

State Public Defender Fee Payments

Lawyers who are appointed by the State Public Defender's Office (SPD) are required to submit their hours and expenses to the SPD at the conclusion of a representation in order to receive payment. The expenses may include fees charged by a 3rd party, such as an investigator or expert witness, whose services have been pre-approved by the SPD. The SPD, via the Department of Administration (DOA), makes a single payment to the lawyer for these legal fees and expenses. The payments are made by check or direct deposit.

Payments by Check

When to deposit in Business Account

If an SPD check consists solely of funds owed to a lawyer for fees that have been earned, the check must be deposited to the lawyer's business or personal account.

When to deposit in Trust Account

If an SPD check includes funds owed to a 3rd party, such as a pre-approved investigator or expert witness, or anyone other than the lawyer, the check must be deposited to the lawyer's trust account. When the deposit is available for disbursement, the lawyer must disburse the funds to the 3rd party and the lawyer. This may be one to two days following a deposit, depending upon the fund availability policies of the lawyer's financial institution. The method of disbursement will depend upon the type of trust account into which the funds are deposited, i.e., a Traditional IOLTA, an E-Banking Trust Account or an All-in-One Trust Account.

NOTE: While a combined payment of legal fees and fees owed to a 3rd party must be deposited to a trust account, a lawyer is **not** required to comply with the five-day waiting period under [SCR 20:1.5\(h\)\(1\)](#) before withdrawing those fees from the trust account. The legal fees can be disbursed from the trust account as soon as they are available.

Disbursement from a Traditional IOLTA

Since electronic transactions are prohibited in a Traditional IOLTA, a lawyer who deposits an SPD check that includes funds owed to a 3rd party to this type of trust account must disburse the legal fees as well as the funds owed to the 3rd party with a trust account check. The client matter and purpose of the payments to the lawyer and 3rd party should be identified on the checks' memo lines and/or in some other record maintained by the lawyer.



Disbursement from an E-Banking Trust Account

A lawyer may deposit an SPD check that includes funds owed to a 3rd party to an E-Banking Trust Account (EBTA) if the lawyer wants to disburse one or both payments electronically. Funds can be electronically transferred from the EBTA to the lawyer's business or personal account or to a 3rd party's account. If a payment is electronically transferred, the lawyer must identify the client matter and purpose of the transfer in the bank's on-line payment system. If the payment is made by check to either the lawyer or the 3rd party, the lawyer must identify the client matter and purpose of the check on the check's memo line. See, [SCR 20:1.15\(f\)\(3\)b.5.](#)



Disbursement from an All-in-One Trust Account

A lawyer may deposit an SPD check that includes funds owed to a 3rd party to an All-in-One Trust Account. Funds can be electronically transferred from the All-in-One to the lawyer's business or personal account and to the 3rd party's account. If a payment is electronically transferred, the lawyer must identify the client matter and purpose of the transfer in the bank's on-line payment system. If the lawyer disburses the payments by check to either the lawyer or the 3rd party, the lawyer must identify the client matter and purpose of the check on the checks' memo lines. See, [SCR 20:1.15\(f\)\(3\)c.4.](#)

Payments by Direct Deposit

In mid-2013, the SPD began offering lawyers the option to receive payments for legal fees and expenses via direct deposit. There are two options for accepting direct deposits. Each option has certain requirements. The options are:

1. Depositing payments to the lawyer's Business Account; or
2. Depositing payments to the lawyer's E-Banking Trust Account (EBTA) or All-in-One Trust Account.¹

Prior to commencing SPD payments by direct deposit, a lawyer must identify the account into which the deposits will be made.

Option 1: Direct Deposit to Business Account

If a lawyer occasionally receives payments from the SPD that include funds owed to a 3rd party and the lawyer has designated a business account as the account into which SPD direct deposits are to be made, the lawyer must advance any payment owed to a pre-approved investigator or expert witness

¹ An "All-in-One" IOLTA is a trust account in which checking and electronic transactions are permitted. It provides an alternative to the E-Banking Trust Account and is subject to the security requirements of [SCR 20:1.15\(f\)\(1\)](#) and the insurance requirements of [SCR 20:1.15\(f\)\(3\)c.2.](#)

from funds belonging to the lawyer. The lawyer's advance to the 3rd party must occur prior to the lawyer's receipt of the direct deposit from the SPD.

When a lawyer pays a 3rd party's fees in advance, the SPD's payment to the lawyer no longer includes funds owed to a 3rd party. Consequently, the direct deposit must be made to the lawyer's business account.



A lawyer must not arrange for direct deposits to the business account if the lawyer intends to pay a 3rd party's fees simultaneously with the receipt of an SPD payment. A simultaneous payment is not an advance. If a lawyer does not have sufficient funds to make such advances, the lawyer must direct the SPD to make its direct deposits to a trust account

Option 2: Direct Deposit to E-Banking or All-in-One Trust Account

In order to authorize direct deposits of fees and/or expenses owed to a 3rd party to a trust account, a lawyer must maintain either an EBTA or an All-in-One Trust Account, subject to the requirements of [SCR 20:1.15\(f\)\(3\)b.](#) and [SCR 20:1.15\(f\)\(3\)c.](#) Direct deposits must not be made to a Traditional IOLTA as such transactions are explicitly prohibited by [SCR 20:1.15\(f\)\(3\).](#)

A lawyer may authorize the SPD to make direct deposits to an EBTA even if those payments will seldom include funds owed to a 3rd party. Under [SCR 20:1.15\(f\)\(3\)b.4.b.](#), a lawyer must transfer such deposits to the business account by check or electronic transfer and identify the client matter and purpose of such transfers on the memo line of the check or in the bank's on-line payment system. The purpose of this rule is to enable lawyers to avoid the need to maintain two electronic payment systems, one for the business account and one for the trust account.

While the rule relating to an All-in-One, [SCR 20:1.15\(f\)\(3\)c.](#) does not include the language found in the EBTA rule, [SCR 20:1.15\(f\)\(3\)b.4.b.](#), a lawyer may use the EBTA rule for guidance in properly handling similar transactions in an All-in-One.

Debits, Chargebacks and ACH Reversals

Pursuant to [SCR 20:1.15\(f\)\(3\)b.6.](#) and [SCR 20:1.15\(f\)\(3\)c.3.](#), a lawyer whose EBTA or All-in-One is debited by the State to correct an error relating to an SPD payment must replace the debited funds within 3 business days of receiving notice of the State's debit. In addition, after receiving notice, the lawyer must not accept any new payments to the EBTA until the lawyer has reimbursed the account for any shortfall or negative balance caused by the State's debit. Similarly, a lawyer must not make any disbursements from an All-in-One until the lawyer has reimbursed the account for the shortfall.

SCR 20:1.5 Fees *(Effective July 1, 2016)*

(h) (1) At least five business days before the date on which a disbursement is made from a trust account for the purpose of paying fees, with the exception of contingent fees or fees paid pursuant to court order, a lawyer shall transmit to the client in writing all of the following:

- a. An itemized bill or other accounting showing the services rendered.
- b. Notice of the amount owed and the anticipated date of the withdrawal.
- c. A statement of the balance of the client's funds in the lawyer's trust account after the withdrawal.

(2) The lawyer may withdraw earned fees on the date that the invoice is transmitted to the client, provided that the lawyer has given prior notice to the client in writing that earned fees will be withdrawn on the date that the invoice is transmitted. The invoice shall include each of the elements required under SCR 20:1.5(h)(1).

(3) If a client makes a particularized and reasonable objection to the disbursement described in SCR 20:1.5(h)(1), the disputed portion shall remain in the trust account until the dispute is resolved. If the client makes a particularized and reasonable objection to a disbursement described in SCR 20:1.5(h)(1) or (2) within 30 days after the funds have been withdrawn, the disputed portion shall be returned to the trust account until the dispute is resolved, unless the lawyer reasonably believes that the client's objections do not present a basis to hold funds in trust or return funds to the trust account under SCR 20:1.5(h). The lawyer will be presumed to have a reasonable basis for declining to return funds to trust if the disbursement was made with the client's informed consent, in writing. The lawyer shall promptly advise the client in writing of the lawyer's position regarding the fee and make reasonable efforts to clarify and address the client's objections.

SCR 20:1.15(f)(1) through (f)(3)c.4. *(Effective July 1, 2016)*

(f) Security requirements and restricted transactions.

(1) **Security of transactions.** A lawyer is responsible for the security of each transaction in the lawyer's trust account and shall not conduct or authorize transactions for which the lawyer does not have commercially reasonable security measures in place. A lawyer shall establish and maintain safeguards to assure that each disbursement from a trust account has been authorized by the lawyer and that each disbursement is made to the appropriate payee. Only a lawyer admitted to practice law in this jurisdiction or a person under the supervision of a lawyer having responsibility under SCR 20:5.3 shall have signatory and transfer authority for a trust account.

(2) **Prohibited transactions.**

a. **Cash.** No withdrawal of cash shall be made from a trust account or from a deposit to a trust account. No check shall be made payable to "Cash." No withdrawal shall be made from a trust account by automated teller or cash dispensing machine.

b. **Telephone transfers.** 1. Except as provided in SCR 20:1.15(f)(2)b.2., no deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds.

2. Wire transfers may be initiated by telephone, and telephone transfers may be made between non-pooled trust accounts that a lawyer maintains for a particular client.

c. **Electronic transfers by 3rd parties.** A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer's trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds without the permission of the lawyer.

(3) **Electronic transactions.** A lawyer shall not make deposits to or disbursements from a trust account by way of an electronic transaction, except as provided in SCR 20:1.15(f)(3)a. through c.

a. **Remote Deposit.** A lawyer may make remote deposits to a trust account, provided that the lawyer keeps a record of the client or matter to which each remote deposit relates, and that the lawyer's financial institution maintains an image of the front and reverse of each remote deposit for a period of at least six years.

b. **E-Banking Trust Account.** A lawyer may accept funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits, and may disburse funds by electronic transactions that are not prohibited by sub. (f)(2)c., provided that the lawyer does all of the following:

1. Maintains an IOLTA account, which shall be the primary IOLTA account, in which no electronic transactions shall be conducted other than those transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement, or those transactions authorized by SCR 20:1.15(f)(3)a., (3)b.4.a., and (3)b.4.d.

2. Maintains a separate IOLTA account with commercially reasonable account security for electronic transactions, which shall be entitled: "E-Banking Trust Account."

3. Holds lawyer or law firm funds in the E-Banking Trust Account reasonably sufficient to cover monthly account fees and fees deducted from deposits and maintains a ledger for those account fees.

4. Transfers the gross amount of each deposit within three business days after the deposit is available for disbursement, and if necessary, adds funds belonging to the lawyer or law firm to cover any deduction of fees and surcharges relating to the deposit, in accordance with all of the following:

a. All advanced costs and advanced fees held in trust under SCR 20:1.5(f) shall be transferred to the primary IOLTA account by check or by electronic transaction.

b. Earned fees, cost reimbursements, and advanced fees that are subject to the requirements of SCR 20:1.5(g) shall be transferred to the business account by check or by electronic transaction.

c. Any funds that the client has directed be disbursed by electronic transfer shall be promptly disbursed from the E-Banking Trust Account by electronic transaction.

d. All funds received in trust other than funds identified in SCR 20:1.15(f)(3)b.4.a., b., and c. shall be transferred to the primary IOLTA account by check or by electronic transaction.

e. Except for funds identified in SCR 20:1.15(f)(3)b.4.a. and b., a lawyer or law firm shall not be prohibited from deducting electronic transfer fees or surcharges from the client's funds, provided the client has agreed in writing to accept the electronic payment after being advised of the anticipated fees and surcharges.

5. Identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system.

6. Replaces any and all funds that have been withdrawn from the E-Banking Trust Account by the financial institution or card issuer, and reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal within three business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the E-Banking Trust Account; and reimburses the E-Banking Trust Account for any chargeback, surcharge, or ACH reversal prior to accepting a new electronic deposit or transferring funds from the primary IOLTA to the E-Banking Trust Account for purposes of making an electronic disbursement.

c. **Alternative to E-Banking Trust Account.** A lawyer may deposit funds paid by credit card, debit card, prepaid or other types of payment cards, and other electronic deposits into a trust account, and may disburse funds from that trust account by electronic transactions that are not prohibited by sub. (f)(2)c., without establishing a separate E-Banking Trust Account, provided that all of the following conditions are met:

1. The lawyer or law firm maintains commercially reasonable account security for electronic transactions.

2. The lawyer or law firm maintains a bond or crime insurance policy in an amount sufficient to cover the maximum daily account balance during the prior calendar year.

3. The lawyer or law firm arranges for all chargebacks, ACH reversals, monthly account fees, and fees deducted from deposits to be deducted from the lawyer's or law firm's business account; or the lawyer or law firm replaces any and all funds that have been withdrawn from the trust account by the financial institution or card issuer within three business days of receiving actual notice that a chargeback, surcharge, or ACH reversal has been made against the trust account; and the lawyer or law firm reimburses the account for any shortfall or negative balance caused by a chargeback, surcharge, or ACH reversal. The lawyer shall reimburse the trust account for any chargeback, surcharge, or ACH reversal prior to disbursing funds from the trust account.

4. The lawyer or law firm identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system.