

# DELAWARE

## The Lawyers' Fund for Client Protection of the Supreme Court of Delaware

(Rules of the Trustees of  
The Lawyers' Fund for Client Protection  
of the Supreme Court of Delaware  
Rule 1., et seq.)

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**RULES OF THE TRUSTEES OF  
THE LAWYERS' FUND FOR  
CLIENT PROTECTION OF THE  
SUPREME COURT OF DELAWARE**

**Rule 1. Meetings.**

1. Meetings of the Trustees shall be held at the call of the Chairperson or of a majority of the Trustees, upon reasonable notice. At least 1 meeting shall be held each calendar year.

2. Five Trustees shall constitute a quorum. A majority of the Trustees present at a duly constituted meeting may exercise any powers held by the Trustees, except to the extent that Rule 66 of the Supreme Court provides otherwise.

**Rule 2. Officers.**

1. The Chairperson of the Trustees shall preside at all meetings of the Trustees at which the Chairperson shall be present. In the absence of the Chairperson from any meeting, the Trustees present shall elect 1 of their members to preside at that meeting.

2. The Treasurer shall have custody of all money and investments of the Lawyers' Fund for Client Protection (the "Fund") and shall insure that accurate records of all receipts and disbursements of the Fund are kept.

(a) The Treasurer shall maintain checking or savings accounts in such Delaware banks or trust companies as the Trustees may from time to time direct. Checks or withdrawal authorizations on all such accounts shall be made only on the dual signatures of the Treasurer and the Chairperson, or of either of those officers and one other Trustee.

(b) The Trustees, may employ such accountants, auditors, brokers, investment advisers, or other assistants as may be deemed proper.

(c) In the event that the Trustees shall authorize the investment of all or any part of the Fund, they shall further direct 1 or more of the following methods of investment:

i. The purchase of individual securities either specified by the Trustees or to be chosen by a broker or investment adviser employed as provided in (b) above; or

ii. The deposit of such funds with a fund – bond, fixed income, mixed or equity – maintained by a bank or trust company with Delaware offices for the investment of trust funds, designated by the Trustees.

(d) In the event it is necessary for the Treasurer to safeguard securities, purchased as aforesaid, the Treasurer or Chairperson is authorized to rent in the name of the Trustees a safe deposit box located in Delaware in a bank or trust company. Access to such safe deposit box shall be only on the dual signatures of the Treasurer and the Chairperson, or of either of those officers and 1 other Trustee.

3. The Secretary and/or his or her designee shall keep minutes of the meetings of the Trustees and shall furnish a copy thereof to each Trustee. The Secretary shall maintain the records and papers of the Trustees.

### **Rule 3. Funding**

The Trust Fund shall be funded from assessments, pursuant to Supreme Court Rule 66(e), made annually against active members of the Bar of the Supreme Court. As a condition of continuing active membership in the Bar of the Supreme Court, every active member, except judges disqualified from practicing law, shall pay to the Supreme Court an annual assessment as determined by the Supreme Court in the Annual Registration Statement pursuant to Supreme Court Rule 69. The assessment is due and payable on February 1 of each year and delinquent if not paid by March 1 of that year.

### **Rule 4. Claims against the Fund.**

1. The Trustees will receive and consider for reimbursement from the Fund: (1) Claims for losses due to the defalcations(s) or dishonesty of a member of the Delaware Bar within the practice of the member's profession or acting as a fiduciary who has resigned, died, been adjudged insane, been disbarred, suspended or otherwise disciplined, been convicted of embezzlement or misappropriation of money or other property of the member's clients or whose whereabouts is unknown; (2) claims certified to the Trustees by the Board on Professional Responsibility of the Supreme Court of Delaware as appropriate cases for consideration because the loss was caused by the defalcation(s) or dishonest conduct of a member of the Delaware Bar, or (3) or any other claims for losses due to the defalcation(s) or dishonesty of a member of the Bar which the Trustees, in the exercise of their discretion pursuant to paragraph (g) of Rule 66 of the Supreme Court, deem appropriate for consideration in that such consideration will advance the purpose of the Fund. Claims duly presented will be considered by the Trustees as fairly, fully and equitably as possible under the circumstances.

2. No claim shall be recognized which is based upon a defalcation or dishonest act or acts which occurred prior to January 1, 1967.

3. All claims eligible for payment by the Trustees within a calendar year shall be treated as claims of that calendar year and be considered before the end of January of the succeeding year and allowed or disallowed, unless further investigation is required. The Trustees in their discretion may make partial

payments on claims allowed, and in no event will a payment on any given claim exceed 10 percent of the Fund balance at the time of payment. Any unpaid portions of allowed claims may, in the Trustees' discretion, be carried forward to succeeding years.

4. Claims for losses must be filed with the Trustees within 2 years after the defalcation(s) or dishonesty was or should have been discovered by the claimant to be eligible for consideration, even though such claims may not be acted upon by the Trustees under the provisions of Rule 4(1) hereof until a later date.

5. Claims must be submitted in writing and signed by the claimant or the claimant's personal representative under oath, setting forth all pertinent facts and information and be directed to the Trustees of the Lawyers' Fund for Client Protection in the care of the Executive Director, Lawyers' Fund for Client Protection, The Renaissance Centre, 405 N. King Street, Suite 420, Wilmington, Delaware, 19801, or in the care of any Trustee of said Fund. The claim shall be on a form approved by the Trustees.

6. Upon the filing of a claim the Chairperson shall assign it to one or more Trustees for investigation. The Trustees shall act as hearing officers, and may, if desirable, take testimony under oath of the claimant and any other witnesses. Upon request of the hearing officers, the Secretary or Assistant Secretary of the Trustees may compel by subpoena the appearance of witnesses (including the claimant) and the production of pertinent books, papers and documents for investigatory or hearing purposes. The Supreme Court may, upon proper application, enforce the appearance and testimony of any witnesses and the production of any documents subpoenaed. The hearing officers shall file their report and recommendation with the Secretary of the Trustees. If the hearing officers deem it necessary, they may employ the services of a reporter to make a record of the proceedings before them.

7. No claim shall be allowed except upon the affirmative vote of 5 Trustees at a duly constituted meeting. The determination of any claim shall lie in the sole discretion of the Trustees, as contemplated by paragraph (g) of Rule 66 of the Supreme Court.

8. Where a claim is allowed by the Trustees, the Trustees shall be subrogated to the amount of such claim paid or to be paid by the Fund, and the Trustees may require each claimant, as a condition of payment, to execute such instruments, to take such action and to enter into such agreements as the Trustees may desire, including, but not limited to, assignments, subrogation agreements, trust agreements and promises to cooperate with the Trustees in making and prosecuting claims or charges against any person.

9. The spouse, law partner, attorney stockholder in a professional corporation, associate or conspirator of any defaulting attorney shall not have any right to file claims for reimbursement from the Fund.

10. No claim shall be allowed to the extent that the member of the Bar was bonded or the loss otherwise covered.

11. No attorney's fee shall be paid by a claimant in connection with any allowance made by the Trustees, and any attorney representing a claimant shall be required to give to the Trustees a written statement that the attorney will accept no fee from the claimant for services rendered in connection with any recovery from this Fund.

**Rule 5. Conflict of Interest.**

1. A Trustee who has or has had a client-lawyer relationship or a financial relationship with a claimant or lawyer who is the subject of a claim shall not participate in the investigation or adjudication of a claim involving that claimant or lawyer.

2. A Trustee with a past or present relationship, other than as provided in subsection (1) above, with a claimant or the lawyer whose alleged conduct is the subject of the claim, or who has other potential conflict of interest, shall disclose such relationship to the Trustees and, if the Trustees deem appropriate, that Trustee shall not participate in any proceeding relating to such claim.

**Rule 6. Immunity.**

All communications to and from the Trustees relating to claims made pursuant to Rule 4 of the Lawyers' Fund for Client Protection and all evidence given in claim investigations and discussion relating thereto, shall be absolutely privileged, and no civil suit predicated thereon may be instituted against any claimant, witness or lawyer. Trustees, associate trustees, auditors and staff and receivers and their agents and staff shall be immune from civil suit for any conduct in the discharge of their official duties.

**Rule 7. Reimbursement from the Fund is discretionary.**

No person shall have the legal right to reimbursement from the Fund. There shall be no appeal from a decision of the Trustees.

**Rule 8. Confidentiality.**

1. Claims, proceedings and reports involving claims for reimbursement are confidential until the Trustees authorize reimbursement to the claimant, except as provided below, unless provided otherwise by law. After payment of the reimbursement, the Trustees may publicize the nature of the claim, the amount of reimbursement, and the name of the lawyer. The name and the address of the claimant shall not be publicized by the Trustees unless specific permission has been granted by the claimant.

2. This Rule shall not be construed to deny access to relevant information by professional disciplinary agencies or other law enforcement authorities as the Trustees shall authorize, or the release of statistical information that does not disclose the identity of the lawyers or the parties, or the use of such information as is necessary to pursue the Fund's subrogation rights under Rule 4.

**Rule 9. Audits.**

1. At the direction of a Justice of the Supreme Court, or upon request of the Chairperson of the Board on Professional Responsibility, or on their own motion, the Trustees shall cause an audit to be made of the books and records of a member of the Bar or of the member's law firm pursuant to Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct and the applicable guidelines and any amendment thereto. The audit shall cover those books and records which a member of the Bar is required to maintain under Rule 1.15 and the applicable guidelines. A copy of the audit report shall be given only to the Justices of the Supreme Court, to the Chairperson of the Board on Professional Responsibility for the members of the Board, to Disciplinary Counsel and to the Trustees. The examination shall be subject to the strict rule of confidentiality set forth in the Delaware Lawyers' Rules of Professional Conduct.

2. On or before July 1 in each calendar year the Trustees shall select 60 individual members of the Bar or law firms, or a combination of both, whose books and records shall be examined during the next 12 months solely for the purpose of verifying the accuracy of certificates included with the annual registration statement filed under Supreme Court Rule 69. The Trustees may in any one-year select more or fewer than 60 members or firms for audit, in light of the cost thereof and the resources of the Fund or as circumstances may require.

3. The Trustees shall select a certified public accountant to make any such audit or examination.

4. Whenever a specific audit or an annual examination discloses 1 or more failures to comply with the applicable rules, or a shortage of funds, or both, the Trustees may, in their discretion, require the attorney involved to pay the cost of such audit. Otherwise, the cost of any such audit or examination shall be paid by the Trustees out of the Lawyers' Fund for Client Protection as a proper expense thereof.

5. Attorneys or law firms may demonstrate their compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct and the applicable Guidelines by voluntarily filing an annual certification of an independent certified public accountant with the Trustees in the form attached to these Rules. The filing of such a voluntary certification shall not, however, preclude an independent compliance check at the discretion of the Trustees.

**Rule 10. Statement of Claim.**

**STATEMENT OF CLAIM  
TO  
TRUSTEES OF THE LAWYERS' FUND FOR CLIENT PROTECTION  
OF THE SUPREME COURT OF DELAWARE**

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**INSTRUCTIONS**

- **Answer every question. If space is inadequate, attach additional pages.**
  - **You must submit copies of canceled checks, receipts, letters, etc. that will support your claim.**
  - **Your claim must be notarized.**
  - **Mail your completed claim to: Bunny Christopher, Executive Director, Lawyers' Fund for Client Protection, 405 N. King Street, Suite 420, Wilmington, DE 19801.**
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1. Your Name: \_\_\_\_\_
2. Your Address: (street) \_\_\_\_\_  
(city, State, zip code) \_\_\_\_\_
3. Your Daytime Telephone Number: \_\_\_\_\_
4. Your email address: \_\_\_\_\_
5. Name of lawyer being complained about: \_\_\_\_\_
6. Address of that lawyer: \_\_\_\_\_
7. How much money do you claim you lost? \_\_\_\_\_
8. State the date the loss occurred: \_\_\_\_\_
9. State the date when you discovered the loss: \_\_\_\_\_
10. What do you claim the lawyer did wrong?

11. Additional information about the claim may be obtained from the following:

Name: \_\_\_\_\_ Name: \_\_\_\_\_

Address: \_\_\_\_\_ Address: \_\_\_\_\_

Tel. No.: \_\_\_\_\_ Tel. No.: \_\_\_\_\_

12. Have you recovered any of the money you claim to have lost? \_\_\_\_\_ If so, state the amount you recovered, when you recovered it and from whom you recovered it.

13. Have you filed a lawsuit or obtained a judgment against the lawyer or anyone else with respect to the money you claim to have lost? \_\_\_\_\_ If so, state the name of the lawsuit, the date it was filed, the court in which it was filed, and the date of the judgment, if any.

14. Are you personally related to the lawyer being complained about or are you/were you a business associate or employee of that lawyer? \_\_\_\_\_ If so, describe your relationship to the lawyer.

15. Name, address and telephone number of your lawyer, if any, who represents you for this claim:

\_\_\_\_\_  
\_\_\_\_\_

NOTE: No lawyer is permitted to charge you a fee for assisting in the preparation or resolution of this claim.

NOTICE TO CLAIMANT: By signing this claim form, you indicate that you understand that the Lawyers' Fund for Client Protection has no legal responsibility for the acts of individual lawyers in their practice of law, that the decision of the Trustees of the Lawyers' Fund for Client Protection to pay anything to you on account of your claim is entirely within their own judgment and is not a matter of your right, and that neither you nor anyone else has the right to sue the Lawyers' Fund for Client Protection or its Trustees on account of your claim.

STATE OF DELAWARE :  
 :  
 : SS **AFFIDAVIT**  
COUNTY OF \_\_\_\_\_ :

\_\_\_\_\_, swears under oath (or affirms) that (s)he is the person who has the claim described in this Statement of Claim, that (s)he has read and understands the Statement of Claim and believes that the information contained in the Statement of Claim is true to the best of his(her) own knowledge, that (s)he agrees to cooperate in the investigation of this claim and also in any disciplinary proceedings against the lawyer complained about, and that if the Trustees decide on any payment of this claim, (s)he agrees to sign any appropriate documents that the Trustees may require.

\_\_\_\_\_  
(Signature of Claimant)

Signed and sworn to (or affirmed) before me on

\_\_\_\_\_ by \_\_\_\_\_  
(Date) (Name of Claimant)

\_\_\_\_\_  
(Signature of Notarial Officer)

\_\_\_\_\_  
(Title of Notarial Officer)

My commission expires \_\_\_\_\_

**Rule 11. Report on compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct and the applicable guidelines and audit program.**

SUGGESTED REPORT FORMAT

(Independent CPA letterhead)

(Date)

Executive Director, Lawyers' Fund for Client Protection  
The Renaissance Centre

405 N. King Street, Suite 420  
Wilmington, DE 19801

Re: (Name of Attorney or Firm)  
(Address)

Dear Executive Director:

We have performed an audit of our client, noted above, for the specific purpose of determining their (his/her) compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct. The audit procedures used were those contained in the Audit Program of the Lawyers' Fund for Client Protection and this report relates only to those items.

Based on our audit, there were no findings/exceptions, and in our opinion (attorney/firm name) is in compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct.

or

Based on our audit, (attorney/firm name) is not in compliance with Rule 1.15 of the Delaware Lawyers' Rules of Professional Conduct. We found the following exceptions:

- 1)
- 2)
- 3)

These exceptions will be resolved as follows:

(Attorney/firm name) understands that our audit and submission of this report does not preclude an audit performed by the auditor of the Lawyers' Fund for Client Protection.

Enclosed is a copy of a completed Audit Program with appropriate work papers.

Very truly yours,

(CPA firm signature)

# LAWYERS' FUND FOR CLIENT PROTECTION

## Audit Program to Determine Compliance with Rule 1.15 and Rule 1.5(f) of the Delaware Lawyers' Rules of Professional Conduct

This completed audit program must be attached to your report.

Attorney \_\_\_\_\_ Audit Date \_\_\_\_\_

Audited by (Firm Name) \_\_\_\_\_

### AUDIT OBJECTIVES

#### GENERAL

- I Attorney is in compliance with Rule 1.15 and Rule 1.5(f) and has properly answered all of the statements on the CERTIFICATE OF COMPLIANCE.

#### SPECIFIC

##### A. NON-FIDUCIARY FUNDS

1. Attorney maintains financial control over law practice.
2. Proper records are maintained.
3. Reconciliations are performed each month.

##### B. FIDUCIARY FUNDS

1. Client funds are safeguarded.
2. Proper records are maintained.
3. Reconciliations are performed each month.
4. There is no commingling of attorney funds and client funds.
5. Interest earned on client funds is either credited and/or paid to the client or the interest is credited and paid to IOLTA.

| Audit Objective | <b>AUDIT PROCEDURES</b>   | Performed by or N/A | Finding/Exception | Work-paper Index |  |  |  |  |  |  |  |  |  |  |  |  |
|-----------------|---|---------------------|-------------------|------------------|--|--|--|--|--|--|--|--|--|--|--|--|
| I               | <p><b>GENERAL</b></p> <p>1. Obtain a copy of the latest ANNUAL REGISTRATION STATEMENT and the latest CERTIFICATE OF COMPLIANCE filed with the Supreme Court. (These forms are due by March 1 of each year)</p> <p style="padding-left: 20px;">a. If these forms were not filed when due, attach an explanation from the attorney indicating the date they will be filed.</p> <p style="padding-left: 20px;">b. Verify that all questions are answered properly.</p> <p style="padding-left: 20px;">c. A "NO" answer to any of the items on the CERTIFICATE OF COMPLIANCE indicates non-compliance. If there is a "NO" answer to any item, attach a letter from the attorney explaining the reason for non-compliance and a statement indicating when the attorney will be in compliance.</p> <p>I</p> <p>2. Verify that all bank accounts (both fiduciary and non-fiduciary) are listed on the ANNUAL REGISTRATION STATEMENT and that all bank accounts for funds held in connection with the practice of law in Delaware are used solely for that purpose.</p> <p style="padding-left: 20px;">a. Obtain and attach to the audit report a copy of the first page of the latest bank statement for each bank account which the attorney or a member of the law firm has power to control, draw on or deposit in (including not only open accounts, but also any accounts open at any time during the prior calendar year).</p> <p style="padding-left: 20px;">b. If any bank accounts which the attorney or a member of the law firm has power to control, draw on or deposit in, (including not only open accounts, but also any accounts open at any time during the prior calendar year) is not listed, note here the omitted bank account information requested on the ANNUAL REGISTRATION STATEMENT.</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; border-bottom: 1px solid black;">BANK NAME</th> <th style="text-align: left; border-bottom: 1px solid black;">ACCOUNT NAME</th> <th style="text-align: left; border-bottom: 1px solid black;">ACCOUNT NO.</th> </tr> </thead> <tbody> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> <tr> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> <td style="border-bottom: 1px solid black;"> </td> </tr> </tbody> </table> <p style="padding-left: 20px;">c. If a bank account, maintained in connection with the practice of law in Delaware, is located outside the state of Delaware, note here and indicate purpose.</p> <p style="padding-left: 20px;">d. If a bank account, maintained in connection with the practice of law in Delaware, also contains funds for the practice of law in another jurisdiction, note here and indicate purpose.</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>_____</p> | BANK NAME           | ACCOUNT NAME      | ACCOUNT NO.      |  |  |  |  |  |  |  |  |  |  |  |  |
| BANK NAME       | ACCOUNT NAME  | ACCOUNT NO.         |                   |                  |  |  |  |  |  |  |  |  |  |  |  |  |
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| Audit Objective | <b>AUDIT PROCEDURES</b>  | Performed by or N/A | Finding/Exception | Work-paper Index |
|-----------------|--|---------------------|-------------------|------------------|
|                 | <p><b>NON-FIDUCIARY FUNDS</b></p> <p><i>The period of review of records of non-fiduciary funds transactions should be, at a minimum, the latest six months. Use separate audit program page for each account.</i></p> <p>ACCOUNT NAME _____</p> <p>BANK _____</p> <p>BANK ACCOUNT NO. _____</p> <p>REVIEW PERIOD: From _____ to _____</p> <p><b>A2</b> 1. Inquire whether the minimum required records are maintained for at least five years following the completion of the year to which they relate. These records are:</p> <ul style="list-style-type: none"> <li>a. Bank statements, deposit tickets, and cancelled checks (or images and/or copies thereof as provided by the bank)</li> <li>b. Cash receipts and cash disbursements journals</li> <li>c. Monthly cash reconciliations</li> </ul> <p><b>A1</b> 2. Obtain bank statements and review for NSF checks or overdraft balances other than those caused by deposits of client payments which were covered by the client or the attorney without undue delay. Attach detailed listing, if any, with the attorney's explanation.</p> <p><b>A2</b> 3. Obtain cash receipts journal.</p> <ul style="list-style-type: none"> <li>a. Determine that entries identify source and date.</li> <li>b. Ascertain that journal has monthly totals.</li> <li>c. Determine that cash receipts entries can be proved to deposit totals.</li> </ul> <p><b>A2</b> 4. For each bank account, obtain cash disbursements journal.</p> <ul style="list-style-type: none"> <li>a. Determine that entries show date, payee, and expense type.</li> <li>b. Ascertain that journal has monthly totals.</li> </ul> <p><b>A3</b> 5. Audit monthly cash and bank reconciliations.</p> <ul style="list-style-type: none"> <li>a. Manual system: <ul style="list-style-type: none"> <li>+ beginning cash balance</li> <li>+ cash receipts (-) cash disbursements</li> <li>= ending cash balance/checkbook balance</li> <li>= adjusted bank balance</li> <li style="text-align: center;">-or-</li> <li>general ledger balance = adjusted bank balance</li> </ul> </li> <li>b. Computer system: <ul style="list-style-type: none"> <li>Check register (or general ledger) balance = adjusted bank balance</li> </ul> </li> </ul> |                     |                   |                  |

| Audit Objective | <b>AUDIT PROCEDURES</b>   | Performed by or N/A | Finding/Exception | Work-paper Index |
|-----------------|---|---------------------|-------------------|------------------|
|                 | <p><b>FIDUCIARY FUNDS</b></p> <p><i>The period of review of records of fiduciary funds transactions should be, at a minimum, the latest six months. Use separate audit program page for each account.</i></p> <p>ACCOUNT NAME _____</p> <p>BANK _____</p> <p>BANK ACCOUNT NO. _____</p> <p>REVIEW PERIOD: From _____ to _____</p> <p><b>B2</b> 1. Inquire whether the minimum required records are maintained for at least five years following the completion of the fiduciary obligation. These records are:</p> <ul style="list-style-type: none"> <li>a. Bank statements, deposit tickets, records of electronic transfers, and cancelled checks (or images and/or copies thereof as provided by the bank). Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed.</li> <li>b. Cash receipts and cash disbursements journals</li> <li>c. Client subsidiary ledgers</li> <li>d. Monthly trial balances of subsidiary ledger</li> <li>e. Monthly cash reconciliations</li> </ul> <p><b>B1</b> 2. Obtain bank statements and review for NSF checks or overdraft balances. If any, attach detailed listing with attorney's explanation. (Disbursements from fiduciary accounts must be made from "good" funds.)</p> <p><b>B5</b> 3. Determine if IOLTA account. If not, and an interest-earning account, make certain that it is not a pooled account and that interest is credited to the client. (A pooled account must be an IOLTA account unless the law firm has a written exemption from participation in the IOLTA Program from the Delaware Bar Foundation).<br/><i>NOTE: Interest earned on client funds CANNOT be retained by the attorney.</i></p> <p><b>B2</b> 4. Obtain cash receipts journal.</p> <ul style="list-style-type: none"> <li>a. Determine that entries identify source and date.</li> <li>b. Ascertain that journal has monthly totals.</li> <li>c. Determine that cash receipts entries can be proved to deposit totals.</li> </ul> <p><b>B2</b> 5. Obtain cash disbursements journal.</p> <ul style="list-style-type: none"> <li>a. Determine that entries show date, payee, and client name.</li> <li>b. Ascertain that journal has monthly totals.</li> </ul> |                     |                   |                  |

| Audit Objective | <b>AUDIT PROCEDURES</b>  | Performed by or N/A | Finding/Exception | Work-paper Index |
|-----------------|--|---------------------|-------------------|------------------|
|                 | <b>FIDUCIARY FUNDS (CONTINUED)</b>   |                     |                   |                  |
| <b>B3</b>       | <p><b>6.</b> Audit monthly bank reconciliations and review list of outstanding checks for those more than six months old. Inquire whether a good faith effort has been made to determine why these checks have not cleared the bank. Prepare listing of checks more than six months old and note reasons why they are still outstanding.</p> <p><i>NOTE: See Supreme Court Rule 73 for disposition of old, undeliverable fiduciary account outstanding checks.</i></p>   |                     |                   |                  |
| <b>B2</b>       | <p><b>7.</b> Review client subsidiary ledger.</p> <p><i>NOTE: If a separate bank account has been set up for a specific client, transactions for that client must be recorded in a separate ledger account.</i></p> <p><b>a.</b> Determine that a separate account is maintained for each client for whom monies or other property have been received in trust.</p> <p><b>b.</b> Ascertain that all fiduciary transactions for cash receipts and cash disbursements (showing date, source/payee, and amount) are entered in the subsidiary ledger.</p> <p><b>c.</b> Verify that a listing is prepared each month from the subsidiary ledger. The listing must show: Client name, client balance, and the grand total of all client balances.</p>   |                     |                   |                  |
| <b>B4</b>       | <p><b>8.</b> Determine if any attorney funds are in the fiduciary account.</p> <p><i>NOTE: The attorney may maintain funds sufficient to pay bank service charges; however, such amount may not exceed \$2000 and must be separately stated and accounted for on the monthly listing.</i></p>  |                     |                   |                  |
| <b>B2</b>       | <p><b>9.</b> Inquire whether the attorney has received any property for safekeeping from a client, other than cash. If so, verify whether a subsidiary ledger account has been set up showing date of receipt or disbursement, description of property received or disbursed, and the amount or value.</p>   |                     |                   |                  |
| <b>B3</b>       | <p><b>10.</b> Verify that the reconciled end-of-month cash balance (see fiduciary audit procedure no. 6) agrees with the total of all client funds being held (see fiduciary audit procedure no. 7c).</p>  |                     |                   |                  |
| <b>B1</b>       | <p><b>11.</b> Examine monthly listing of client balances for the following:</p> <p><b>a.</b> Determine if any negative client balances (monies disbursed for client in excess of monies received for client). If any, attach details with attorney's explanation.</p> <p><i>NOTE: A negative client balance indicates that other client funds are being used to fund the negative balance. A check should be drawn immediately from the operating account and deposited in the fiduciary account to cover the negative balance.</i></p> <p><b>b.</b> Determine age of client balances. If old balance, request reasons why funds have not been disbursed. Review documentation in client files, if necessary, to determine if good faith effort has been made to locate client and disburse funds.</p> <p><i>NOTE: See Supreme Court rule for disposition of old, unclaimed client balances and old fiduciary account undeliverable, outstanding checks.</i></p> |                     |                   |                  |

| Audit Objective   | <b>AUDIT PROCEDURES</b>  | Performed by or N/A | Finding/Exception | Work-paper Index |
|---|--|---------------------|-------------------|------------------|
| <p><b>B1, B4</b></p> <p><b>B5</b></p> <p><b>B1</b></p> <p><b>B1</b></p> <p><b>A1</b></p> <p><b>I</b></p> <p><b>B4</b></p> <p><b>B2</b></p> <p><b>B1</b></p> | <p style="text-align: center;"><b>FIDUCIARY FUNDS (CONTINUED)</b></p> <p><b>c.</b> Ascertain that no client balance represents fees earned by the attorney.<br/> <i>NOTE: The failure to remove earned fees from the fiduciary account on a timely basis represents commingling of client funds and attorney funds.</i></p> <p><b>12.</b> If any client funds are of significant amount and are held for a significant period of time, verify that a separate interest-earning bank account has been set up and the client was credited with the interest earned.</p> <p><b>13.</b> To test the timely deposit of client funds, select five deposits from bank statements or deposit tickets and trace to supporting documentation in client files.<br/> <i>NOTE: Attach work paper, documenting test, to completed audit program.</i></p> <p><b>14.</b> Perform the following to test the proper disbursement of client funds:</p> <p><b>a.</b> Select five cases from the client subsidiary ledger or monthly listing.<br/> <b>b.</b> Review documentation in client files that support financial transactions.<br/> <b>c.</b> Examine cancelled checks (or images and/or copies thereof as provided by the bank) and records of electronic transfers to verify disbursements.<br/> <i>NOTE: Attach work paper, documenting test, to completed audit program.</i></p> <p><b>15.</b> Review federal, state, and city payroll tax returns and tax depositories to verify the timely filing and payment of payroll taxes.</p> <p style="text-align: center;"><b>RETAINERS (Rule 1.5(f) and Comment)</b></p> <p><b>16.</b> Inquire whether the attorney accepts retainers (payments in advance of a service being performed and prior to fee being earned).</p> <p><b>17.</b> Ascertain that retainers are being deposited in the escrow account.</p> <p><b>a.</b> On a sample basis, trace deposits of large amount in operating account to transfer checks issued as earned fees from the escrow account.<br/> <i>NOTE: (1) Attach work paper, documenting test, to completed audit program.</i></p> <p><b>18.</b> Obtain copy of retainer agreement and determine that the agreement states:</p> <p><b>a.</b> The fee is refundable if not earned.<br/> <b>b.</b> The basis under which the fee shall be considered to be earned.</p> <p><b>19.</b> Make certain that, when earned fees are withdrawn from the escrow account, a statement is provided to the client showing the amount withdrawn and the remaining balance of the unearned retainer.</p> |                     |                   |                  |

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|-----------------|---|---------------------|-------------------|------------------|
|                 | <p><b>REAL ESTATE FUNDS</b></p> <p>NOTE: (1) A real estate bank account is a fiduciary account.<br/> (2) This audit program page is only necessary if a separate bank account is used exclusively for real estate settlement transactions.<br/> (3) Cash receipts and disbursements journals are not required for an account used exclusively for real estate settlement transactions.</p> <p>ACCOUNT NAME _____<br/> BANK _____<br/> BANK ACCOUNT NO. _____</p> <p>REVIEW PERIOD: From _____ to _____</p> <p><b>B2</b> 1. Inquire whether the minimum required records are maintained for at least five years following the completion of the real estate transaction. These records are:</p> <p style="padding-left: 20px;">a. Bank statements, deposit tickets, records of electronic transfers, and cancelled checks (or images and/or copies thereof as provided by the bank). Records of all electronic transfers from fiduciary accounts shall include the name of the person authorizing transfer, the date of transfer, the name of recipient and confirmation from the banking institution confirming the number of the fiduciary account from which the funds are withdrawn and the date and time the request for transfer was completed.<br/> b. Settlement sheets<br/> c. Other related documents</p> <p><b>B1</b> 2. Obtain bank statements and review for NSF checks or overdraft balances. If any, attach detailed listing with attorney's explanation. (Disbursements from fiduciary accounts must be made from "good" funds.)</p> <p><b>B5</b> 3. Determine if IOLTA account. If not, an interest-earning account, make certain that it is not a pooled account and that interest is credited to the client. (A pooled account must be an IOLTA account unless the law firm has a written exemption from participation in the IOLTA Program from the Delaware Bar Foundation).<br/> NOTE: <i>Interest earned on client funds CANNOT be retained by the attorney.</i></p> <p><b>B3</b> 4. Audit monthly bank reconciliations and review list of outstanding checks for those more than six months old. Inquire whether a good faith effort has been made to determine why these checks have not cleared the bank. Prepare listing of checks more than six months old and note reasons why they are still outstanding.<br/> NOTE: <i>See Supreme Court Rule 73 for disposition of old, undeliverable fiduciary account outstanding checks.</i></p> <p><b>B3</b> 5. If the adjusted bank balance is a positive number, verify that it is in agreement with the total of the listing, by client, of funds being held.<br/> NOTE: <i>This is a required monthly procedure.</i></p> |                     |                   |                  |

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|-----------------|--|---------------------|-------------------|------------------|
| <b>B1</b>       | <p><b>REAL ESTATE FUNDS (CONTINUED)</b></p> <p><b>6.</b> Perform the following to test whether deposits and disbursements are timely and proper.</p> <ul style="list-style-type: none"> <li><b>a.</b> Select five real estate settlements.</li> <li><b>b.</b> Vouch deposits to supporting documentation.</li> <li><b>c.</b> Examine cancelled checks and compare to documentation.</li> </ul> <p style="margin-left: 40px;"><i>NOTE: Attach work paper, documenting test, to completed audit program.</i></p> |                     |                   |                  |

INQUIRIES ANSWERED BY:

NAME

POSITION

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