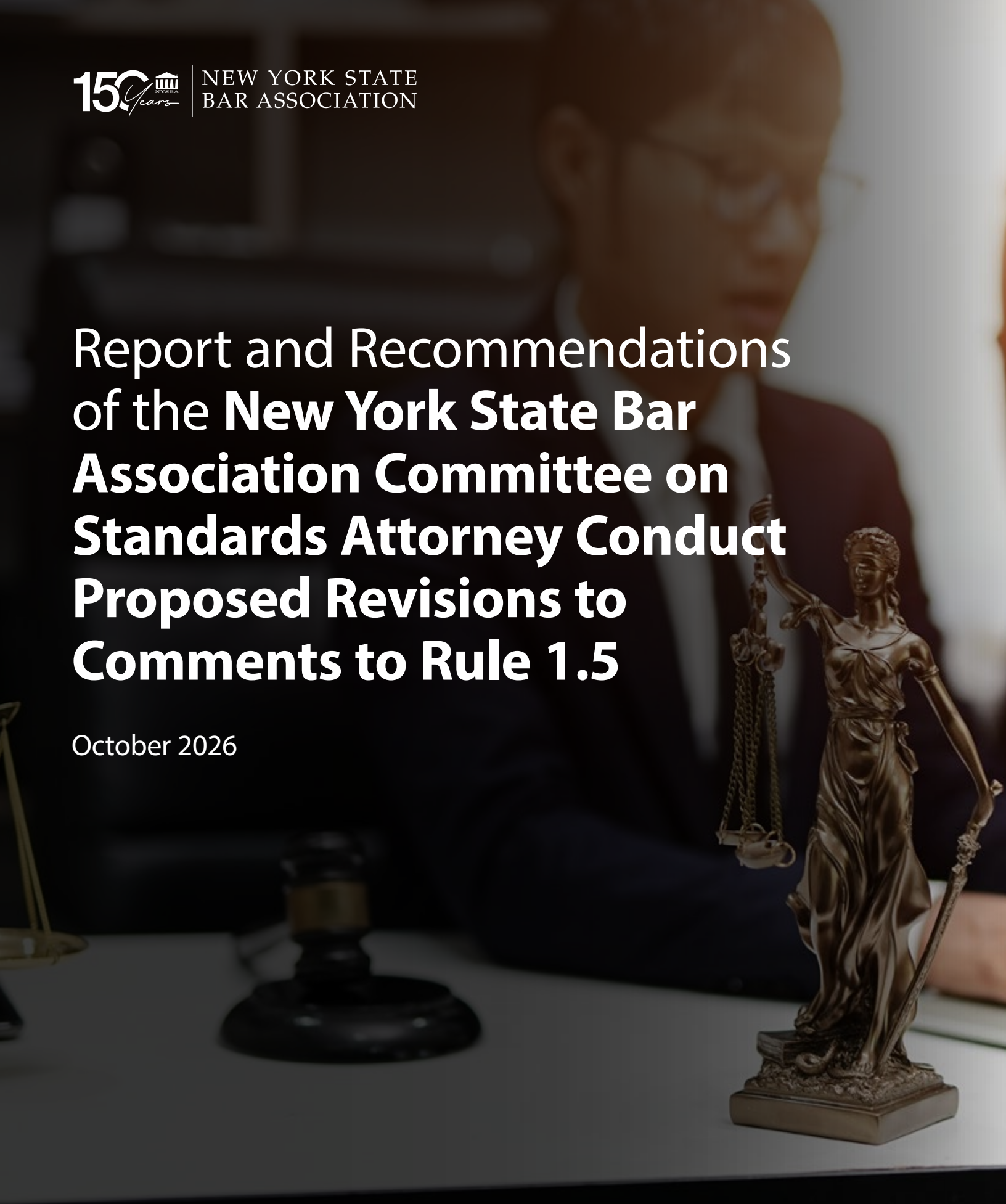
NEW YORK STATE BAR ASSOCIATION

Report and Recommendations of the **New York State Bar Association Committee on Standards Attorney Conduct Proposed Revisions to Comments to Rule 1.5**

October 2026



Approved by the House of Delegates on October 31, 2026.

MEMORANDUM

August 17, 2026

To: NYSBA Executive Committee and House of Delegates

From: NYSBA Committee on Standards of Attorney Conduct ("COSAC")

Re: Proposals Regarding Rule 1.15 from NYSBA Committee on Professional Discipline and New York City Bar Association Professional Discipline Committee

---

Introduction

The NYSBA Committee on Standards of Attorney's Conduct ("COSAC") submits this report following its review and discussion of: (1) the New York State Bar Association ("NYSBA") Committee on Professional Discipline's proposal to add new Comments to Rule 1.15 regarding treatment of advance retainers and maintaining a paper trail of withdrawals from attorney trust accounts; and (2) the New York City Bar Association Professional Discipline Committee's proposed amendments to Rule 1.15 (d)(1), plus a new explanatory Comment.

The purpose of this report is to document COSAC's review of the proposed comments and amendments, to summarize the substance of the same, and to set forth COSAC's analysis, conclusions, and recommendations.

Materials Reviewed

COSAC reviewed the following materials:

1. The NYSBA Committee on Professional Discipline's 2-page November 13, 2024 Memo to COSAC entitled, "*Proposed Comment to Rule 1.15 of the Rules of Professional Conduct.*"

2. The New York City Bar Association's published 10-page May 2026 report entitled, "*Report by the Professional Discipline Committee Proposing Amendment to New York Rule of Professional Conduct Rule 1.15 (d)(1).*"

Proposals by NYSBA Committee on Professional Discipline ("COPD")

The NYSBA Committee on Professional Discipline submitted a memo to COSAC headed "*Proposed Comment to Rule 1.15 of the Rules of Professional Conduct.*" The COPD memo proposes two new Comments to RPC 1.15, addressed below one at a time.

COPD's Proposed Comments [5A] and [5B] to Rule 1.15

COPD has proposed new Comments to address the proper treatment of advance retainer fees. The new Comments would provide as follows:

Advance Retainer Fees

[5A] In New York, advance retainer fees are generally not considered to be client property and thus are not required to be placed in an attorney's trust or IOLA account. Advance retainer fees may therefore be deposited into an attorney's or law firm's operating account. Upon completion of the matter, upon termination of the engagement, or upon discharge of the attorney, any unearned portion of the advance fees must be promptly refunded to the client – *see* Rule 1.16(e).

[5B] If a client requests that an advance retainer fee be held in an attorney trust or IOLA account until earned, the attorney may agree to do so but, per Rule 1.4 the attorney should explain to the client the possible advantages, disadvantages, alternatives, and risks of doing so. For example, if the advance retainer fees are maintained in the attorney's trust account, then the funds will generally be considered client property and may be exposed to claims by the client's creditors. A related point is that because New York generally deems advance fees to be attorney property unless the attorney and client agree to maintain the funds in an attorney trust account, depositing advance fees into an attorney trust account without the client's express agreement to do so may be considered commingling in violation of Rule 1.15(a).

COSAC's evaluation and recommendation regarding proposed Comments [5A] & [5B]

New York is in a small minority of states that treat advance retainer fees as attorney property upon receipt. The policy of treating advance retainer fees as attorney property upon receipt has been articulated in a number of ethics opinions going back more than forty years. *See, e.g.,* N.Y. State 570 (1985) and N.Y. State 816 (2007). COPD's proposed Comment [5A] to Rule 1.15 correctly captures this New York anomaly.

Under Rule 1.16(e), however, the attorney will have a responsibility to refund any "unearned" retainer funds upon withdrawal, termination, or discharge whether the advance fees have been deposited into the attorney's operating account or into a trust account.

To avoid undue burdens on sole practitioners and small law firms, COSAC believes that New York should continue to follow its practice of treating advance retainer fees as the attorney's property immediately upon receipt *unless* – as discussed in Comment [5B] –the attorney and client have agreed to treat the advance retainer fees as client property. If the attorney and client have agreed to treat the advance retainer fees as client property, then the advance retainer fees *must* be deposited into an attorney trust account. (Conversely, if the attorney and client have *not* agreed to treat the funds as client property, then the funds will by default be deemed to be the attorney's property, and they *must not* be deposited into an attorney trust account because that would commingle the attorney's property with the client's property, which Rule 1.15(a) forbids.)

Thus, COPD's proposed Comments [5A] and [5B] correctly state the current law and practice in New York that permits an attorney to deposit advance retainer fees into the attorney's operating account but alternatively permits an attorney and client to instead agree to that an advance retainer payment remains client property and will be deposited into an attorney trust account, to be drawn upon only when earned. COSAC therefore supports COPD's proposed Comments [5A] and [5B] to Rule 1.15.

COPD's proposed Comment [5C] to Rule 1.15

COPD has also proposed the following new Comment to address the requirement of a paper trail when funds are transferred out of an attorney trust account electronically (as by wire or ACH). The new Comment would provide as follows:

> Required "Paper Trail" for Withdrawals from an Attorney Trust Account
>
> [5C] Rule 1.15(e) recognizes the importance of maintaining a "paper trail" of all special account withdrawals by requiring each withdrawal to be made either (i) by check to a named payee or (ii) with the prior written approval of the party entitled to the proceeds, by bank transfer. When the lawyer maintaining the attorney trust account, special account, or escrow account is also the party entitled to the funds (*e.g.,* if the electronically transferred funds will be used to pay the lawyer's outstanding legal fees or to reimburse the attorney for expenses already incurred on behalf of the client), then an ACH transfer, a wire transfer, or some other type of electronic bank transfer from the lawyer's special account to the lawyer's operating account is permitted, provided the transfer meets three conditions: (a) the records maintained by the financial institution where the accounts are held must independently and clearly identify both the account from which the funds are transferred and the account to which the funds are transferred, (b) the funds are transferred without any intervening conversion to cash, and (c) the transfer is clearly recorded in the attorney's ledger books per Rule 1.15(d)(1)(ii) & (d)(2). When the lawyer maintaining the trust account is also "the party entitled to the proceeds," then the "prior written approval" of the party entitled to the proceeds (*i.e.,* the lawyer) may be inferred from the lawyer's initiation and processing of the transfer itself.

COSAC's evaluation and recommendation regarding proposed Comment [5B]

Because maintaining an accurate paper trail of withdrawals from an attorney trust account is of enormous importance, and because electronic transfers from an attorney trust account to an attorney's operating account pose special problems, COSAC supports COPD's proposed Comment [5C].

Proposals by City Bar's Professional Discipline Committee

In May 2026 the New York City Bar's Professional Discipline Committee ("PDC" or "City Bar PDC") issued a "*Report by the Professional Discipline Committee Proposing Amendment to New York Rule of Professional Conduct Rule 1.15 (d)(1)*" (the "PDC Report") (available online at https://www.nycbar.org/reports/proposed-amendment-to-new-york-rule-of-professional-conduct-rule-1-15d1 and attached to this memorandum). The PDC Report, which was endorsed by the City Bar as a whole, proposes amending Rule 1.15(d)(1) to add a requirement that, at least once every 60 days, an attorney must reconcile all trust accounts, special accounts, and escrow accounts that Rule 1.15(b)(1) requires an attorney to maintain. The proposed amendment would codify the expectations set forth in New York case law and would establish a uniform baseline standard for trust account reconciliation. The PDC's proposed rule is as follows:

PDC's proposed Rule 1.15(d)(1)(ix)

> At least once every 60 days, a lawyer shall prepare and retain a three-way reconciliation report of all special accounts or other accounts that Rule 1.15(b)(1) requires

the lawyer to maintain. Each reconciliation report shall demonstrate identical balances among: (i) the general ledger balance; (ii) the aggregate of all individual client ledger balances; and (iii) the adjusted bank statement balance from the financial institution holding each special account or other account required by Rule 1.15(b)(1). A three-way reconciliation report is not required for periods in which no banking transaction activity occurs.

To accompany and explain the amended black letter text of Rule 1.15 requiring reconciliation, the City Bar Professional Discipline Committee also proposes a new Comment to Rule 1.15(d)(1)(ix) that would provide as follows:

Required Trust Account Reconciliation

[5D] The three-way reconciliation process mandated by Rule 1.15(d)(1)(ix) requires three related steps:

A. Funds held for each client in individual client ledgers should be totaled and compared to the total of the general ledger or other record which records all deposits into and withdrawals from an attorney trust account, special account, escrow account, or other account required by Rule 1.15(b)(1)
B. the bank statement balance should be adjusted by adding deposits not yet credited to the account and deducting uncleared checks; and
C. the aggregation of all individual client ledgers should equal the total of the general ledger or other record which records all deposits and withdrawals in the account and the adjusted bank statement balance.

While a lawyer must prepare and maintain three-way reconciliation reports not less frequently than every 60 days, lawyers should note that some banks may allow only 30 days from the statement date to notify the bank of errors.

COSAC's evaluation and recommendation regarding City Bar PDC's proposals

COSAC supports City Bar PDC's proposals for both the amended black letter text to Rule 1.15(d)(1) and for the new Comment to explain and elaborate on the new black letter language.

By way of background, existing Rule 1.15(b)(1) requires that funds belonging to another person incident to the lawyer's practice of law be held in a banking institution within New York State that agrees to provide dishonored check and overdraft reports in accordance with the provisions of 22 NYCRR Part 1300. Such funds shall be maintained in a special account separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; and all funds held in escrow or otherwise entrusted to the lawyer or firm incident to the lawyer's or firm's practice of law shall be deposited into such special account or accounts.

A reconciliation requirement for those bank accounts is already imposed by case law, as set out at length in the PDC Report. Reconciling the special bank accounts required by Rule 1.15(b)(1) means using a formula or method to ensure that an attorney's internal records match the bank statements.

The City Bar Professional Discipline Committee concluded that an amendment to Rule 1.15(d)(1) is necessary to explicitly state that a lawyer or law firm has a duty to reconcile each attorney trust account, escrow account, or special account at least once every 60 days. New York courts have already interpreted language in various paragraphs of Rule 1.15 to mandate or strongly encourage

periodic reconciliation but have not set out definitive uniform rules. The City Bar PDC's Report, after listing eight pages of case law on the topic of reconciliation, concludes:

> In sum, the case law is not uniform on how to treat the failure to reconcile a special account. It also does not provide guidance on how often a reconciliation should be performed nor does it specify a method. The consistent principle is that reconciliation is an expected escrow control and that a failure to perform it can constitute professional misconduct.

Despite the case law mandating or strongly encouraging periodic reconciliation, New York's current version of Rule 1.15 does not expressly impose a reconciliation requirement. The City Bar PDC believes that, as a matter of fairness and due process, a separate new provision is needed to give notice to attorneys that reconciliation of special accounts is required. The PDC Report concludes "*We respectfully urge the proposed amendment to RPC Rule 1.15(d)(1) and proposed Comment to the new rule to provide fair notice to New York attorneys that three-way reconciliation of an attorney escrow account is required and should be performed not less frequently than every 60 days.*" (Emphasis added.)

PDC also notes that many states expressly require reconciliation of an escrow account and that "[s]ome require quarterly reconciliations, some require reconciliations every 60 days, and at least seven states require monthly reconciliation."

An important question is how often reconciliation should be required. Considering the large number of solo, small, and midsize firms in New York State, COSAC believes that a requirement to reconcile trust accounts every 30 days would impose onerous burdens on many firms but would not offer meaningful additional protection to clients and the public. Additionally, were inadvertent violations to happen frequently, the effectiveness and purpose of the reconciliation requirement would be diminished unless Attorney Grievance Committees spent enormous amounts of time bringing charges against negligent attorneys. On the other hand, requiring reconciliation only over a longer interval – say every 90 days (*i.e.,* quarterly) – appears too relaxed and would skirt or transgress the outer edge of acceptability. Accordingly, COSAC believes that the "middle ground" of requiring reconciliation at least every 60 days strikes a fair balance and compromise between these competing considerations.

Conclusion

COSAC recommends that the NYSBA House of Delegates approve the City Bar PDC's proposed amendment to the text of Rule 1.15(d)(1) and recommend that proposal to the Administrative Board of the Courts. COSAC also recommends that the House of Delegates (i) approve PDC's proposed new Comment to Rule 1.15, contingent on the Appellate Division's adoption of the PDC's proposed black letter amendment requiring periodic reconciliation of trust accounts, and (ii) approve COPD's proposed new Comments to Rule 1.15 regarding advance retainer fees and a paper trail for withdraws from attorney trust accounts.

NEW YORK CITY BAR

REPORT BY THE PROFESSIONAL DISCIPLINE COMMITTEE PROPOSING AMENDMENT TO NEW YORK RULE OF PROFESSIONAL CONDUCT RULE 1.15 (d)(1)

The Professional Discipline Committee ("PDC") proposes an amendment to the New York Rules of Professional Conduct ("RPC") rule 1.15(d)(1) to include a requirement that attorneys must reconcile a special bank account or accounts required by Rule 1.15(b)(1).[1] A reconciliation requirement for those bank accounts is already imposed by case law. In simplest terms, reconciling a special bank account or accounts required by Rule 1.15(b)(1) is using a formula to ensure that an attorney's internal records match the bank statements.

I. OVERVIEW

In May 2025, the PDC established a subcommittee to study cases in which respondents were charged by an Attorney Grievance Committee ("AGC") with a failure to reconcile a special bank account or accounts required by Rule 1.15(b)(1), as well as to review reconciliation rules existing in other states. Throughout the Report, the terms "special account or accounts required by Rule 1.15(b)(1)," "trust account" and "escrow account" are used interchangeably. The subcommittee concluded that an amendment to Rule 1.15(b)(1) is necessary to explicitly state there is a duty to reconcile an escrow account, as there is no substitute for formal notice, particularly when imposing sanctions. While courts have construed a reconciliation requirement in the RPC, interpreting different rule sections for the premise, the RPC does not expressly impose the requirement. The subcommittee believes that having a separate rule giving notice to attorneys that reconciliation is required is a matter of fairness and due process.

The Second Department has aptly stated the importance of reconciliation:

> A reasonably prudent fiduciary regularly reconciles their escrow records with the bank statements. An attorney who simply views an account balance without reconciling the attorney's records with the bank statements puts client funds in the escrow account at risk should the attorney's calculations be inaccurate or other errors in the account be present. *In re Aizin*, 177 A.D.3d 51, 55 (App. Div. 2nd Dept. (2019)).

While New York courts agree that attorneys have a duty to reconcile and the goal of reconciliation is to ensure the accuracy of an attorney's recordkeeping, detect fraud, maintain regulatory compliance, and, ultimately, to protect client funds, there is no consensus on the

[1]RPC Rule 1.15(b)(1) requires that funds belonging to another person incident to the lawyer's practice of law be held in a banking institution within New York State that agrees to provide dishonored check and overdraft reports in accordance with the provisions of 22 NYCRR Part 1300. Such funds shall be maintained in a special account separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited.

source of this fiduciary obligation. Typically, a reconciliation of an escrow account involves taking the internal balance of the account and the total of the client ledger balances and reconciling those balances against the bank statement for the same period. This process, known as a three-way reconciliation because there are three totals being compared, significantly strengthens an attorney's oversight of an escrow account. A two-way reconciliation, which does not include the balances of the client ledgers, can overlook discrepancies when internal errors or misallocations occur between client accounts – even if the total balances superficially match the bank balance.[2]

II. THE CASE LAW REQUIRES RECONCILATION BUT COURTS DO NOT AGREE ON THE SOURCE OF THE OBLIGATION

Thirty years ago, one of the earliest reported cases to find a duty to reconcile was issued by the Fourth Department. Nicholas Capobianco was served with a petition by the AGC of the Seventh Judicial District charging him with violations of the New York Lawyer's Code of Professional Responsibility[3] pertaining to his escrow account. (*In re Capobianco*, 219 A.D.2d 179 (App. Div. 4th Dept. 1996)). The Referee found that the Respondent consistently failed to preserve and identify client funds in his trust account, commingled his personal funds with his client funds in the trust account, used the trust account to pay for personal and business expenses, failed to maintain a running balance of his trust account activity and failed to maintain individual client ledger sheets reconciled with his trust account obligations. The Court confirmed the report of the Referee who found that Respondent violated Disciplinary Rules 1-102(A)(5) and (8) (engaging in conduct prejudicial to the administration of justice and conduct that adversely reflects on his fitness to practice law) and Disciplinary Rule 9-102(A), (B) and (C) (failing to maintain and preserve client funds and to keep records related to client funds entrusted to him). Although the Opinion did not specify which rule violation corresponded to the failure to reconcile, all charges confirmed by the Referee were sustained. The Court suspended Mr. Capobianco for one year.

Courts in the other three Judicial Departments have attributed the failure to reconcile as a violation of both RPC rule 8.4(h) (a lawyer is prohibited from engaging in conduct adversely reflecting on the lawyer's fitness as a lawyer) and RPC rule 1.15(d)(2) (lawyers are required to make accurate entries of all financial transactions in their records of receipts and disbursement, 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). Neither rule mentions reconciliation but courts have read the duty into those rules. In a case decided last year, the AGC in the Second Department charged a Respondent who failed to reconcile his escrow with a violation of RPC rule 1.15(a) (prohibiting misappropriation and commingling) (*See* discussion of Matter of Cohn below).

Most recently, in the Second Department, the AGC commenced a disciplinary proceeding against Matthew John Cavalier, serving him with a petition containing ten charges. *Matter of Cavalier*, 244 N.Y.S.3d 771 (App. Div. 2nd Dept. 2025). The first four charges alleged violations of RPC rule 1.15(a) (misappropriation of fiduciary funds from an escrow account); Charge Five

---

[2]For a general overview of the reconciliation process and differences between one, two and three-way reconciliations *see* Terrell Turner, "The Ostrich Versus Crow Trust Accounting Approach," Am Bar Ass'n 50 Law Practice 1 (September/October 2024).

[3]The predecessor of the Rules of Professional Conduct, effective April 1, 2009.

alleged a violation of RPC rule 1.15(b)(1) (failure to keep funds entrusted to an attorney as a fiduciary separate) in that Mr. Cavalier deposited fiduciary funds into a personal account; Charge Six alleged a violation of RPC rule 1.15(b) (misuse of an escrow account) in that Mr. Cavalier deposited personal funds into his escrow account and made disbursements from the escrow account to pay personal or business expenses; Charge Seven alleged a violation of RPC rule 1.15(a) (prohibition against commingling) in that Mr. Cavalier commingled personal funds with fiduciary funds in his escrow account; Charge Eight alleged a violation of RPC rule 1.15(d)(2) (failure to maintain required bookkeeping records) in that Mr. Cavalier failed to make or maintain records of all deposits into and withdrawals from his escrow account showing the date, source, and description of each item deposited, and the date, payee, and purpose of each withdrawal; Charge Nine alleged a violation of RPC rule 8.4(h) (engaging in conduct adversely reflecting on ones fitness as a lawyer) in that Mr. Cavalier failed to reconcile his escrow account from September 2016 through May 2019. Charge Ten alleged a violation of RPC rule 8.4(h) based on all the allegations set forth in Charges One through Nine.

Mr. Cavalier testified that he did not reconcile his escrow account until he was asked to do so by the AGC as part of its investigation. Logically speaking, it would seem that the duty to reconcile should fall within the required recordkeeping section of Rule 1.15, which pertains to attorney escrow accounts. The Court found that Mr. Cavalier failed to keep the required records for his escrow account and that he failed to reconcile the account. The violations were separately addressed by the Court. The former was viewed as a violation of the record keeping rules found in Rule 1.15, but the latter was deemed among the professional misconduct violations found in Rule 8.4. Both the Referee and the Court agreed that charging an attorney with an 8.4(h) violation for failing to reconcile was the proper charge. The Respondent was suspended for two years.

In *Matter of Cohn*, the AGC in the Second Department commenced a disciplinary proceeding against Steven Cohn, serving him with a petition containing four charges. (*Matter of Cohn*, 237 A.D.3d 123 (App. Div. 2nd Dept. 2025). Charge One alleged a violation of RPC rule 1.15(a) (misappropriation of fiduciary funds from an escrow account and failing to properly review, audit and reconcile the records for an escrow account); Charge Two alleged a violation of RPC rule 5.3 (failure to supervise a non-lawyer employee); Charge Three alleged a violation of RPC rule 1.15 (a) (prohibition against commingling); and Charge Four alleged a violation of 8.4(h) (engaging in conduct adversely reflecting on ones fitness as a lawyer). Beginning in March 2020, Mr. Cohn was isolating at his home in upstate New York following the onset of the Covid-19 pandemic. An attorney would routinely pick up Mr. Cohn's bank and bookkeeping records from his office and forward them to his home where he would perform the monthly reconciliations. However, beginning in July 2020, that individual fell ill. Mr. Cohn instructed his paralegal to forward the July records to him in August, but she withheld certain bank materials, which created a lapse in oversight of the escrow account by Mr. Cohn. Knowing the escrow account was not subject to Mr. Cohn's review, the paralegal committed a crime of opportunity, converting approximately $50,000 from the escrow account. The shortfall created by the theft led to a dishonored check notice issued by the bank and, subsequently, an investigation by the AGC. To cover the deficit, Respondent deposited personal funds into the escrow account.

The AGC did not charge Mr. Cohn with any violations of the recordkeeping rules in 1.15(d). The failure to reconcile was charged as a violation of RPC rule 1.15(a), which is typically used to charge misappropriation or commingling. The Referee confirmed the charges in the petition and the Court sustained the Referee's findings. Mr. Cohn was suspended for six

months. The Court noted that Mr. Cohn's continued failure to perform a full reconciliation of the account until he returned to the office caused a six-month delay in his discovery of the paralegal's theft.

In Matter of Fitzgerald, the AGC in the Second Department commenced a disciplinary proceeding against Kevin J. Fitzgerald, serving him with a petition containing five charges. *Matter of Fitzgerald*, 216 A.D.3d 127 (App. Div. 2nd Dept. 2023). Charge One alleged a violation of RPC rule 1.15(a) (misappropriation of client funds); Charge Two alleged a violation of RPC rule 1.15(d)(2) (failure to make accurate entries of all financial transactions related to an escrow account); Charge Three alleged a violation of RPC rule 8.4(h) (engaging in conduct which adversely reflects on the fitness to practice law) in that Mr. Fitzgerald failed to reconcile his escrow account, and even when given the opportunity to do, was unable to explain the deficiencies in his escrow account; Charge Four alleged a violation of RPC rule 1.15(b)(2) (failure to properly title an escrow account) and Charge Five alleged a violation of RPC rule 8.4(h) in that based on the conduct alleged in all the charges, he engaged in conduct adversely reflecting on his fitness to practice law. The Court found that the shortfalls in Mr. Fitzgerald's escrow account were not due to venal conduct on his part. All charges were confirmed by the Referee and sustained by the Court. In its findings, the Court opined that, "[w]hile the attorney has the prerogative to determine how much resources he or she wishes to expend to fully reconcile his or her escrow account, he or she cannot forgo that duty to resolve the cause of the account deficiency, then claim that there is no client or third-party harm." The Court suspended the Respondent for six months.

In *Matter of Novofastovsky*, the AGC in the First Department commenced a disciplinary proceeding against Ilya Novofastovsky, serving him with a petition containing five charges. *Matter of Novofastovsky*, 204 A.D.3d 15 (App. Div. 1st Dept. 2022). Charge One through Four alleged violations of RPC rules 1.15(a) (misappropriation of client funds) and 1.15(d)(1)(i), (ii); (2) (record keeping rules) and Charge Five alleged that Mr. Novofastovsky's conduct described in the previous charges adversely reflected on his fitness to practice law. Mr. Novofastovsky admitted that he negligently allowed the misappropriation of client funds from his escrow account, that he failed to keep the required records in accordance with rule 1.15(d) and that he failed to reconcile all transactions in the escrow account. The AGC did not charge the failure to reconcile separately as misconduct under Rule 8.4. After the Respondent consented to discipline, the Court imposed a public censure.

In *Matter of Silverman*, the AGC in the First Department commenced a reciprocal disciplinary proceeding against Jared Silverman based on his public censure in New Jersey by Order of the New Jersey Supreme Court for violations of the New Jersey Rules of Professional Conduct. *Matter of Silverman*, 194 A.D.3d 217 (App. Div. 1st Dept. 2021). When the New Jersey Office of Attorney Ethics conducted a random audit of Mr. Silverman's escrow account a shortfall was discovered, which Mr. Silverman then failed to correct despite given the opportunity to do so. The evidence at hearing revealed that Mr. Silverman maintained inaccurate three-way reconciliations and had many other record-keeping deficiencies. The New Jersey Disciplinary Review Board issued a decision in May 2019 recommending disbarment for violating NJ RPC rules 1.8(a)(2) (improper business transaction with a client); 1.15(a) (misappropriation of client funds); 1.15(d) (record-keeping violations) and 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). NJ RPC rule 1.15(d) requires attorneys to comply with the record-keeping provisions in R. 1:21-6 of the New Jersey Court Rules. R. 1:21-6(c)(G) imposes a monthly reconciliation requirement. The New Jersey Supreme Court

found that Mr. Silverman had engaged in professional misconduct, but disagreed with certain findings and the sanction recommendation. The Supreme Court found insufficient evidence that Mr. Silverman had knowingly misappropriated client funds or engaged in dishonesty, fraud, deceit or misrepresentation. Mr. Silverman was publicly censured. Mr. Silverman argued that because the Supreme Court did not cite specific violations for the other charges, they should not be sustained in New York. The First Department rejected his argument. Although the Supreme Court did not expressly find that Respondent violated NJ RPC rules 1.8(a)(2) and 1.15(d), in censuring the Respondent, it implicitly sustained those charges. Further, the First Department, which also imposed a public censure, found that Respondent's misconduct in New Jersey would also constitute professional misconduct under the New York Rules of Professional Misconduct under RPC rules 1.8(a)(2) (improper business transaction with a client) and 1.15(d)(2); (e) (record-keeping violations). The Court did not cite Rule 8.4 as the rule violation for a failure to properly reconcile an escrow account.

In *Matter of Dranov*, the AGC in the First Department commenced a reciprocal disciplinary proceeding against Alexander B. Dranov based on his suspension for three months in New Jersey by Order of the New Jersey Supreme Court for violations of the New Jersey Rules of Professional Conduct. *Matter of Dranov*, 26 A.D.3d 26 (App. Div. 1st Dept. 2006). The AGC recommended an order suspending Mr. Dranov for three months. Respondent conceded to improper recordkeeping, commingling funds and the negligent misappropriation of client funds in the New Jersey proceeding. The First Department considered the misconduct serious misconduct under New York law. Mr. Dranov argued that the New Jersey's bookkeeping rules are stricter than New York's insofar as New York does not expressly require reconciliations or individual client ledgers. Since the rules are different, the Respondent argued, they should not constitute misconduct in New York. The First Department disagreed. "[A]ccurate records of escrow account are required to be kept pursuant to DR 9-102(d)[4], and the failure to maintain accurate records of these accounts is sanctionable." *Id*. at 30. The First Department found the Supreme Court's sanction too lenient and suspended Mr. Dranov for two years. The duty to reconcile is viewed by the First Department as part of an attorney's duty to keep accurate records within RPC rule 1.15(d).

The Third Department also views the failure to reconcile as a violation of the recordkeeping rules in RPC rule 1.15. In *In re Wooseok Chang,* the AGC in the Third Department commenced a reciprocal disciplinary proceeding against Wooseok Chang after he was publicly reprimanded by the Commonwealth of Massachusetts Board of Bar Overseers of the Supreme Judicial Court upon his stipulation that he had violated several ethical rules of the jurisdiction. *In re Wooseok Chang*, 232 A.D.3d 1197 (App. Div. 3rd Dept. 2024). Mr. Chang admitted to violating attorney escrow record-keeping requirements; communication rules regarding of the scope of the representation or rate of fee; and communication rules regarding a lawyer's services. Respondent opposed the AGC's motion to impose discipline due to his established misconduct in Massachusetts.

The Third Department construed Mr. Chang's opposition to include the argument that "that was an infirmity of proof establishing the misconduct and that at least some of the misconduct for which respondent was disciplined does not constitute misconduct in New York." *Id*. at 1198. Specifically, the Court noted that New York does not have a precise analogue to Massachusetts Rules of Professional Conduct rule 1.15(f)(1)(E), which states:

[4] DR 9-102(d)(9) is the predecessor of RPC rule 1.15(d)(2).

Reconciliation Reports. For each trust account, the lawyer shall prepare and retain a reconciliation report on a regular and periodic basis but in any event no less frequently than every sixty days. Each reconciliation report shall show the following balances and verify that they are identical:

(i) The balance that appears in the check register as of the reporting date.
(ii) The adjusted bank statement balance, determined by adding outstanding deposits and other credits to the bank statement balance and subtracting outstanding checks and other debits from the bank statement balance.
(iii) For any account in which funds are held for more than one client matter, the total of all client matter balances, determined by listing each of the individual client matter records and the balance that appears in each record as of the reporting date, and calculating the total. For the purpose of the calculation required by this paragraph, bank fees and charges shall be considered an individual client record. No balance for an individual client may be negative at any time.

However, the AGC argued that New York RPC rule 1.15(d)(2) *was* violated by Respondent's conduct in failing to reconcile any of his attorney escrow accounts through the three-way reconciliation process. The Third Department while acknowledging that rule 1.15(d)(2) is more general in that it simply requires lawyers to make accurate entries of all financial transactions in their records of receipts and disbursements and in their special accounts, the fact Mr. Chang failed to compare the records to his client matter balances and to generate a reconciliation report, constituted a violation of RPC rule 1.15(d)(2) because Respondent was not making accurate entries of all financial transactions. (*Id*. at 1199). The Court granted the motion and imposed reciprocal discipline publicly censuring the Respondent.

In sum, the case law is not uniform on how to treat the failure to reconcile a special account. It also does not provide guidance on how often a reconciliation should be performed nor does it specify a method. The consistent principle is that reconciliation is an expected escrow control and that a failure to perform it can constitute professional misconduct.

III. THE DUTY TO RECONCILE APPEARED IN SIX REPORTED CASES IN THE FIRST AND SECOND DEPARTMENTS SINCE 2025[5]

The failure to reconcile appears most frequently in cases involving the negligent misappropriation of client funds. Had the attorney been reconciling the escrow account properly, client funds likely would not have been compromised. Summaries of the four cases not previously discussed above are as follows:

Matter of Rajan, 2026 NY Slip Op 00018, 245 N.Y.S.3d 234 (App. Div. 1st Dept.) Reciprocal Discipline imposed for multiple record-keeping deficiencies, as revealed in a random audit by the New Jersey Office of Attorney Ethics. Respondent consented to a public censure in New Jersey for violating N.J. RPC 1.15(a) (negligent misappropriation of client funds) and N.J. RPC 1.15(d) (failure to comply with the record-keeping requirements of N.J. Court Rule 1:21-6). One of the deficiency findings in New Jersey was that Respondent failed to conduct proper three-way reconciliations of his attorney trust account. The First Department imposed reciprocal discipline

[5]Matters of Cavalier and Cohn were discussed in Section II.

in the form of public censure finding that the misconduct also violated New York Rules of Professional Conduct (RPC rule1.15(a) and RPC rule 1.15(b)(3)), which are essentially equivalent to N.J. RPC 1.15(a) and N.J. RPC 1.15(d), coupled with R 1:21-6 (record keeping) of the NJ Court Rules.

Matter of Calcagno, 2025 NY Slip Op 05236, 240 N.Y.S.3d 257 (App. Div. 2nd Dept.) Respondent misappropriated funds, commingled personal funds, misused the escrow account to conduct personal business, failed to keep the required record for his escrow account and failed to regularly reconcile his escrow account. Respondent defaulted. Respondent was disbarred.

Matter of Stutman, 2025 NY Slip Op 04655, 240 N.Y.S.3d 246 (App. Div. 2nd Dept.) Respondent repeatedly overdisbursed funds from his escrow account on behalf of multiple client matters causing misappropriation of other client funds and a shortage in the escrow account ranging from $25 to $15,277.54. The court found that these defalcations occurred in large part due to the Respondent over-disbursing funds, failing to properly reconcile his escrow account, and failing to verify that client funds were on deposit prior to disbursing funds on the matter, thereby causing the invasion of other client funds. Charge Three alleged that Respondent engaged in conduct adversely reflecting on his fitness as a lawyer by failing to reconcile his escrow account in violation of rule 8.4(h). The court suspended Respondent for six months.

Matter of Pitkowsky, 2025 NY Slip Op 01372, 236 A.D.3d 47, 228 N.Y.S.3d 709 (App. Div. 2nd Dept.) Respondent was charged with misappropriating funds entrusted to him and failing to keep adequate escrow records. Charge Six alleged that based on the factual specifications of charges one through five, between December 2018 and December 2019, the respondent engaged in conduct adversely reflecting on his fitness as a lawyer by failing to reconcile the escrow account, in violation of rule 8.4 (h) of the Rules of Professional Conduct. Respondent failed to maintain amounts which he was required to maintain of client funds. The court publicly censured Respondent.

IV. PROPOSED RECONCILIATION RULE AND COMMENT

The proposed amendment would codify the expectations set forth in the case law and establish a uniform baseline standard, giving attorneys due notice. The PDC's proposed rule is as follows:

Proposed Rule 1.15(d)(1)(ix):

A lawyer shall prepare and retain a three-way reconciliation report of all special accounts or other accounts required by Rule 1.15(b)(1) not less frequently than every 60 days. Each reconciliation report shall demonstrate identical balances among: 1) the general ledger balance; 2) the aggregate of all individual client ledger balances; and 3) the adjusted bank statement balance from the financial institution holding each special account or other account required by Rule 1.15(b)(1). A three-way reconciliation report is not required for months which do not contain banking transaction activity.

The proposed Comment to Rule 1.15(d)(1)(ix) is as follows:

The three-way reconciliation process requires that funds held for each client in individual client ledgers be totaled and compared to the total of the general ledger or other record which records all deposits into and withdrawals from a special account or other account required by Rule 1.15(b)(1) and the bank statement balance adjusted by adding deposits not yet credited to the account and deducting uncleared checks. The aggregation of all individual client ledgers should equal the total of the general ledger or other record which records all deposits and withdrawals in the account and the adjusted bank statement balance. While a lawyer must prepare and maintain three-way reconciliation reports not less frequently than every 60 days, lawyers should note that banks may allow only 30 days from statement date to notify the bank of errors.

V. TIMING OF THE RECONCILIATIONS

New York disciplinary decisions are silent on the required frequency of reconciliations and whether they should be two-way or three-way reconciliations. The ABA Model Rules on Client Trust Account Records – Comment Rule 1 Recordkeeping Generally provide guidance on the frequency of conducting reconciliations. Specifically in paragraph 5 of the Comment Rule 1, it states: "Quarterly reconciliation is recommended only as a minimum requirement; monthly reconciliations is the preferred practice given the difficulty of identifying an error (whether by the lawyer or the bank) among three months' transactions."

Reconciliation timing requirements in other states:

Monthly	No less frequently than every 60 days	Quarterly
Florida - Rule 5-1.2(d)(1)	Massachusetts – Rule 1.15(f)(1)(e)	North Carolina Rule 1.15-3(d)(2)
New Jersey- Rule 1:21-6(c)(1)		Hawaii – Trust Acc R Rule 4(c)(8)
New Mexico - Rule 17-204(A)(1)		Connecticut – Rule 1.15(j)(9)
Ohio – Rule 1.15(a)		Illinois Rule 1.15A(b)(7)
Pennsylvania – Rule 1.15(c)(4)		Alabama – Rule 1.15(e)(9)
South Dakota – Section 16-18-20.2		North Dakota-Rule 1.15 Appx(a)(9)
Vermont – Rule 1.15A(a)(4)		Virgin Islands Rule 211.1.15-1(a)(9)
California – Rule 1.15(g)(1)(d)		Louisiana Rule 1.15(f)
Maryland - Rule 19-407(b)		
Minnesota - RPC Appx 1: Maintenance of Books and Records		
South Carolina – Rule 1, Rule 417		
California–Cal.StateBar Rule 2.5(E)		
New Hampshire - Rule 50(2)(C)(vi)		
Delaware – Rule 1.15(d)(8)		
Arizona – Rule 43(B)(2)(c)		
South Dakota – S.D.Codified Laws 16-18-20-2		
Virginia – Rule 1.15(d)(3)		

The PDC therefore proposes to set a clear minimum standard to end any confusion. A three-way reconciliation should be the standard. Considering the potential increase in costs to a law firm, particularly a small law firm, having to perform reconciliations each month, the recommendation is to mandate reconciliations no less frequently than 60 days. Attorneys should be encouraged to perform the reconciliations monthly, in accordance with national guidance and New York best-practice materials, which emphasize that more frequent reconciliations reduce the difficulty of identifying bank errors, bookkeeping errors, and unauthorized transactions, and that three-way reconciliation strengthens oversight by confirming the general ledger, the aggregate of client ledgers, and the adjusted bank balance match.

VI. CONCLUSION

We respectfully urge the proposed amendment to RPC Rule 1.15(d)(1) and proposed Comment to the new rule to provide fair notice to New York attorneys that three-way reconciliation of an attorney escrow account is required and should be performed not less frequently than every 60 days.

Dated: May 14, 2026

Professional Discipline Committee
Kathryn Donnelly, Chair

Subcommittee:

Kathryn Donnelly, Esq.
Eugene Gormakh, Esq.
Brian Kerr Esq.