DISTRICT OF COLUMBIA BAR

RULES OF PROFESSIONAL CONDUCT REVIEW COMMITTEE

FINAL REPORT FOR PUBLIC COMMENT

PROPOSED CHANGES TO

D.C. RULE 1.15 COMMENTS [1] AND [2]

The views expressed herein are those of
the D.C Bar Rules of Professional Conduct Review Committee
and not those of the D.C. Bar or its Board of Governors.

March 2026

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INTRODUCTION

Rule 1.15(a) requires that a lawyer hold client property "separate from the lawyer's own property," that client funds be kept in one or more trust accounts, and that the lawyer keep "complete records" of client account funds for five years after the representation is terminated.

Rule 1.15(a) Comment [1] requires that a lawyer hold the property of others "with the care required of a professional fiduciary," and states that client property should be kept separate from the lawyer's business and personal property and that monies should be kept in one or more trust accounts that meet the requirements of Rule 1.15. The Comment also states that Rule 1.15(a) prohibits the misappropriation of entrusted funds and commingling of entrusted funds with the lawyer's property.

Rule 1.15(a) Comment [2] explains the purpose of Rule 1.15(a)'s "complete records" requirement by quoting from the D.C. Court of Appeals' decision in *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003). Although Comment [2] does not specify what records should be kept, it notes that the records that should be kept can vary and directs lawyers to the 2010 ABA Model Rules For Client Trust Account Records for guidance.

The D.C. Bar Rules of Professional Conduct Review Committee ("Committee") proposes Rule 1.15(a) Comment [1] be revised to address an issue with respect to D.C. caselaw on misappropriation and commingling. The D.C. Court of Appeals has held that disbarment will be imposed on a lawyer for intentional or reckless misappropriation and a six-month suspension will be imposed in the case of negligent misappropriation. The Court has not addressed the issue of whether a lawyer whose handling of client funds is not negligent, but who inadvertently misappropriates client funds or commingles the attorney's funds should be sanctioned. However, the Court has defined negligence so broadly in this context as to create a standard akin to strict liability for any error. It is the Committee's view that a lawyer who exercises "the care required of a professional fiduciary" as required by Rule 1.15(a) Comment [1] but who inadvertently misappropriates or commingles is not negligent and therefore should not be subject to sanction if the conditions prescribed in the Committee's proposed revision to Comment [1] are satisfied.

The Committee's proposed revision to Comment [1] identifies several factors that are relevant in determining whether a lawyer holding entrusted funds has exercised the care required of a professional fiduciary. One of the factors is to comply with the requirement in Rule 1.15(a) that a lawyer maintain "complete records." Neither Rule 1.15(a) nor Comments [1] or [2] specify what documents should be kept by a lawyer to maintain "complete records." The Committee recommends that Comment [2] be revised to provide guidance on the specific types of records a lawyer should keep in order to comply with the "complete records" requirement and to enable a lawyer to satisfy all of the factors the Committee proposes be applied to

determine if a lawyer has exercised the care required of a professional fiduciary.

The Committee's proposed revisions to Comments [1] and [2] to Rule 1.15(a) will (i) avoid exposing to sanction a lawyer who inadvertently misappropriates or commingles client funds despite handling client funds "with the care required of a professional fiduciary," and (ii) provide lawyers with detailed guidance on the requirements of a professional fiduciary and for keeping "complete records."

BACKGROUND

The D.C. Court of Appeals has held that "'in virtually all cases of misappropriation, disbarment will be the only appropriate action unless it appears that the misconduct resulted from nothing more than simple negligence." *In re Gray*, 224 A.3d 1222, 1233 (D.C. 2024) (quoting *In re Addams*, 579 A. 2d 190, 191 (D.C. 1990)). Unless the misappropriation is negligent, the Court of Appeals applies a rule of presumptive disbarment absent "extraordinary circumstances." *In re Adams*, 579 at 191. The Court of Appeals does not require proof of intent in order to apply the presumption of disbarment. "Reckless misappropriation" also triggers the presumption of disbarment. *In re Gray*, 224 A.3d at 1234.

The Court of Appeals has defined negligent misappropriation as follows:

> Negligent misappropriation is an attorney's non-intentional, non-deliberate, non-reckless misuse of entrusted funds or an attorney's non-intentional, non-deliberate, non-reckless failure to retain the proper balance of entrusted funds. Its hallmarks include a good-faith, genuine, or sincere but erroneous belief that entrusted funds have properly been paid; and an honest or inadvertent but mistaken belief that entrusted funds have been properly safeguarded.

In re Abbey, 169 A.3d 865, 872 (D.C.2017). Where misappropriation results from simple negligence, the Court of Appeals has imposed a suspension for a period of six months. *See generally*, *In re Dobbie*, 305 A.3d 780, 798 n.9 (D.C. 2023) ("'[A] six-month suspension is the norm for attorneys who have negligently misappropriated client funds'.") (quoting *In re Herbst*, 931 A.2d 1016, 1017 (D.C. 2007)). The Court has held that an attorney who misappropriated client funds but had an objectively reasonable good faith belief in his or her entitlement to the funds nevertheless had negligently misappropriated and is therefore subject to a six-month suspension. *See In re Gray*, 224 A.3d at 1232 (citing *In re Chang*, 694 A.2d 877, 880-82 (D.C. 1997)).

Commingling "involves the failure to keep a client's funds separate from those of the attorney." *In re Berryman*, 764 A.2d 760, 767 (D.C. 2000). The sanction for a single act of commingling "generally have ranged from censure accompanied by a requirement for continuing legal education

in professional responsibility . . . to suspension." *Id.* at 767. In more serious cases of commingling, the Court may impose the sanction of disbarment. *In re Hines*, 482 A.2d 378, 384-85 (D.C. 1984).

It is the Committee's view that a lawyer who inadvertently misappropriates or commingles client funds despite exercising the care of a professional fiduciary is not negligent and therefore should not be subject to any sanction. Neither the Rules nor the D.C. Court of Appeals have defined "the care required of a professional fiduciary" or the specific records that must be maintained in order to comply with the "complete records" requirement in Rule 1.15(a). Accordingly, the Committee's proposed revision to Comments [1] identifies several factors that are relevant in determining whether a lawyer has exercised the care of a "professional fiduciary." The Committee also propose a revision to Comment [2] to provide detailed guidance on what documents must be retained by a lawyer to satisfy the "complete records" requirement in Rule 1.15(a).

I. CURRENT COMMENTS [1] AND [2] TO RULE 1.15(a)

Comments [1] and [2] to Rule 1.15(a) currently state as follows:

> [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts maintained with financial institutions meeting the requirements of this rule. This rule, among other things, sets forth the longstanding prohibitions of the misappropriation of entrusted funds and the commingling of entrusted funds with the lawyer's property. This rule also requires that a lawyer safeguard "other property" of clients, which may include client files. For guidance concerning the disposition of closed client files, see D.C. Bar Legal Ethics Committee Opinion No. 283.
>
> [2] Paragraph (a) of Rule 1.15 requires lawyers to keep "[c]omplete records of [client] funds and property. . . ." The D.C. Court of Appeals addressed the meaning of "complete records" in In re Clower, 831 A.2d 1030, 1034 (D.C. 2003): "The Rules of Professional Conduct should be interpreted with reference to their purposes. The purpose of maintaining 'complete records' is so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party

> funds not be misappropriated or commingled. Financial records are complete only when documents sufficient to demonstrate an attorney's compliance with his ethical duties are maintained. The reason for requiring complete records is so that any audit of the attorney's handling of client funds by Disciplinary Counsel can be completed even if the attorney or the client, or both, are not available." Rule 1.15 requires that lawyers maintain records such that ownership or any other question about client funds can be answered without assistance from the lawyer or the lawyer's clients. The precise records that achieve this result obviously can vary, but lawyers may wish to look for guidance on records from the 2010 ABA Model Rules For Client Trust Account Records.

II. HISTORY OF COMMENTS [1] AND [2] TO RULE 1.15(a)

Rule 1.15(a) and Comment [1] were adopted by the D.C. Court of Appeals in 1991 and have been amended several times since then. There have not been any significant changes to the Rule or Comment [1] that relate to the recommendations in this Report. From the time of an amendment in 1992 relating to trust accounts to the present, Rule 1.15(a) has required that lawyers hold property of clients and third persons in the lawyer's possession separate from the lawyer's own property; client funds must be kept in one or more trust accounts; and a lawyer must keep "complete records" of account funds and other property for a period of five years after termination of the representation.

Comment [1], from its adoption in 1991 to the present, has required that a lawyer "should hold property of others with the care required of a professional fiduciary" and that "all property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts."

Comment [2] to Rule 1.15 was adopted by the D.C. Court of Appeals in 2015 to provide guidance on the "complete records" requirement in Rule 1.15(a). The Comment provides guidance by incorporating an excerpt from the D.C. Court of Appeals' decision in *In re Clower*, 831 A.2d 1030 (D.C. 2003) on the purpose of maintaining complete records. Comment [2] contains the following quote from *In re* Clower:

> The Rules of Professional Conduct should be interpreted with reference to their purposes. The purpose of maintaining "complete records" is so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his fiduciary obligation that client or third-party funds not be misappropriated or commingled. Financial

> records are complete only when documents sufficient to demonstrate an attorney's compliance with his ethical duties are maintained. The reason for requiring complete records is so that any audit of the attorney's handling of client funds by [Disciplinary] Counsel can be completed even if the attorney or the client, or both, are not available.

831 A.2d at 1034 (quoting with approval the opinion of the D.C. Board On Professional Responsibility in *In re Clower*).

The Comment also encourages lawyers to consult the 2010 ABA Model Rules On Client Trust Account Records for guidance on what specific financial records should be kept.

III. ANALOGS TO COMMENTS [1] AND [2] TO RULE 1.15(a)

D.C. Rule 1.15(a) and Comment [1] are substantially similar to ABA Model Rule 1.15(a) and Comment [1].

ABA Model Rule 1.15(a) states:

> A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of [five years] after termination of the representation.

ABA Model Rule 1.15(a) Comment [1] states:

> [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by

law or court order. *See, e.g.*, Model Rules for Client Trust Account Records.

The ABA Model Rules do not contain a comment similar to Comment [2] to D.C. Bar Rule 1.15(a). Comment [2] is unique to the D.C. Rules of Professional Conduct because it focuses, as noted above, on *In re Clower's* statement on the purpose of maintaining "complete records."

IV. ABA AND STATE ETHICAL RULES THAT IDENTIFY "COMPLETE RECORDS"

Although the ABA Model Rules of Professional Conduct, the D.C. Rules of Professional Conduct and the ethical rules in many states do not specify the records that lawyers should maintain in order to comply with the "complete records" requirement, ABA Model Rule 1 of the ABA Model Rules on Client Trust Account Records referenced in D.C. Rule 1.15(a) Comment [2] and the ethics rules of several states contain detailed record keeping requirements. We quote these rules below in order to establish that it is a common practice for some states to identify the types of records that must be kept to satisfy the "complete records" requirement.

A. Rule 1 of ABA Model Rules on Client Trust Account Records

D.C. Rule 1.15(a) Comment [2] states that lawyers "may wish to look for guidance on records from the 2010 ABA Model Rules For Client Trust Account Records." Rule 1 of the ABA Model Rules on Client Trust Account Records provides the following detailed list of records that a lawyer should maintain:

> (a) receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
>
> (b) ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
>
> (c) copies of retainer and compensation agreements with clients;

(d) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(e) copies of bills for legal fees and expenses rendered to clients;

(f) copies of records showing disbursements on behalf of clients;

(g) the physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

(h) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(i) copies of [monthly] trial balances and [quarterly] reconciliations of the client trust accounts maintained by the lawyer; and

(j) copies of those portions of client files that are reasonably related to client trust account transactions.

B. Virginia's Financial Record Keeping Rule

Virginia Rules 1.15(c) and (d) have the following requirements with respect to trust account record-keeping and trust accounting procedures:

(c) Record-Keeping Requirements. A lawyer shall, at a minimum, maintain the following books and records demonstrating compliance with this Rule:

(1) Receipts and disbursements journals for each trust account. These journals shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; manner in which the funds were received, disbursed, or transferred; and current balance. A checkbook or transaction register may be used in lieu of separate receipts and disbursements journals as long as the above information is included.

(2) A client ledger with a separate record for each client, other person, or entity from whom money has been received in trust. Each entry shall include, at a minimum: identification of the client or matter; date and amount of the transaction; name of the payor or payee; source of funds received or purpose of the disbursement; and current balance.

(3) In the case of funds or property held by a lawyer as a fiduciary, the required books and records shall include an annual summary of all receipts and disbursements and changes in assets comparable in detail to an accounting that would be required of a court supervised fiduciary in the same or similar capacity; including all source documents sufficient to substantiate the annual summary.

(4) All records subject to this Rule shall be preserved for at least five calendar years after termination of the representation or fiduciary responsibility.

(d) Required Trust Accounting Procedures. In addition to the requirements set forth in Rule 1.15 (a) through (c), the following minimum trust accounting procedures are applicable to all trust accounts.

(1) Insufficient Fund Reporting. All accounts are subject to the requirements governing insufficient fund check reporting as set forth in the Virginia State Bar Approved Financial Institution Agreement.

(2) Deposits. All trust funds received shall be deposited intact. Mixed trust and non-trust funds shall be deposited intact into the trust fund and the non-trust portion shall be withdrawn upon the clearing of the mixed fund deposit instrument. All such deposits should include a detailed deposit slip or record that sufficiently identifies each item.

(3) The following reconciliations must be made monthly and approved by a lawyer in the law firm:

(i) reconciliation of the client ledger balance for each client, other person, or entity on whose behalf money is held in trust;

(ii) reconciliation of the trust account balance, adjusting the ending bank statement balance by adding any deposits not shown on the statement and subtracting any checks or disbursements not shown on the statement. This adjusted balance must equal the balance in the checkbook or transaction register; and

(iii) reconciliation of the trust account balance ((d)(3)(ii)) and the client ledger balance ((d)(3)(i)). The trust account balance must equal the client ledger balance.

(4) The purpose of all receipts and disbursements of trust funds reported in the trust journals and ledgers shall be fully explained and supported by adequate records.

C. Maryland's Financial Record Keeping Rule

Rule 19-407 of Maryland's Attorney Trust Accounts Rules requires that a lawyer maintain the following records with respect to client funds:

(a) Creation of Records. The following records shall be created and maintained for the receipt and disbursement of funds of clients or of third persons:

(1) *Attorney Trust Account Identification.* An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.

(2) *Deposits and Disbursements.* A record for each account that chronologically shows all deposits and disbursements, as follows:

(A) for each deposit, a record made at or near the time of the deposit that shows (i) the date of the deposit, (ii) the amount, (iii) the identity of the client or third person for whom the funds were deposited, and (iv) the purpose of the deposit

(B) for each disbursement, including a disbursement made by electronic transfer, a record made at or near the time of

disbursement that shows (i) the date of the disbursement, (ii) the amount, (iii) the payee, (iv) the identity of the client or third person for whom the disbursement was made (if not the payee), and (v) the purpose of the disbursement;

(C) for each disbursement made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction.

Cross reference: See Rule 19-410 (c), which provides that a disbursement that would create a negative balance with respect to any individual client matter or with respect to all client matters in the aggregate is prohibited.

(1) *Client Matter Records*. A record for each client matter in which the attorney receives funds in trust, as follows:

(A) for each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement; (ii) the amount of the deposit or disbursement; (iii) the purpose for which the funds are intended; (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter; and

(B) an identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever it is to be returned to a person other than the client.

(2) *Record of Funds of the Attorney.* A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule 19-408 (b).

(b) Monthly Reconciliation. An attorney shall cause to be created a monthly reconciliation of all attorney trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule 19-408 (b), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.

(c) Electronic Records. Whenever the records required by this Rule are created or maintained using electronic means, there must be an ability to print a paper copy of the records upon a reasonable request to do so.

Committee note: Electronic records should be backed up regularly by an appropriate storage device.

(d) Records to be Maintained. Financial institution month-end statements, any canceled checks or copies of canceled checks provided with a financial institution month-end statement, duplicate deposit slips or deposit receipts generated by the financial institution, and records created in accordance with section (a) of this Rule shall be maintained for a period of at least five years after the date the record was created.

Committee note: An attorney or law firm may satisfy the requirements of section (d) of this Rule by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, electronic records, or any other medium that preserves the required data for the required period of time and from which a paper copy can be printed.

Cross reference: Rule 19-301.15 (1.15) (Safekeeping Property) of the Maryland Rules of Professional Conduct.

D. New York's Financial Record Keeping Rule

Rule 1.15(d) of the New York Rules of Professional Conduct requires that lawyers maintain the following records with respect to trust accounts:

(d) Required Bookkeeping Records.

(1) A lawyer shall maintain for seven years after the events that they record:

(i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;

(ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;

(iii) copies of all retainer and compensation agreements with clients;

(iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;

(v) copies of all bills rendered to clients;

(vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed;

(vii) copies of all retainer and closing statements filed with the Office of Court Administration; and RULE 1.15 113

(viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.

(2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

E. California's Financial Record Keeping Rule

Rule 1.15 of California's Rules of Professional Conduct requires that lawyers keep the following records with respect to client or third-party funds:

Standards:

Pursuant to this rule, the Board of Trustees of the State Bar adopted the following standards, effective November 1, 2018, as to what "records" shall be maintained by lawyers and law firms in accordance with paragraph (d)(3).

(1) A lawyer shall, from the date of receipt of funds of the client or other person through the period ending five years from the date of appropriate disbursement of such funds, maintain:

(a) a written ledger for each client or other person on whose behalf funds are held that sets forth:

(i) the name of such client or other person;

(ii) the date, amount and source of all funds received on behalf of such client or other person;

(iii) the date, amount, payee and purpose of each disbursement made on behalf of such client or other person; and

(iv) the current balance for such client or other person;

(b) a written journal for each bank account that sets forth:

(i) the name of such account;

(ii) the date, amount and client or other person affected by each debit and credit; and

(iii) the current balance in such account;

(c) all bank statements and cancelled checks for each bank account; and

(d) each monthly reconciliation (balancing) of (a), (b), and (c).

(2) A lawyer shall, from the date of receipt of all securities and other properties held for the benefit of client or other person through the period ending five years from the date of appropriate disbursement of such securities and other properties, maintain a written journal that specifies:

(a) each item of security and property held;

(b) the person on whose behalf the security or property is held;

(c) the date of receipt of the security or property;

(d) the date of distribution of the security or property; and

(e) person to whom the security or property was distributed.

F. Other States That Require Lawyers to Keep Specific Financial Records

Florida (Rule 5-1.2 of Florida's Rules Regulating Trust Accounts), Massachusetts (Rule of Professional Conduct 1.15(f)) and Washington (Rule of Professional Conduct 1.15B) also identify detailed trust accounting records that a lawyer is required to keep.

V. ANALYSIS

The Committee has concluded that a lawyer who exercises the care required of a professional fiduciary in handling trust funds but nevertheless inadvertently misappropriates or commingles trust funds should not be considered negligent and therefore should not be subject to a six-month suspension or any other sanction. A six-month suspension places a harsh burden on a lawyer which can be very damaging to his or her reputation, ability to serve clients, and ability to make a living. A lawyer who fulfills his or her duties as a professional fiduciary should not be subjected to that hardship. The Committee's proposed revision will provide the D.C. Office of Disciplinary Counsel, the D.C. Board on Professional Responsibility, and the D.C. Court of Appeals with a broader and more equitable framework for analyzing misappropriation/commingling cases by expanding the current categories of intentional/reckless and negligent misappropriation/commingling to include a third category -- non-negligent misappropriation/commingling.

The Committee has also concluded that the Comment should identify relevant factors to determine whether a lawyer has exercised the care of a professional fiduciary. By doing so, the Comment will provide guidance to lawyers, a standard which, if met, will enable a lawyer to avoid a sanction for inadvertent misappropriation or commingling, and help avoid disputes over whether a lawyer has met the requirements of a professional fiduciary.

The Committee has identified six factors which provide a reasonable minimum standard that all lawyers should follow in order to exercise the care of a professional fiduciary. The factors aren't exhaustive but complying with them is sufficient to establish that a lawyer has exercised the care of a professional fiduciary. While complying with all six factors is a necessary condition for avoiding a disciplinary sanction if a lawyer inadvertently misappropriates or commingles client funds, it is not sufficient under the Committee's proposed revision. The Committee has identified several practical requirements that must be met in order for a lawyer to avoid sanction. The Committee recommends that the lawyer not have a recurring problem in handling trust funds, have evidence such as the lawyer's records that corroborate the lawyer's explanation for the discrepancy, and acted promptly to rectify the error upon detection and without loss to the client or a third party.

One of the six factors in determining whether a lawyer exercised the care of a professional fiduciary is the "complete records" requirement prescribed by Rule 1.15(a). The Committee is of

the view that it is important to identify specific requirements for maintaining "complete records" in order to provide guidance to lawyers with respect to trust account records and to enable a lawyer to establish that they met the factors that are relevant for determining whether they acted with the care of a professional fiduciary. Identifying the required records will also limit disputes over whether a lawyer has satisfied the "complete records" or "professional fiduciary" requirements.

In analyzing this issue, the Committee considered whether identifying specific records that must be kept could impose an unreasonable burden on solo practitioners or small law firms. A solo practitioner who has $10,000 in client funds in their trust account should not be required to keep the same records as a large law firm with millions of dollars in client funds in trust accounts that belong to many clients. To address this issue, the proposed Comment states that the documents identified "are sufficient, but not necessary, for purposes of a lawyer's duty to keep 'complete records' pursuant to this Rule." The intent is to enable lawyers, depending on their practice, to satisfy the "complete records" requirement without necessarily having to keep all of the documents or take all of the actions identified in the proposed revision to Comment [2].

At the same time, for the lawyer who wants to be sure they are following best practices with respect to financial records, the proposed revision provides comprehensive guidance.

VI. PROPOSED AMENDMENTS TO COMMENTS [1] AND [2] TO RULE 1.15(a)

The Committee proposes the following amendments to Rule 1.15(a) Comments [1] and [2][1]: The proposed amendments appear below with new language shown in **bold-underline** and deleted language shown in ~~strikethrough:~~

> [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts maintained with financial institutions meeting the requirements of this rule. This rule, among other things, sets forth the longstanding prohibitions of the misappropriation of entrusted funds and the commingling of entrusted funds with the lawyer's property. This rule also requires that a lawyer

[1] Going forward, the Committee recommends that all new proposed Comments be added as sub-comments, such as Comment[1][A], [1][B], [1][C], etc….Some jurisdictions, such as New York, have moved to this model. The reason is to avoid errors and misdirection in older publications such as court opinions, legal ethics opinions, and articles that cite to specific Comments. This format helps to avoid unnecessary renumbering of the original Comments.

safeguard "other property" of clients, which may include client files. For guidance concerning the disposition of closed client files, see D.C. Bar Legal Ethics Committee Opinion No. 283.

[1A] Multiple factors are relevant in determining whether a lawyer holding entrusted funds has exercised the care required of a professional fiduciary including, but not limited to, whether the lawyer: (i) has an engagement letter or fee agreement with the client explaining how client funds entrusted to the lawyer will be held and when they can be transferred to the lawyer; (ii) has a system in place designed to comply with Rule 1.15, including, where appropriate, the training and supervision of individuals the attorney employs to assist in the management of entrusted funds; (iii) maintains complete records in compliance with Rule 1.15(a); (iv) maintains accurate billing records; (v) transfers funds out of the lawyer's trust account in compliance with the lawyer's billing to the client and engagement letter or fee agreement; and (vi) retains trust account records for five years after termination of the representation as required by Rule 1.15(a).

[1B] The D.C. Court of Appeals has defined misappropriation as any unauthorized use of entrusted client funds. *E.g.*, *In re Ekekwe-Kauffman*, 267 A.3d 1074, 1080 (D.C. 2022). A lawyer's overdraft of a bank account holding entrusted funds is an indicia of misappropriation. "'The severity of the sanction for misappropriation depends on whether the misappropriation was (1) intentional or reckless or (2) merely negligent.'" *Id.* (Citation omitted.) The D.C. Court of Appeals imposes the sanction of disbarment for intentional or reckless misappropriation and a six-month suspension for negligent misappropriation. *In re Addams*, 579 A.2d 190, 191 (D.C. 1990); *In re Reed*, 679 A.2d 506, 509 (D.C. 1996).

[1C] A lawyer who exercises the care of a professional fiduciary but who unintentionally fails to hold the property of a client or third person separate from the lawyer's own property is not negligent and should not be disbarred or suspended if (i) the lawyer does not have recurring problems in the handling of entrusted funds, such as commingling or prior overdrafts; (ii) evidence, such as the lawyer's records, corroborates the lawyer's explanation for the discrepancy; and (iii) the lawyer promptly rectified upon detection the error without loss to the client or a third party.

[2] Paragraph (a) of Rule 1.15 requires lawyers to keep "[c]omplete records of [client] funds and property . . . ." The D.C. Court of Appeals addressed the meaning of "complete records" in *In re Clower*, 831 A.2d 1030, 1034 (D.C. 2003): "The Rules of Professional Conduct should be interpreted with reference to their purposes. The purpose of maintaining 'complete records' is so that the documentary record itself tells the full story of how the attorney handled client or third-party funds and whether the attorney complied with his

fiduciary obligation that client or third-party funds not be misappropriated or commingled. Financial records are complete only when documents sufficient to demonstrate an attorney's compliance with his ethical duties are maintained. The reason for requiring complete records is so that any audit of the attorney's handling of client funds by Disciplinary Counsel can be completed even if the attorney or the client, or both, are not available." Rule 1.15 requires that lawyers maintain records such that ownership or any other question about client funds can be answered without assistance from the lawyer or the lawyer's clients. While ~~T~~the precise records that achieve this result obviously can vary, ~~but lawyers may wish to look for guidance on records from the 2010 ABA Model Rules For Client Trust Account Records~~ the following list of records are sufficient, but not necessary, for purposes of a lawyer's duty to keep "complete records" pursuant to this Rule:

- **Attorney Trust Account Identification. An identification of all attorney trust accounts maintained, including the name of the financial institution, account number, account name, date the account was opened, date the account was closed, and an agreement with the financial institution establishing each account and its interest-bearing nature.**

- **Deposit and Disbursement Records. Centralized record or journal with each deposit and/or disbursement shown chronologically. Entries made at or near the time of the relevant deposit or disbursement. Entries that detail the date of the deposit or disbursement; the amount; the source of deposit or destination of disbursement; the identity of the related client; and the purpose of the deposit or disbursement.**

- **Client Matter Records. A record for each client matter in which the attorney receives funds in trust, including:**

    - **For each attorney trust account transaction, a record that shows (i) the date of the deposit or disbursement, (ii) the amount of the deposit or disbursement, (iii) the purpose for which the funds are intended, and (iv) for a disbursement, the payee and the check number or other payment identification; and (v) the balance of funds remaining in the account in connection with the matter;**

    - **An identification of the person to whom the unused portion of a fee or expense deposit is to be returned whenever it is to be returned to a person other than the client; and**

    - **A record that identifies the funds of the attorney held in each attorney trust account as permitted by Rule 1.15(f).**

- **Financial Institution Records. Periodic (for example, monthly or quarterly, as relevant) statements;**

- **Client File Records. Copies of those portions of client files that are reasonably related to client trust account transactions, including:**

    - **Fee Agreements. Copies of any agreements or communications pertaining to fees and costs;**

    - **Billing Invoices. Copies of bills for legal fees and expenses provided to clients;**

    - **Disbursements. Copies of assignments and authorizations, liens, or bills, invoices or other documents supporting all disbursements or transfers from the trust account;**

    - **Accounting Statements. Copies of all statements or accountings to clients or third parties showing the disbursement of funds to them or on their behalf; and**

    - **Time Records. Copies of time entries, if kept, showing the amount of time expended, the basis or rate charged, a description of work performed, the total amount billed. (There may be cases such as contingent fee or flat fee cases, where time records are not kept. It is recommended, but not required, that even in those cases time records be kept to establish payment milestones in flat fee cases and to support quantum meruit claims in contingent fee cases if the lawyer is discharged.)**

- **Electronic Records. Whenever the records encouraged by these Comments are created or maintained using electronic means, there should be an ability to print the information contained in such records onto paper (by running a report in an accounting software program, for example), or otherwise make them available in a reasonably accessible format, upon a reasonable request to do so. Electronic records should be backed up regularly by an appropriate storage device.**

- **Monthly Reconciliation. A monthly reconciliation of all trust account records, client matter records, records of funds of the attorney held in an attorney trust account as permitted by Rule 1.15(f), and the adjusted month-end financial institution statement balance. The adjusted month-end financial institution statement balance is computed by adding subsequent deposits to and subtracting subsequent disbursements from the financial institution's month-end statement balance.**