

ETHICS ADVISORY OPINION

25-01

UPON THE REQUEST OF A MEMBER OF THE SOUTH CAROLINA BAR, THE ETHICS ADVISORY COMMITTEE HAS RENDERED THIS OPINION ON THE ETHICAL PROPRIETY OF THE INQUIRER'S CONTEMPLATED CONDUCT. THIS COMMITTEE HAS NO DISCIPLINARY AUTHORITY. LAWYER DISCIPLINE IS ADMINISTERED SOLELY BY THE SOUTH CAROLINA SUPREME COURT THROUGH ITS COMMISSION ON LAWYER CONDUCT.

S.C. Rules of Professional Conduct: 1.15 (Also Rule 417, SCACR)

Facts: A federal agency has advised that it will no longer accept paper checks drawn on lawyer trust accounts in satisfaction of medical liens on client settlement funds due to Executive Order 14247. This Order mandates that all payments to the federal government and its agencies be made via electronic funds transfer as of September 30, 2025. The counsel's office for the federal agency does not know whether the agency will currently refuse to accept mailed paper checks but advised that some South Carolina law firms have already used the new electronic method without issue.

The agency states that payments are to be made through Pay.gov. According to information on Pay.gov and provided by the federal agency in question, Pay.gov is a Web transaction portal, sponsored by the United States Department of the Treasury's Fiscal Service, which allows for funds due to a federal agency to be debited from an account maintained by a law firm via automated clearinghouse (ACH) or electronic transfer.

It is the understanding of the inquiring lawyer ("Lawyer") that this type of electronic funds transfer would involve authorizing Pay.gov to initiate a debit to pull a specific amount of money from Lawyer's account thus delegating control, within authorized limits, over the withdrawal. This is understood to be distinct from a lawyer-initiated wire or ACH transfer. The agency advises that payment confirmation will be sent to the email provided on its payment form.

Questions Presented:

1. Does the inclusion in Rule 1.15, cmt. 9, of specific types of payments that are permitted, mean that a lawyer's authorization of debits from their trust account is limited to only those type of small, predictable fees or does the Rule allow for an ACH debit for other types of payments that are not listed?
2. If debits are ethically permitted for payments such as lien reimbursements, do these transactions allow compliance with the recordkeeping requirements of Rule 417?

Summary:

1. No, Rule 1.15, cmt. 9, by listing specific types of payments that are permitted does not preclude lawyer authorization of ACH debits from a trust account for other types of payments on behalf of a client.

2. Yes. A lawyer should create and retain documentation related to the movement of the funds from one account to another, authorization of the debit, and receipt of payment of the funds must be created and retained, as required by Rule 1.15 and Rule 417.

Opinion:

Rule 1.15(d), SCRPC, Rule 407, SCACR, provides that upon receiving funds or other property in which a third person has an interest, a lawyer shall promptly deliver to that third person any funds to which the third person is entitled to receive, absent another obligation to retain the funds in trust, per Rule 1.15(e). The Rule itself does not address the method by which payment to the third party may or must be “delivered.”

In 2014, in response to a petition filed by the South Carolina Bar, the Supreme Court amended Rule 1.15 to add Comment [9], which acknowledges the ability of lawyers to use electronic transfer to pay recording fees, submission fees, filing fees, or similar fees. *Re: Electronic Transfers from Lawyer Trust Accounts*, Appellate Case No. 2014-000261 (S.C. Sup. Ct. Order filed April 10, 2014).

In order to pay recording fees, submission fees, filing fees, or similar fees on behalf of a client or third party, a lawyer may authorize the electronic transfer of funds from the lawyer's trust account to a government agency or a vendor duly authorized by a government agency to collect such fees. Such authorization may include granting the government agency or its duly authorized vendor the right to debit the funds authorized by the lawyer from the lawyer's trust account, subject to the requirements of Rule 1.15(f).

Rule 1.15, cmt. 9. Comment [9] does not limit or exhaustively list the means by which funds can be delivered but instead provides clarification as to the allowance for types of fees that can be paid by electronic funds transfer while remaining in compliance with Rule 1.15.

Rule 417 (Financial Recordkeeping), SCACR, contains additional rules that govern the means and purposes of allowable disbursements from trust accounts. Rule 2(c) provides that “withdrawals shall be made only (i) by check payable to a named payee and not to cash, or (ii) by authorized electronic transfer.” Rule 5, SCRFR governs “Authorized Electronic Transfers generally, with 5(a) allowing for such transfers for “money required for payment to a client or third person on behalf of a client.” Regardless of means of transfer, the lawyer must comply with all financial recordkeeping requirements contained in Rule 1, SCRFR and Rule 1.15, SCRPC.

Here, the federal government has notified Lawyer that funds must be paid electronically using Pay.gov and as a practical matter, Lawyer has no choice but to comply. However, the Rules referenced specifically contemplate such electronic transfers, and, with Comment [9], specifically contemplate authorized debits from a trust account. Thus, payment on behalf of a client from a trust account via authorized debit through Pay.gov does not violate the Rules of Professional Conduct.

Preferably, all such transfers will be prompted by one-time payment authorizations initiated by the lawyer, for a specific amount, on behalf of a specific client, to resolve a specific obligation.

However, the lawyer may be required to make a broader authorization for Pay.gov to initiate withdrawals from the trust account. This creates additional risk of inadvertent or improper disbursement from the trust account. A lawyer must monitor the trust account on a regular basis and complete monthly reconciliations of all client trust accounts, per Rule 1(i), SCRFR. To enable the ability to engage in the requisite oversight for the trust account, a lawyer must create and/or maintain sufficient documentation related to the movement of the funds from one account to another, including any authorizations for debits and receipts for payment of the funds, as well as all other records required by Rule 1.15 and Rule 417.

To reduce the risk to inadvertent or unauthorized withdrawal affecting clients' funds held in trust, a lawyer may (but is not required to) open a separate or dedicated trust account for purposes of deposit of client funds (or those of multiple clients if multiple have funds that will be paid to a federal agency through Pay.gov) prior to authorization for withdrawal through Pay.gov from that separate trust account. A dedicated account will reduce the risk of exposure for other client funds but create additional recordkeeping and supervision obligations on the part of the lawyer.