COLORADO SUPREME COURT
Office of Attorney Regulation Counsel

Trust Account Manual

Commingling

What is commingling?

Colo. RPC 1.15A(a) requires that a lawyer keep funds of third parties or clients separate from his or her own funds. A lawyer commingles funds when he or she places client funds or funds of a third party in the same account with his or her own funds. Commingling can occur in trust account or in a business or personal account.

Lawyers Cannot Use Trust Accounts for Personal Finances.

A lawyer can never use his or her trust account as a personal account for holding or hiding personal assets. Likewise, it would be inappropriate for a law firm to deposit in a trust account the money the firm plans to use on a firm holiday party, for example. Another example of such a problem is a lawyer who has his stock market sales receipts wired into his trust account.

Even if there are no client funds in the trust account, meaning that the account has a zero balance, it is still improper to use the trust account as a personal account.

Why Is Commingling Prohibited?

Commingling places the funds of a client or a third party at risk. The risk arises because the lawyer's funds can be attached, garnished or seized when the lawyer or the lawyer's estate is responsible to a creditor or heir. If the heir or creditor looks for money belonging to the lawyer and finds it in the lawyer's trust account, then it is quite possible that all of the trust account will be taken until it is determined what portion of the money belongs to the lawyer and what portion belongs to the client or third party.

As agents of their clients, lawyers cannot do anything to harm or worsen their client's situation. Accordingly, lawyers must keep their money separate from their client's money.

In the past, the IRS, among other creditors, has seized lawyer trust accounts containing client funds in order to satisfy the lawyer's debts. The IRS will do this when it discovers that the lawyer has his or her own funds in the trust account. If this occurs, the lawyer must take steps to protect the client's funds; however, it is not uncommon for the lawyer to be out-of-town, unreachable, or mentally incapable of protecting the client funds. Thus, the rule of professional conduct requires that funds of clients or third parties be segregated from the lawyer's own property.

Small Amounts to Cover Service Charges, but NO Cushions

Colo. RPC 1.15B(f) permits a lawyer to keep funds in the trust account reasonably sufficient to pay anticipated service charges or other fees for maintenance or operation of the trust account so long as those funds are clearly identified in the lawyer's records. In other words, a lawyer can deposit and keep a small amount of money in the trust account to cover those charges. However, this allowance does not authorize the lawyer to keep a "cushion" of his/her own money in the account.

Some very well-intentioned lawyers have mistakenly thought that they could keep a cushion of their own funds in the trust account in case they made a bookkeeping error and did not have enough money in the trust account. The rules do not allow such a cushion and it is considered to be commingling.

To reiterate: a lawyer's trust account can never have more in it than what the lawyer holds for clients or third parties and a small amount to cover service charges. As discussed below, the lawyer should periodically remove amounts for earned fees from the trust account.