PROGRAM MATERIALS
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Ethical Attorney's Fees, Referral Fees, and Billing Practices (2022 Update)

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Ethical Referral Fees, Attorney Fees, and Billing

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Today's Topics

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Ethical Fees

- ABA Model Rules of Professional Conduct 1.5- Factors in Determining Reasonable Fee
- Client-Lawyer Relationship
- (a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:
- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

Ethical Fees

- Model Rule 1.5
- (b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.
- (c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d) or other law. **A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated.** The agreement must **clearly notify the client of any expenses for which the client will be liable** whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

Ethical Fees

- Model Rule 1.5
- (d) A lawyer shall not enter into an arrangement for, charge, or collect:
- (1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or
- (2) a contingent fee for representing a defendant in a criminal case

- Most jurisdiction's have these prohibitions but check your jurisdiction's rules.

Ethical Referral Fees

- Referral Fees constitute fee splitting/sharing and are subject to specific rules and requirements.
- Model Rule 1.5
- (e) A division of a fee between lawyers who are not in the same firm may be made only if:
- (1) the division is in proportion to the services performed by each lawyer or each lawyer assumes joint responsibility for the representation;
- (2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and
- (3) the total fee is reasonable.

- Check your jurisdiction's rules.

Ethical Referral Fees

- Model Rule 1.5 Comment:
- Division of Fee
- [7] A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, and most often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist.
- **Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or if each lawyer assumes responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing.** Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (c) of this Rule. **Joint responsibility for the representation entails financial and ethical responsibility for the representation as if the lawyers were associated in a partnership.** A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.
- Malpractice liability even if lawyer has only referred the case but expects a referral fee.

Ethical Referral Fees

- Model Rule 7.2
- Information About Legal Services
- (b) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may:

- (2) pay the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral service;

- 4) refer clients to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:
- (i) the reciprocal referral agreement is not exclusive; and
- (ii) the client is informed of the existence and nature of the agreement; and

- (5) give nominal gifts as an expression of appreciation that are neither intended nor reasonably expected to be a form of compensation for recommending a lawyer's services.

Ethical Referral Fees: Non-lawyers

- Model Rule 5.4
- Professional Independence of a Lawyer
- (a) A lawyer or law firm **shall not share legal fees with a nonlawyer**, except that:
- (1) an agreement by a lawyer with the lawyer's firm, partner, or associate may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
- (2) a lawyer who purchases the practice of a deceased, disabled, or disappeared lawyer may, pursuant to the provisions of Rule 1.17, pay to the estate or other representative of that lawyer the agreed-upon purchase price;
- (3) a lawyer or law firm may include nonlawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement; and
- (4) a lawyer may share court-awarded legal fees with a nonprofit organization that employed, retained or recommended employment of the lawyer in the matter.

Ethical Referral Fees: Non-Lawyers

- Model Rule 5.4
- Professional Independence of a Lawyer
- (b) A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) A lawyer shall not permit a person who recommends, employs, or pays the lawyer to render legal services for another to direct or regulate the lawyer's professional judgment in rendering such legal services.
- (d) A lawyer shall not practice with or in the form of a professional corporation or association authorized to practice law for a profit, if:
- (1) a nonlawyer owns any interest therein, except that a fiduciary representative of the estate of a lawyer may hold the stock or interest of the lawyer for a reasonable time during administration;
- (2) a nonlawyer is a corporate director or officer thereof or occupies the position of similar responsibility in any form of association other than a corporation ; or
- (3) a nonlawyer has the right to direct or control the professional judgment of a lawyer.

Ethical Referral Fees: Non-lawyers

- Florida Bar Rule 4-5.4
- Professional Independence of a Lawyer
- Comment:
- Law Firms And Associations
- [1] The provisions of this Rule express traditional limitations on sharing fees. These limitations are to protect the lawyer's professional independence of judgment. Where someone other than the client pays the lawyer's fee or salary, or recommends employment of the lawyer, that arrangement does not modify the lawyer's obligation to the client. As stated in paragraph (c), such arrangements should not interfere with the lawyer's professional judgment.

- [2] This Rule also expresses traditional limitations on permitting a third party to direct or regulate the lawyer's professional judgment in rendering legal services to another. See also Rule 1.8(f) (lawyer may accept compensation from a third party as long as there is no interference with the lawyer's independent professional judgment and the client gives informed consent).

Ethical Referral Fees: Non-lawyers

- Sharing Fees with non-lawyers who are permitted to practice in federal or other administrative matters.
- Florida Bar Ethics Opinion 95-1 (July 15, 1995)
- Florida lawyer was approached by a non-lawyer who wanted to start a business representing claimants in social security disability matters. Federal Regulations allow non-lawyers to represent claimants in those matters. The non-lawyer asked the lawyer to work for the company and act as a claimant representative as an employee of the company. The lawyer would be the representative and also manage the company. The non-lawyer would be the sole shareholder in the company; however, all management, and decisions concerning the representation of clients would be made by the lawyer.
- "A Florida Bar member who maintains a law practice or otherwise holds himself or herself out as a lawyer **may not ethically enter into a business arrangement with a nonlawyer to represent claimants in social security disability matters**. Fees claimed by or paid to the bar member for such representation are considered legal fees, and thus the proposed arrangement would violate Rule 4-5.4, which prohibits a lawyer from sharing legal fees with a nonlawyer.

- Check your jurisdiction's rules.

Non-lawyer Ownership of Law Firm and Fee Sharing

- Washington D.C. Bar Rule 5.4
- Rule permits non-lawyer ownership of law firms and fee sharing.
- Professional Independence of a Lawyer
- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
- (4) Sharing of fees is permitted in a partnership or other form of organization which meets the requirements of paragraph (b); and
- (5) A lawyer may share legal fees, whether awarded by a tribunal or received in settlement of a matter, with a nonprofit organization that employed, retained, or recommended employment of the lawyer in the matter and that qualifies under Section 501(c)(3) of the Internal Revenue Code.

Non-lawyer Ownership of Law Firm and Fee Sharing

- Washington D.C. Bar Rule 5.4
- Professional Independence of a Lawyer
- (b) A lawyer may practice law in a partnership or other form of organization in which a financial interest is held or managerial authority is exercised by an individual nonlawyer who performs professional services which assist the organization in providing legal services to clients, but only if:
- (1) The partnership or organization has as its sole purpose providing legal services to clients;
- (2) All persons having such managerial authority or holding a financial interest undertake to abide by these Rules of Professional Conduct;
- (3) The lawyers who have a financial interest or managerial authority in the partnership or organization undertake to be responsible for the nonlawyer participants to the same extent as if nonlawyer participants were lawyers under Rule 5.1;
- (4) The foregoing conditions are set forth in writing.

Non-lawyer Ownership of Law Firm and Fee Sharing

- Washington D.C. Bar Rule 5.4
- Comment
- 4] This rule rejects an absolute prohibition against lawyers and nonlawyers joining together to provide collaborative services, but continues to impose traditional ethical requirements with respect to the organization thus created. Thus, a lawyer may practice law in an organization where nonlawyers hold a financial interest or exercise managerial authority, but only if the conditions set forth in subparagraphs (b)(1), (b)(2), and (b)(3) are satisfied, and pursuant to subparagraph (b)(4), satisfaction of these conditions is set forth in a written instrument. The requirement of a writing helps ensure that these important conditions are not overlooked in establishing the organizational structure of entities in which nonlawyers enjoy an ownership or managerial role equivalent to that of a partner in a traditional law firm.

- [10] Some sharing of fees is likely to occur in the kinds of organizations permitted by paragraph (b). Subparagraph (a)(4) makes it clear that such fee sharing is not prohibited.

Non-lawyer Ownership of Law Firm and Fee Sharing

- Utah and Arizona now permit non-lawyer ownership of law firms and sharing of fees.
- Utah: https://www.abajournal.com/news/article/first-law-firm-owned-entirely-by-nonlawyers-opens-in-utah
- Arizona: https://www.abajournal.com/web/article/arizona-approves-alternative-business-structures-as-part-of-access-to-justice-reforms

Non-refundable Fees

- Non-refundable/set/flat fees - are they ethical?
- Generally, yes in one form or another in all jurisdictions except Minnesota.
- Minnesota Ethics Opinion No. 15 states:
- “All advance fee payments must be deposited into an interest bearing trust account in accordance with Rules 1.15(a)(2) and (e), Minnesota Rules of Professional Conduct. A lawyer may withdraw fees from the trust account when earned provided the client is given: 1) written notice of the time, amount, and the purpose of the withdrawal; and 2) an accounting of the client's funds in the trust account.
- Funds paid to a lawyer pursuant to an availability or nonrefundable retainer agreement are not required to be deposited into a trust account or held in trust. All availability or nonrefundable retainer agreements must be in writing and signed by the client.”
- Therefore, the only permitted non-refundable fees are “retainers” to secure the lawyer’s availability. Those retainer fees must be reasonable and are subject to an analysis using the reasonableness factors in Rule 1.5(a) of the Minnesota Bar Rules.
- Check your jurisdiction's rules.

Non-refundable Fees

- Florida Bar Ethics Opinion 93-2 (October 1, 1993)
- **Nonrefundable fees are permissible but are subject to the rule regarding clearly excessive fees.** When charging a flat fee (a portion of which will be used to pay costs), the lawyer must deposit into the trust account any unearned fee, as well as the estimated amount of costs. An attorney who charges a flat fee, a portion of which will be used to pay costs, must deposit into the trust account any unearned fee, as well as the estimated amount of costs.
- Earned fees, including “true retainers,” must not be placed in the trust account. Unearned fees and advances for costs must be placed in the trust account.
- Note: Rule 4-1.15 was significantly amended by the Supreme Court in April 2002. The substance of the rule is now incorporated into Rule 5-1.1. Rule 4-1.5 was amended effective February 1, 2010, to require that nonrefundable fees be confirmed in writing.

Florida Non-refundable Fees

- Florida Bar Rule 4-1.5
- (e) Duty to Communicate Basis or Rate of Fee or Costs to Client and Definitions.
- (1) Duty to Communicate. When the lawyer has not regularly represented the client, the basis or rate of the fee and costs shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation. **A fee for legal services that is nonrefundable in any part shall be confirmed in writing and shall explain the intent of the parties as to the nature and amount of the nonrefundable fee.** The test of reasonableness found in subdivision (b), above, applies to all fees for legal services without regard to their characterization by the parties.

Florida Nonrefundable fees

- Florida Bar Rule 4-1.5
- Comment to Rule states, “A **nonrefundable retainer or nonrefundable flat fee is the property of the lawyer and should not be held in trust**. If a client gives the lawyer a n**egotiable instrument that represents both an advance on costs plus either a nonrefundable retainer or a nonrefundable flat fee**, **the entire amount should be deposited into the lawyer’s trust account, then the portion representing the earned nonrefundable retainer or nonrefundable flat fee should be withdrawn within a reasonable time.** An advance fee must be held in trust until it is earned. Nonrefundable fees are, as all fees, subject to the prohibition against excessive fees.”

- Check your jurisdiction.

Florida Non-refundable Fees

- Bar Rule 4-1.15(a) Clients' and Third-Party Funds to be Held in Trust.
- A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation.
- If client pays for non-refundable earned fee and advance costs in one payment, the lawyer must deposit the payment into the trust account and immediately move the earned fee into the operating account.

Non-refundable Fees

- New York State Bar Opinion 599 (3/16/1989)

- “While we recognize that nonrefundable minimum fee provisions are subject to potential abuse, especially in matrimonial matters, we do not believe that such agreements are necessarily violative of the Code in all situations A fee agreement may provide for a fixed minimum, but only if the agreement is expressly conditioned on the absence of lawyer default, the minimum amount is not excessive or unconscionable under the circumstances of the particular matter, and the client is fully advised of the grounds on which the agreement can be avoided. In the absence of such disclosure, adequate to assure complete understanding on the part of the client, it would be improper for a fee agreement to describe the fee or a portion thereof as 'nonrefundable.’"

Non-refundable Fees

- Texas State Bar Ethics Opinion Number 611 (September 2011)

- "A legal fee relating to future services is a non-refundable retainer at the time received only if the fee in its entirety is a reasonable fee to secure the availability of a lawyer's future services and compensate the lawyer for the preclusion of other employment that results from the acceptance of employment for the client. A non-refundable retainer meeting this standard and agreed to by the client is earned at the time it is received and may be deposited in the lawyer's operating account.
- However, any payment for services not yet completed does not meet the strict requirements for a non-refundable retainer (as that term is used in this opinion) and must be deposited in the lawyer's trust or escrow account. Consequently, it is a violation of the Texas Disciplinary Rules of Professional Conduct for a lawyer to agree with a client that a fee is non-refundable upon receipt, whether or not it is designated a 'non-refundable retainer' ,if that fee is not in its entirety a reasonable fee solely for the lawyer's agreement to accept employment in the matter."

Non-refundable Fees

- Utah State Bar Ethics Advisory Opinion Number 12-02

- “When managed as required by the Rules, flat-fee agreements provide substantial benefits to clients, attorneys and serve the interests of justice. Attorneys can manage financial risks so as to allow clients who could not otherwise afford counsel to obtain representation. Sophisticated clients are able to anticipate and accurately manage litigation expenses, and attorneys are able to avoid the administrative expenses of billing for their services by the hour. It is the committee's opinion that, as discussed herein, Utah attorneys may enter into flat-fee agreements with clients where such agreements do not violate Utah Rules of Professional Conduct Rules 1.5, LIS or 8.4.”

- Check your jurisdiction’s Bar Rules.

Types of Attorneys' Fees

- Types of fee arrangements:
- Non-refundable fee is earned upon receipt and placed into operating account. Tip: keep billable hours to defend Bar complaint if filed).
- Set or flat fee is earned upon receipt and placed into operating account. Tip: keep billable hours to support non-refundable fee if it is challenged.
- Contingency fee agreement. Tip: keep hours for *quantum meruit* and/or Bar complaint defense)
- Fee agreement with hourly billing. Tip: send periodic/monthly invoices with detailed billable hours.

Types of Attorneys' Fees

- Types of fee arrangements: Florida
- Rule 4-1.5(e) (2)
- Definitions.
- (A) Retainer. A retainer is a sum of money paid to a lawyer to guarantee the lawyer's future availability. A retainer is not payment for past legal services and is not payment for future services.
- (B) Flat Fee. A flat fee is a sum of money paid to a lawyer for all legal services to be provided in the representation. A flat fee may be termed "non-refundable."
- (C) Advance Fee. An advanced fee is a sum of money paid to the lawyer against which the lawyer will bill the client as legal services are provided.

- Check your jurisdiction's rules on permitted and prohibited fees

Ethical Billing Practices

- What is appropriate billable time?

- 1. Nothing in Bar Rules except fee should be reasonable and can't be illegal, prohibited, or clearly excessive (4-1.5)
- 2. Tip: billable hours should result from substantive efforts by lawyer or trained non-lawyer which provides value to client.
- 3. No clerical, secretarial, or other non-substantive time.
- 4. How about coordination and scheduling of court proceedings, deposition etc.?
- 5. How about summarizing deposition and hearing/trial transcripts?

- Check your jurisdiction's rules.

Ethical Billing Practices

- Tips on Ethical Billing of Fees
- 1. Communicate the fee arrangement before you start the case, preferably in writing and even more preferably, in a written fee agreement.
- 2. Make sure the fee better is reasonable (look at 8 reasonableness factors in Bar rules).
- 3. “Nonrefundable” does not mean that you can be paid for doing nothing.
- 4. Verbal flat fee arrangements are fraught with peril.
- 5. Availability fees (towering reputation fee retainers) are separate and distinct from fee for actual legal services.
- 6. If the fee is shared with a lawyer outside the firm, it must be in writing and the client must be fully advised. Do not share fees with non-lawyers
- 7. Keep accurate time records. Invoices must be detailed and descriptive of legal services provided. Review invoices before sending to client.
- 8. When payment is late, be timely and direct with the client. It is much easier to address and resolve fee issues and failure to pay early in the legal matter than later when there may or will be much more at stake.

- Check your jurisdiction’s rules.

Ethical Billing Practices

- Letters of Protection (LOPs) and 3rd party liens
- Florida Bar Rule 5-1.1(e) Notice of Receipt of Trust Funds; Delivery; Accounting. Upon receiving funds or other property in which a client or third person has an interest, a lawyer **shall promptly notify** the client or third person.
- Rule 5-1.1(**f**) Disputed Ownership of Trust Funds. When in the course of representation a lawyer is in possession of property in which 2 or more persons (1 of whom may be the lawyer) claim interests, the **property shall be treated by the lawyer as trust property.**

- Check your jurisdiction's rules.

Charging Debit/Credit Merchant Fees to Client

- Charging client for merchant fees for credit/debit transactions is permitted in Florida as of March 5, 2019.
- Florida lawyers now permitted to charge clients actual charge merchant imposes on the lawyer for the client's payment; therefore, if client pays with a debit or credit card, the actual merchant charge imposed can be added to the total payment.

- Amended Florida Bar Rule 4-1.5(h) states:
- (h) Credit Plans. A lawyer or law firm may accept payment under a credit plan. No higher fee shall be charged and no additional charge shall be imposed by reason of a lawyer's or law firm's participation in a credit plan. Lawyers may charge clients the actual charge the credit plan imposes on the lawyer for the client's transaction.

- Check your jurisdiction's rules.

Lawyer Agreement to Pay Client Fees and Costs

- Florida Bar Ethics Opinion 96-3 (February 15, 1997)
- Florida Lawyers are prohibited from paying fees and costs assessed against a client pursuant to the Florida Offer of Judgment statute.
- “The committee concludes that the proposed conduct would be prejudicial to the administration of justice, in violation of Rule 4-8.4(d), because it would defeat the purpose of the Offer of Judgment statute. In Opinion 1989-3, the New York State Bar Association Committee on Professional Ethics found that an agreement requiring a client to pay Rule 11 sanctions imposed upon a lawyer for filing non-meritorious claims was unethical because it defeated the purpose of the Rule and improperly shifted liability to the client. Similarly, the deterrent effect of the Offer of Judgment statute would be defeated if lawyers could insulate their clients from potential financial liability.
- Furthermore, costs and fees assessed pursuant to this statute are not the type of "financial assistance" contemplated (and permitted) by Rule 4-1.8(e).”

- Check your jurisdiction’s rules.

Law Firm Management and Retention of Client Files

- Lawyer made need client file if the client disputes the fee and/or a lawsuit is filed challenging the fee.
- Model Rule 1.15(a) states, in part:
- “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.”

- Model Rule 1.16(d) states:
- "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law."

Law Firm Management and Retention of Client Files

- In Florida, the client file is owned by the lawyer, not the client.
- There is no Florida Bar Rule requiring a lawyer to maintain a client file for any specific period of time; however,
- Trust accounting records must be kept for 6 years after the last transaction,
- Written contingency fee agreements and closing statements in contingent fee cases must be kept for 6 years after the date of the closing statement,
- Required written statement of insured client's rights must be kept for 6 years,
- There is a 6 year limitations period on filing a Florida Bar complaint unless there is fraud, concealment etc.
- There is no specific number of years for which lawyers are required to keep closed client files in Florida, it is recommended that the files be kept 7 years.

- Check your jurisdiction’s rules.

Law Firm Management and Retention of Client Files

- Electronic storage of client files
- Florida Bar Opinion 06-1 (April 10, 2006)
- Lawyers may, but are not required to, store files electronically unless: a statute or rule requires retention of an original document, the original document is the property of the client, or destruction of a paper document adversely affects the client's interests. Files stored electronically must be readily reproducible and protected from inadvertent modification, degradation or destruction.

- Check your jurisdiction's rules.

Fees, Costs, Settlement Funds, and Trust Accounts

- An IOTA (or IOLTA) client trust account is not always required depending on the lawyer's practice and funds received related to that practice.
- If the lawyer receives nominal or short term funds (i.e. settlement funds or small amounts of funds), unearned fee deposits, advances on costs, or other third party or client funds, those funds must be deposited into the lawyer's trust account and not disbursed until the funds clear the disbursement of settlement funds is determined, the fees are earned, or the costs are incurred.
- If the lawyer does not accept or receive such funds, an IOTA trust account is not required.

- Check your jurisdiction's trust account and other rules.

Fees, Costs, Settlement Funds, and Trust Accounts

- Bar trust account rules impose strict fiduciary duties on lawyers and require all client and third-party funds to be held in trust.
- In Florida, interest (if any) from IOTA trust fund interest is “swept” into the Bar Foundation’s bank account and used for client security fund and other purposes.
- Florida Bar Rule 5-1.1(j) states that trust funds cannot be disbursed until they are actually “collected”. Cashier’s and certified checks, bank or other financial institution checks, lawyer or real estate broker’s trust account checks, government checks, and insurance company checks are considered to be collected upon receipt.
- Do not depend on this rule…disburse only after check fully clears.

- Check your jurisdiction’s rules.

Fees, Costs, Settlement Funds, and Trust Accounts

- Commingling the lawyer's own funds in the trust account for an unreasonable time is prohibited under Bar rules.
- Florida Bar Rule 5-1.1 (a) Nature of Money or Property Entrusted to Attorney.
- (1) Trust Account Required; Commingling Prohibited.
- A lawyer shall hold in trust, separate from the lawyer's own property, funds and property of clients or third persons that are in a lawyer's possession in connection with a representation. All funds, including advances for fees, costs, and expenses, shall be kept in a separate bank or savings and loan association account maintained in the state where the lawyer's office is situated or elsewhere with the consent of the client or third person and clearly labeled and designated as a trust account.
- A lawyer may maintain his or her funds belonging to the lawyer in the trust account in an amount no more than is reasonably sufficient to pay bank charges relating to the trust account.

- Check your jurisdiction's rules.

Fees, Costs, Settlement Funds, and Trust Accounts

- Lawyers with trust accounts must be aware that there are serious liability and accountability issues for law firm partners and attorneys with signature authority on client trust accounts.
- Florida Bar Rules state that all attorneys with trust account signature authority on the trust account and all partners in a law firm bear ultimate responsibility to insure compliance with the Bar Rules related to IOTA trust accounts.

- Check your jurisdiction's rules.

Fees, Costs, Settlement Funds and Trust Accounts

- **Trust Accounting: disbursements against uncollected funds**
- **6 Florida exceptions permitting immediate disbursement**
- Certified checks and cashiers' checks
- Loan proceeds from bank or institutional lender
- Bank checks; official checks; money orders; and within the State of Florida, credit union checks Federal or State Government checks
- Checks on another FL lawyer's trust account or the escrow account of a licensed real estate broker
- Checks issued by insurance companies licensed by the State of Florida
- …**but don't do it**!
- Wait until funds are collected
- Be careful –Rule states, "may disburse" not shall disburse
- YOU are still the guarantor and have both fiduciary responsibility and responsibility under the Bar rules.

- Check your jurisdiction's rules.

The End!

- Thanks for your attention!
- Be careful out there!