

**GALLET DREYER & BERKEY, LLP**

ATTORNEYS AT LAW

# **Attorney Escrow Accounts, IOLA and Ethics. What Every New Lawyer Needs to Know.**

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**a/k/a . . . How to avoid  
finding yourself in a place  
you never want to be**

# Source of law

Appellate Division Rules – They admitted you; they make the rules that allow you to stay. The rules are in your materials.

## Two important questions before we start talking about the rules

Raise your left hand if you have read the Appellate Division Rules.

Raise your right hand if you have been admitted for two years.

What happens if you raised your right hand but not your left hand?

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# **Ethics Lesson #1**

**Anyone want to hazard a guess?**

**False swearing to the  
Appellate Division is  
unethical.**

## What Goes in an Attorney Escrow Account?

OPM (Other People's Money) – No commingling with your own funds.

If funds are held incident to the practice of law OR someone involved might think you are acting as an attorney.

Must deposit those funds into an account at a bank IN NEW YORK.



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# **IOLA vs. Other Escrow Accts.**

**IOLA = Interest on Lawyer Accounts**



## **IOLA vs. Other Atty. Escrow Accounts**

The ONLY REAL DIFFERENCE is who gets the interest on the account.

**Not IOLA** – The parties can agree who gets the interest.

**IOLA** – The IOLA Fund for New York gets the interest on the account.

**All other rules are the same**



# What the IOLA Fund Is Not

1. It is not a regulator of escrow accounts.
2. It does not make ethics rules.
3. It does not answer ethics questions.
4. It has nothing to do with non-IOLA accounts.
5. It has nothing to do with bounced check reporting.
6. It does not provide money to the Lawyer's Fund for Client Protection.
7. It does not discipline attorneys.

# To IOLA or Not to IOLA

Attorney's good faith judgment

How long will the deposit exist?

How much interest will be earned?

Guideline: <\$150 or even more if less than the cost of establishing and maintaining the account.

**IOLA is optional. Interest-bearing account is always a permitted alternative, BUT if no interest, then must be an IOLA .**

# Opening an Escrow Account

1. Account in name of provider of legal service (law firm, sole proprietor).
2. Subtitle the account – **THREE SUBTITLE CHOICES!** – Attorney Special Account, Attorney Trust Account, *or* Attorney Escrow Account.
3. You can have a common account with multiple clients **BUT** if it is interest bearing – use separate subaccounts. **CLIENT GETS INTEREST!** Get SS#.
4. Who can sign the signature card/checks? Attorneys **ONLY!**
5. Signature stamps?
6. Be prepared for the Third Degree from your bank.

# FDIC Insurance

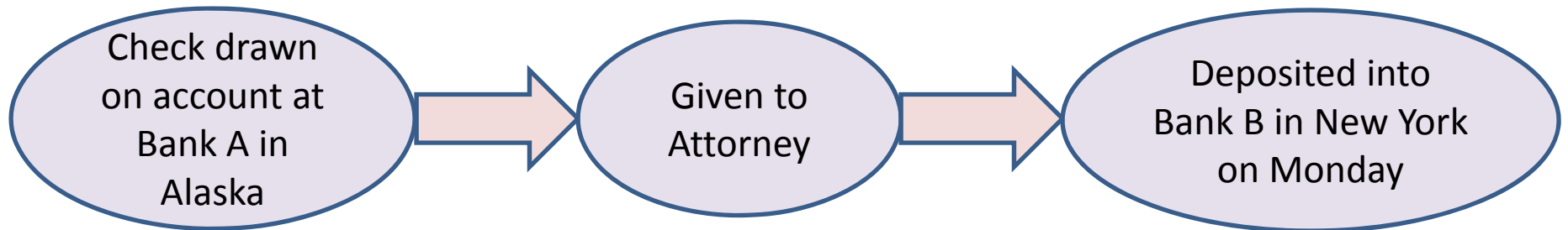
- 1. \$250,000 FDIC insurance – IOLA versus Non-IOLA is the same.**
- 2. Insurance is per beneficial ownership interest.**
- 3. Separate from your own accounts at the bank.**
- 4. You must maintain records of ownership interests, but you must do that anyway.**

# **Time to Disburse: UCC, Fed. Reg. CC and Releasing Funds**

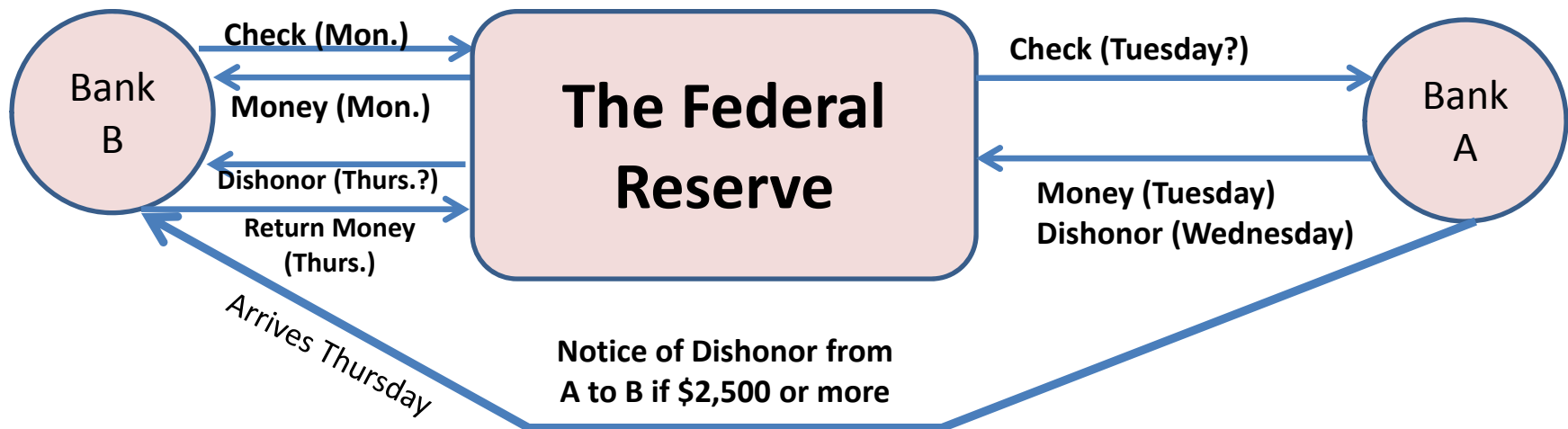
- 1. Uncollected versus available for withdrawal. Available for withdrawal does not mean deposited check can't be charged back.**
- 2. NO checks against undeposited or uncollected funds.**
- 3. Wire transfers.**
- 4. NO CASH! NO CHECKS PAYABLE TO CASH. NO ATM WITHDRAWALS.**



# The Biggest Secret in Banking . . .



How long does it take Bank B to get the money?





# The Bounced Check Rule

- 1. Only open escrow account with a bank that agrees to the bounced check rule.**
- 2. Bank must report ANY situation in which a check bounces on an attorney escrow account because of insufficient funds to the Lawyer's Fund.**
- 3. Bank has 10 days to withdraw report ONLY for bank mistake.**
- 4. If not withdrawn, report is forwarded to disciplinary committee**

# Scams Targeting Attorneys

- 1. Attorney given more money than needed for the transaction.**
- 2. Attorney collects money for “client.”**
- 3. Attorney asked to reissue an escrow account check – after original has been returned.**

# Protective Steps

- 1. WAIT** after a check is deposited – If you are even slightly worried, call drawee bank.
- 2. NEVER** disburse funds on the day you deposit the funds if deposited by check.
- 3. If you have to flip money fast, get a wire transfer.**
- 4. Be suspicious. Do you KNOW and TRUST the source of the money?**

## **If you are not sure?**

- 1. NYSBA Committee on Professional Ethics**
- 2. City Bar Ethics Hotline**