

The State Bar of California

Client Trust Accounts and Bank Stability Concerns

Attorney Information

In view of the current financial crisis, lawyers may have concerns about their obligations to properly maintain client funds. The State Bar [Ethics Hotline](#) provides research assistance on professional responsibility issues and the following links are offered to assist lawyers in addressing these concerns.

□ ***Rule of Professional Conduct 4-100 “Preserving Identity of Funds and Property of a Client”***

All funds held for the benefit of clients must be maintained in accordance with [Rule 4-100](#). This rule requires that client funds be placed in a fiduciary account that is properly labeled as a trust account and that other funds are not commingled with client funds.

This rule also requires appropriate client notice, record-keeping, and disbursement procedures. Notwithstanding the current financial crisis, lawyers should continue to follow all of the requirements of Rule 4-100.

The FDIC provides general information about fiduciary accounts, including information on [FDIC insurance](#) for such accounts. The availability of FDIC insurance may not be determinative of whether a particular deposit fully complies with a lawyer’s fiduciary duties. The State Bar’s [Handbook on Client Trust Accounting for California Attorneys](#) (2011 Online Edition, pages 12-13 and 16-17) includes basic information on this issue.

□ ***IOLTA Requirements***

The [Legal Services Trust Fund Program](#) receives interest on attorney-client trust accounts, and distributes those funds to legal aid offices throughout California.

Under [Business & Professions Code Section 6210 et. seq.](#), lawyers who handle small amounts of money for their clients, or money that is held for a short period of time, must participate in the program by depositing these funds into an Interest on Lawyers’ Trust Account (IOLTA).

There are also State Bar [rules](#) for IOLTA accounts. Like Rule 4-100, the IOLTA requirements, where applicable, must be followed despite the current financial crisis.

Eligible institutions that may hold IOLTA funds are identified on a continually updated [list](#) on the State Bar’s Web site. While consulting this list is an important starting point for researching an institution for depositing IOLTA funds, the State Bar does not make any determination regarding the relative stability of the financial institutions on the list.

□ ***Liability Issues***

Although Rule 4-100 and the IOLTA requirements establish State Bar disciplinary and regulatory standards, they do not resolve concerns about a lawyer’s liability for client funds in the event of a bank failure.

While this is a legal and risk management issue beyond the scope of the State Bar’s regulatory function, for research guidance the State Bar Ethics Hotline is citing a non-

California decision where malpractice liability was not found when a lawyer deposited funds in a bank that was subsequently closed and placed into FDIC receivership.

In *Bazinet v. Kluge* (N.Y.A.D. 1 Dept., 2005) 788 N.Y.S.2d 77 [14 A.D.3d 324], the New York Appellate Division found that the lawyer did not know that the bank was in danger of closing and that the proximate cause of the loss was “the bank’s unforeseen demise.” As suggested by this case, foreseeability is a key element.

Read the **Client Trust Accounts and Bank Stability Concerns** [FAQs](#).

For more information about the Rules of Professional Conduct, call the Ethics Hotline at 1-800-2ETHICS or 415-538-2150.

For more information about IOLTA, call the Legal Services Trust Fund Program at 415-538-2046 or 415-538-2227.

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