8.22.2026

DISCUSSION DRAFT

This draft opinion, prepared by members of a subcommittee of the WSBA Committee on Professional Ethics, is under consideration. This draft does not reflect any official position of the CPE or the WSBA Board of Governors nor does it represent the view of the WSBA. It is for discussion purposes only. This draft is being circulated to invite comments from Stakeholders prior to more formal consideration by the CPE. Thank you in advance foryour feedback on this important area of the law.

Advisory Opinion 2026XX

Title: Insurance Requirements for Trust Accounts

Year Issued: ___________

RPC: 1.15A, 1.15B, 1.4, 1.2
ELC: 15.7

Summary:

This advisory opinion concludes that a lawyer must ordinarily deposit funds held under Washington Rule of Professional Conduct (RPC) 1.15A in a trust account insured to the full extent available under then-current law by either the Federal Deposit Insurance Corporation or the National Credit Union Administration in compliance with Washington Rule for the Enforcement of Lawyer Conduct (ELC) 15.7(d). This advisory opinion further concludes that RPC 1.15A(i) does not require a lawyer who has exercised ordinary prudence in the selection of a financial institution to open additional trust accounts if the amount deposited exceeds the insurance limits provided by the Federal Deposit Insurance Corporation or the National Credit Union Administration. However, the attorney must discuss the risk of uninsured deposits with the clients concerned under RPC 1.4 and follow the clients' instructions under RPC 1.2(a) to seek reasonably available alternatives.

Discussion:

A. Trust Account Funds Must Be Deposited in an Account Complying with RPC 1.15A(i) and ELC 15.7(d)

Washington RPC 1.15A(c)(1) requires a lawyer to "hold property of clients and third persons separate from the lawyer's own property . . . [and] deposit and hold in a trust account funds subject to this Rule[.]"

RPC 1.15A(i) further requires that, in relevant part, a Washington trust account "meet the requirements of ELC 15.7(d)" and be held at a "financial institution authorized by the Legal Foundation of Washington[.]"

Washington ELC 15.7(d) reads:

> **(d) Requirements of All Trust Accounts**. All trust accounts established pursuant to RPC 1.15A(i), LLLT RPC 1.15A(i), or LPORPC 1.12A(h) must be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration up to the limit established by law for those types of accounts or be backed by United States Government Securities. Trust account funds must not be placed in stocks, bonds, mutual funds that invest in stock or bonds, or similar uninsured investments. [n.1]

Neither RPC 1.15(A)(i) nor ELC 15.7 distinguish between pooled accounts under RPC 1.15(i)(1) ("interest on lawyer trust accounts," commonly called "IOLTA" accounts) and those established for individual clients when the funds are sufficiently large to generate net positive returns under RPC 1.15(i)(2). In other words, all trust accounts must meet the requirements of RPC 1.15A(i) and ELC 15.7(d). [n.2]

A periodically updated list of financial institutions authorized to hold trust accounts is available on the Legal Foundation of Washington's web site at www.legalfoundation.org. As the text of ELC 15.7(d) requires, the trust account used must ordinarily be insured by either the Federal Deposit Insurance Corporation (FDIC) or the National Credit Union Administration (NCUA) up to the full limits [n.3] permitted by current law. [n.4]

Although lawyers are required to use a financial institution authorized by the Legal Foundation of Washington, they remain responsible under RPC 1.15A(i) to "exercise ordinary prudence" in selecting a financial institution for their trust account from the Legal Foundation of Washington's list. While "ordinary prudence" is not defined in the rule or the accompanying comments, the term implies an objective standard of a reasonably careful person as that phrase is used elsewhere in Washington common law settings addressing the duties of fiduciaries. [n.5] By way of example, using a trust account at a well-capitalized bank typically would meet the standard; opening a trust account at a bank that is at clear risk of failure due to well-publicized and significant losses would not. [n.6] "Ordinary prudence" as used in RPC 1.15A(i) specifically describes the selection of a financial institution for a trust account. However, because the duty of safekeeping under RPC 1.15A generally is ongoing, a lawyer must continue exercising ordinary prudence by monitoring the financial health of the institution selected for their trust account.

In sum, RPC 1.15(A)(i) and ELC 15.7(d) impose a mandatory duty on Washington lawyers to select a financial institution authorized to hold trust accounts by the Legal Foundation of Washington and to hold funds in trust accounts complying with ELC 15.7(d).

B. RPC 1.15A(i) and ELC 15.7(d) Do Not Require a Lawyer to Open More than One Trust Account if the Total Balance Exceeds the Maximum Amount Insured by the FDIC or the NCUA but RPC 1.4 Requires Consultation with the Clients Affected in that Circumstance and RPC 1.2(a) Requires a Lawyer to Follow Clients' Instructions to Seek Reasonably Available Alternatives

At the time this Advisory Opinion was issued, the current insurance limits for both the FDIC and the NCUA are $250,000. How that insurance limit is calculated in any given circumstance varies and is discussed extensively on the FDIC and NCUA web sites at, respectively, www.fdic.gov and www.ncua.gov.

Significantly for present purposes, however, trust accounts are considered "pass through" accounts and the applicable federal deposit insurance limit is calculated based on the clients whose funds are held within the account rather than a single limit applying to the trust account as a whole. For example, if Client A and Client B each have funds in the same law firm trust account, the insurance limit applies to Client A and Client B individually—not the total contained in the law firm's trust account as a whole. [n.7] Pass-through coverage, however, is only available if the beneficial owners of the funds involved (i.e., the clients or third persons involved) can be identified through the record-keeping requirements specified in the applicable FDIC and NCUA regulations. [n.8] This underscores the importance of maintaining trust account records as required by RPC 1.15A(h)(2), RPC 1.15(h)(6), and RPC 1.15B(a). [n.9]

Although pass-through treatment may provide coverage sufficient to protect clients in most situations, it is conceivable that a lawyer may have clients with funds in trust that exceed FDIC or NCUA insurance coverage. [n.10] In that event, RPC 1.15A(i) and ELC 15.7(d) on their face do not require a lawyer to open more than one trust account to protect the clients or third persons concerned from the risk of uninsured exposure in the event of a bank failure. [n.11] A lawyer in that circumstance, however, has a general duty under RPC 1.4 (addressing lawyer-client communication) to discuss with clients the potential risk involved and, if directed by the client under RPC 1.2(a) following that consultation, to seek reasonably available alternatives such as opening an additional individual trust account for that client at a different financial institution. Although RPC 1.4 only applies to clients, a lawyer may wish to have a similar discussion with non-clients in similar circumstances as a matter of prudent practice. [n.12]

---

1. *See also* RPC 1.15A, cmt. 18 (mirroring and cross-referencing ELC 15.7).
2. Neither Washington RPC 1.15A nor Washington ELC 15.7 have precise counterparts in the ABA Model Rules. *See generally* WSBA, Reporter's Explanatory Memorandum to the Ethics 2003 Committee's Proposed Rules of Professional Conduct at 31 (2004)

("Proposed Rule 1.15A varies considerably from Model Rule 1.15."); GR 9 Cover Sheet to ELC 15.7 (2009) (available at: https://www.courts.wa.gov/court_rules/?fa=court_rules.proposedRuleDisplay&ruleId=170).

3. Comment 18 to RPC 1.15A notes that "[a]ll trust accounts must be insured . . . up to the limit established by law[.]"

4. ELC 15.7(d) also permits a trust account to be "backed by United States Government Securities." ELC 15.7(b)(1), in turn, includes a definition of "United States Government Securities" and ELC 15.7(e)(4) addresses "comparable accounts" backed by such securities. For a comprehensive discussion of trust accounts backed by U.S. Government securities and similar arrangements, *see* the Pennsylvania IOLTA Board's Guidance of April 5, 2023 at: https://paiolta.org/wp-content/uploads/2026/02/FDIC-Insurance-IOLTA-Accounts-When-is-it-Enough-Protection-04.06.23.pdf This opinion focuses on more common trust accounts that are bank or credit union business checking accounts subject to deposit insurance offered by either the FDIC or the NCUA.

5. *See, e.g., Matter of Estate of Ferara*, 29 Wn. App.2d 139, 157, 540 P.3d 194 (2023) ("Washington courts have defined a trustee's duty of care, skill, and diligence to be that degree of care, skill, and diligence that an ordinary prudent person exercises in similar affairs."); *Cook v. Brateng*, 158 Wn. App. 777, 785, 262 P.3d 1228 (2010) (same; collecting cases); *see also* Black's Law Dictionary (12th ed. 2024) (defining "prudent" as "sensible and careful[.]"); Restatement (Third) of the Law Governing Lawyers § 44(1) (2000) ("A lawyer holding funds . . . of a client in connection with a representation . . . must take reasonable steps to safeguard the funds[.]").

6. Matters of substantive law are beyond the purview of an advisory ethics opinion. Therefore, nothing in this opinion should be construed as suggesting a particular civil standard of care. *See generally Hizey v. Carpenter*, 119 Wn.2d 251, 257-266, 830 P.2d 646 (1992) (discussing interplay between RPC and substantive standard of care in legal malpractice litigation); *Hetzel v. Parks*, 93 Wn. App. 929, 934-39, 971 P.2d 115 (1999) (discussing fiduciary duty of safekeeping for funds in lawyer's trust account); *see also* RPC 1.15A, cmt. 4 (regulatory obligations for trust accounting "not intended to expand or otherwise affect existing [substantive] law" on civil responsibility for funds held in trust).

7. *See* 12 C.F.R. §§ 330.5, 330.7 (FDIC); 12 C.F.R. § 745.14 (NCUA).

8. *Id*.

9. The WSBA has extensive trust accounting resources available on its web site at: https://www.wsba.org/for-legal-professionals/ethics/iolta.

10. Because available insurance coverage is calculated by client, a client's existing deposits at a financial institution are counted toward the insurance maximum. To borrow from an example on the FDIC's web site, if a client has $200,000 on deposit at a bank and the lawyer's trust account was at the same bank, the additional "pass through" coverage for the client's funds in the trust account would only be $50,000—the combined maximum for that client at that bank. The FDIC discusses a variety of scenarios in this regard on its web site at: https://www.fdic.gov/financial-institution-employees-guide-deposit-insurance/pass-through-deposit-insurance-coverage#.

11. *See* Note 6, *supra*, regarding substantive legal standards.

12. For a represented non-client, the discussions would be with non-client's lawyer in keeping with RPC 4.2. For an unrepresented non-client, prudent practice would include advising the non-client in the context of those discussions that the lawyer is not representing the non-client. *See generally* WSBA Advisory Op. 202503 at 3 (2025) (discussing disputed funds in trust and noting that lawyer holding such funds should "make clear" to unrepresented non-clients that the lawyer is not representing them).