehavior by lawyers may be no less reprehensible than misappropriation is beside the point. Those often occur in a complex factual setting where the applicability or meaning of ethical standards is uncertain to the bench and bar, and especially to the public, which may not even recognize the wrong. There is nothing clearer to the public, however, than stealing a client's money and nothing worse. Nor is there anything that affects public confidence more much more than the offense itself than this Court's treatment of such offenses. Arguments for lenient discipline overlook this effect as well as the overriding importance of maintaining that confidence.

In summary: maintenance of public confidence in this Court and in the bar as a whole requires the strictest discipline in misappropriation cases. That confidence is so important that mitigating factors will rarely override the requirement of disbarment. If public confidence is destroyed, the bench and bar will be crippled institutions. Functioning properly, however, in the best traditions of each and with full public confidence, they are the very institutions most likely to develop required reform in the public interest.

Elements of Misappropriation under Wilson

[A] Misappropriation that will trigger automatic disbarment under *In re Wilson*, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant: it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality"-all are irrelevant.

2. Negligent Misappropriation

In re Gallo, 117 NJ 365 (1989) (Three-month suspension)

Although respondent did not knowingly misappropriate client funds, we cannot sanction his serious misconduct. Lawyers have a duty to assure that their accounting practices are sufficiently rigorous to prevent misappropriation of trust funds. Whether through ignorance or inattentiveness, the accounting procedures in respondent's office at the time of his audit were entirely inadequate. Respondent was unaware of the balance in the trust account on any given day and consequently could not determine whether the money belonged to a client or to himself. Respondent did not withdraw his fees when earned; rather, he commingled his earned income with client funds, making withdrawals when necessary to pay his operating expenses. We emphasize the seriousness of this inadequate accounting methodology and the resultant ethical violations.

See also - **In re Lehman, 182 NJ 589 (2005) (Reprimand)**

Other Examples:

In re Tompkins, 155 N.J. 542 (1998) (3 months); In re Ewing, 132 N.J. 206 (1993) (1 year); In re Konopka, 126 N.J. 225 (1991) (6 month suspension); In re Johnson, 105 N.J. 249 (1987) (indefinite suspension) and In re Perez, 104 N.J. 316 (1986) (2 year suspension).

3. RPC 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 a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. 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 seven years after the event that they record.**
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- (b) **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.**
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- (c) **When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.**
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- (d) **A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.**

4. The Six Trust Account Duties of New Jersey Attorneys

a. Duty to maintain required records as mandated by Rule 1:21-6

Attorneys must recognize that part of their responsibility to the legal system is the maintenance and supervision of accounting records. There can be no excuse for inadequate record keeping particularly in light of the technological and relatively inexpensive means available today. In re Orlando, 104 NJ 344, 350 (1986)

b. Duty to Account – (RPC 1:15(a))

An attorney has a duty to fully account to the client for funds or property coming into the attorney's hands. An attorney must also account to a client for the handling of funds. This may be done by reconstructing the events surrounding the receipt, maintenance and distribution of clients' funds. The duty to account runs, not only to clients, but to others to whom the attorney owes a duty, such as heirs of an estate. *In re Rea,* 143 N.J. 385, 386 (1996) (Three month suspension for violating RPC 1:15(a) by failing to notify relatives, who were the heirs of an estate for which he was executor and attorney, of his intention to claim certain funds as a fee and for taking the additional fee.)

c. Duty to notify clients promptly upon receipt of funds or property in which the client has an interest. (RPC 1:15(b)).

Since the funds belong to the client, necessary decisions about what to do with the funds require that the client be notified of their receipt. For this reason, client notification should be given just as soon as practical. For the lawyer's protection, the notice should be given in writing. *In re Stein, 97* N.J. 550, 564 (1984) (Six-month suspension).

d. Duty to promptly deliver to the client or a designated third person any funds of property that the client is entitled to receive. (RPC 1:15(b))

In addition to promptly notifying the client of receipt of funds and other property, an attorney has a correlative duty to "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive." RPC 1.15(b). Thus, if the client has authorized the attorney as part of a tort settlement to pay certain medical bills and they are not paid promptly, the attorney has violated the ethical duty to follow the directions of the client by making prompt disbursement of the client's funds. Naturally, no payments may be made until the funds are first deposited into the attorney's trust account and are collected by the attorney's financial institution. Collected funds should be disbursed as soon as it is practical to do so.

E. Duty to keep client funds separate from the attorney's own property. (RPC 1:15(a) and (c)).

This duty is breached the moment the separate identity of the particular client's funds is lost. Classically, the only way to avoid commingling would be to establish a separate account for each client. Recognizing the practical difficulties of such a literal reading, our recordkeeping rule authorizes an exception, a controlled commingling of one client's trust funds with trust funds of other clients, provided strict, detailed recordkeeping practices are maintained. An attorney's own funds, however, are never permitted to be deposited into trust accounts holding clients' funds. This is called active commingling. An exception is made to permit a reasonable amount of attorney funds to be deposited in the trust account to pay bank charges. Commingling referred to as passive commingling, also occurs when an attorney fails to promptly withdraw from the trust account legal fees to which the attorney is entitled. In re Banner, 31 NJ 24 (1959) (One-year suspension).

f. Duty not to use those funds for any purpose whatsoever, other than as directed by the client (RPC 1.15(b) and (c)).

This is the essence of the Wilson violation. It can occur in a wide variety of ways, including taking unauthorized fees, disbursing money before it has been collected through the banking process.

Additional Issues:

Holding funds in a safe

Trustee Taxes

Procedure for taking fees from retainer

Unidentified money

Trust Overdraft Notification

IOLTA Requirements

Attorney Original Signature

Check to "Cash"

Distribution on uncollected funds (drafts)

Part II – Conflicts and Clients that are kind of hot….

RPC 1.7. Conflict of Interest: General Rule

- **(a)** Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:
  - **(1)** the representation of one client will be directly adverse to another client; or
  - **(2)** there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.
- **(b)** Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:
  - **(1)** each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;
  - **(2)** the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
  - **(3)** the representation is not prohibited by law; and
  - **(4)** the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

In re Fornaro, 175 NJ 450 (2003) (Three-year suspension)

In re Witherspoon, 203 NJ 343 (2010) (One-year suspension)

In re Liebowitz, 104 NJ 175 (1985) (Reprimand)

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Sexual Harassment:

In re Seaman, 133 N.J. 67 (1993);

In re Subryan, 187 N.J. 139 (2004)

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Other Conflicts

In re Guidone, 139 N.J. 272 (1994)

We have generally found that in cases involving a conflict of interest, absent egregious circumstances or serious economic injury to the clients involved, a public reprimand constitutes appropriate discipline. Of course, when an attorney's conflict of interest causes serious economic injury to clients, we have not hesitated to impose a period of suspension.

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Part III – "Feeling Sorry for Clients"

RPC 1.8. Conflict of Interest: Current Clients; Specific Rules

- (a) **A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:**
  - (1) **the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;**
  - (2) **the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and**
  - (3) **the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.**

Example - In re Kazer, 189 NJ 299 (2007) (Reprimand)

Conflicts of interest (Business – Family members- Personal – Litigation – Loans – Joint Business Ventures – Sharing Fees)

Part IV – Law Office Management - Payroll Taxes

In re Frohling, 153 NJ 27 (1998) (Reprimand)

In re Esposito, 96 NJ 122 (1984) (6-month suspension based on guilty plea to 26 USC 7203 for one calendar quarter. He received a probationary sentence of one year and was ordered to pay a $5,000 fine. Although Esposito's secretary had prepared tax forms for his signature, he failed to perform the simple ministerial duties of reviewing, signing, and mailing the forms.)

In re Gold, 149 N.J. 23 (1997), an attorney's failure to pay his secretary's social security and federal and state income taxes for two calendar years, coupled with serious conflict of interest situations, caused him to receive a six-month suspension.

Part V – Threatening Criminal Action

RPC 3.4(g)

RPC 3.4. Fairness to Opposing Party and Counsel

A lawyer shall not:

- **(a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value, or counsel or assist another person to do any such act;**
- **(b) falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;**
- **(c) knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists;**
- **(d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party;**
- **(e) in trial, allude to any matter that the lawyer does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant or the guilt or innocence of an accused; or**
- **(f) request a person other than a client to refrain from voluntarily giving relevant information to another party unless:**
  - **(1) the person is a relative or an employee or other agent of a client; and**
  - **(2) the lawyer reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.**
- **(g) present, participate in presenting, or threaten to present criminal charges to obtain an improper advantage in a civil matter.**

In re McDermott, 142 N.J. 634 (1995) (reprimand where attorney filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for legal fees; the charges were dismissed on motion of the prosecutor, who contended that the claim was civil, not criminal, in nature.

Other examples:

Discipline for violation of RPC 3.4(g) has ranged from an admonition to a term of suspension. See, e.g., In the Matter of Mitchell J. Kassoff, Docket No. DRB 96-182 (1996) (admonition where attorney, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent the same day that the attorney received a letter from the other driver's insurance company denying his damage claim);

In the Matter of Christopher Howard, Docket No. DRB 95-214 (1995) (admonition where attorney, who represented one shareholder of a corporation in a dispute with another shareholder, sent a letter to the adversary shareholder threatening to file a criminal complaint for unlawful conversion if he did not return the client's personal property);

In re Dworkin, 16 N.J. 455 (1954) (one-year suspension where attorney, on behalf of a client, sent a letter threatening criminal proceedings against an individual who apparently had forged his signature on the client's check, unless the individual reimbursed the client and paid the attorney's legal fee of $100).

Part VI – Gross Neglect/Pattern of Neglect

RPC 1.1 Competence

A lawyer shall not:

- (a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
- (b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

In Re Rak, 203 NJ 381 (2010) (Reprimand)

Respondent was retained, in November 2007, to represent a client with regard to a corporate bankruptcy. It appears that, almost a year later, respondent filed something referred to as a claim, but more than likely a bankruptcy petition for the client's company. When, in January 2009, the client learned on his own that his case had been dismissed, he tried to reach respondent for three weeks. Unsuccessful in his attempts to spur respondent to action, the client reopened the bankruptcy pro se. At the bankruptcy hearing that followed, respondent appeared and was ordered to file additional documents to complete the case. Respondent then filed the wrong documents with the court. There is no evidence that he ever took corrective action for that final mistake.

We find respondent guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3 respectively. Respondent also failed to communicate to his client important aspects of the case, including its dismissal. He also failed to answer his client's calls for three weeks, immediately following his client's discovery of the dismissal, prompting the client to file a motion pro se to reopen the case. In so doing, respondent violated RPC 1.4(b).

Part VII – Legal Fees

RPC 1.5. Fees

- **(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:**
  - **(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;**
  - **(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;**
  - **(3) the fee customarily charged in the locality for similar legal services;**
  - **(4) the amount involved and the results obtained;**
  - **(5) the time limitations imposed by the client or by the circumstances;**
  - **(6) the nature and length of the professional relationship with the client;**
  - **(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;**
  - **(8) whether the fee is fixed or contingent.**
- **(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.**
- **(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted**

from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

- **(d) A lawyer shall not enter into an arrangement for, charge, or collect:**
  - **(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or**
  - **(2) a contingent fee for representing a defendant in a criminal case.**
- **(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:**
  - **(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and**
  - **(2) the client is notified of the fee division; and**
  - **(3) the client consents to the participation of all the lawyers involved; and**
  - **(4) the total fee is reasonable.**

Overreaching – In re Hinnant, 121 N.J. 395 (1990) (Reprimand)

Fee Splitting with lay people – In re Weinroth, 100 N.J. 343, 349-350 (1985) (Reprimand)

The prohibition of the Disciplinary Rule is clear. It simply forbids the splitting or sharing of a legal fee by an attorney with a lay person, particularly when the division of the fee is intended to compensate such a person for recommending or obtaining a client for the attorney. The policy served by this Disciplinary Rule is to ensure that any recommendation made by a non-attorney to a potential client to seek the services of a particular lawyer is made in the *client's* interest, and not to serve the business impulses of either the lawyer or the person making the referral; it also eliminates any monetary incentive for transfer of control over the handling of legal matters from the attorney to the lay person who is responsible for referring in the client.

In re Pajerowski, 156 N.J. 509 (1998) (Disbarment)

Runners

Loans (Advancing P/I Fees)

Failure to Communicate (Case settled 5 years earlier)

Conflicts (Represented passengers & driver in same accident)

VIII - Greed, Laziness & Extreme Stupidity

Forgery – In re Yacavino, 100 NJ 50 (1985) (3-year suspension)

Jurat – In re Surgent, 79 NJ 529 (1979) (6-month suspension)

Candor – In re Forrest, 158 NJ 428 (1999) (6-month suspension); In re Seelig, 180 NJ 234 (2006).

Personal Misconduct – In re Williams, 169 NJ 264 (2001) (2-month suspension from judicial office); In re bock, 128 NJ 270 (1992)(6-month suspension for drowning at LBI and washing up at a motel in Baltimore)

(Other personal issues include domestic violence, school loans, security fund assessment defaults, child support)

It has long been settled here and elsewhere that any misbehavior, private or professional, which reveals lack of the character and integrity essential for the attorney's franchise constitutes a basis for discipline. The reason for this rule is not a desire to supervise the private lives of attorneys but rather that the character of a man is single and hence misconduct revealing a deficiency is not less compelling because the attorney was not wearing his professional mantle at the time. Private misconduct and professional misconduct differ only in the intensity with which they reflect upon fitness at the bar. This is not to say that a court should view in some prissy way the personal affairs of its officers, but rather that if misbehavior persuades a man of normal sensibilities that the attorney lacks capacity to discharge his professional duties with honor and integrity, the public must be protected from him. In re Mattera, 34 NJ 259, 264 (1961).

Appendix – Rule 1:21-6

1:21-6. Recordkeeping; Sharing of Fees; Examination of Records

- **(a) Required Trust and Business Accounts.** Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:
    - **(1)** a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and
    - **(2)** a business account into which all funds received for professional services shall be deposited.

    One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

    Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

    The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use

in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account to an IOLTA account.

- **(b)** Account Location; Financial Institution's Reporting Requirements. An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) 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 the overdraft created thereby. 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 five banking days of the date of presentation for payment against insufficient funds.

  In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor.

Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by the Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

- **(c) Required Bookkeeping Records.**
  - **(1)** Attorneys, partnerships of attorneys and professional corporations who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record:
    - **(A)** appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as stated below or by check payable to a named

payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and

- **(B)** an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and
- **(C)** copies of all retainer and compensation agreements with clients; and
- **(D)** copies of all statements to clients showing the disbursement of funds to them or on their behalf; and
- **(E)** copies of all bills rendered to clients; and
- **(F)** copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and
- **(G)** originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area

identifying the client's last name or file number of the matter; and

- **(H)** copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and
- **(I)** copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

- **(2)** ATM or cash withdrawals from all attorney trust accounts are prohibited.
- **(3)** No attorney trust account shall have any agreement for overdraft protection.

- **(d) Type and Availability of Bookkeeping Records.** The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.
- **(e) Dissolutions.** Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.
- **(f) Attorneys Practicing With Foreign Attorneys or Firms.** All of the requirements of this rule shall be applicable to every attorney rendering legal services in this state regardless whether affiliated with or otherwise related in any way to an attorney, partnership, legal

corporation, limited liability company, or limited liability partnership formed or registered in another state.

- **(g) Attorneys Associated With Out of State Attorneys.** An attorney who practices in this state shall maintain and preserve for seven years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.
- **(h) Availability of Records.** Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.
- **(i) Disciplinary Action.** An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).
- **(j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners.** When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner

when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.