

Combined payment of earned and unearned fees.

When a client gives a lawyer a single check, which includes: 1) a payment for fees that have already been earned and invoiced, and 2) an advance toward future fees and/or future expenses, what should the lawyer do with that check?

The lawyer must deposit the check into the trust account. After the client's check clears and the funds are available for disbursement, the earned portion of the fees should be disbursed by check to the lawyer or the lawyer's business account. As with any disbursement from the trust account, the lawyer must identify the client and the purpose of that disbursement on the check's memo line. [See, SCR 20:1.15(f)(1)e.1.] The unearned portion of the fee and/or an advance for costs or expenses must remain in the trust account. With respect to the funds that have been earned, the lawyer is not required to send the client a second invoice and wait five days before withdrawing those funds. The funds should be disbursed as soon as the client's check has cleared, and the funds are available for disbursement.