



**New York State Bar Association
Committee on Professional Ethics**

Opinion 1281 (04/09/2025)

Topic: Payments from lawyer's trust account; Pay.gov

Digest: With the client's prior written approval, a lawyer may make an otherwise proper payment of funds from the lawyer's trust account in the form of an online payment through Pay.gov

Rules: 1.15(c), (d) & (e)

FACTS:

1. The inquirer's clients are criminal defendants whom a court has ordered to make criminal debt payments (e.g., to pay fines or to make restitution) to the Clerk of a U.S. District Court. The district court does not accept cash for such payments but instead requires that payment be made either by check or through Pay.gov, an online payment program of the U.S. Department of the Treasury (described below). If payment is made through Pay.gov, the court requires that criminal debt payments be made by debit card or "Bank account (ACH)"—i.e., direct debit.

2. To assist clients who are required to make criminal debt payments but do not have bank accounts, the inquirer deposits cash received from such clients into the lawyer's trust account and issues a check payable to the Clerk on the client's behalf. The lawyer asks whether it would be permissible to make such payments from the trust account through Pay.gov, rather than by check. (The inquiry does not specify whether the attorney seeks to make such payments by debit card or by direct debit).

3. Pay.gov is the Government-wide Web transaction portal operated by the Fiscal Service of the United States Department of the Treasury, which is accessed at: <http://www.fiscal.treasury.gov> and described at www.pay.gov. Pay.gov facilitates the collection of money owed to agencies of the U.S. government. Pay.gov supports various forms of payment, including credit card, debit card and direct debit, but each agency determines the forms of payment it accepts for each type of charge or obligation. As noted above, the present inquiry involves criminal debt payments, which the court requires to be paid by debit card or direct debit if Pay.gov is used.

4. The Pay.gov system operates as follows. First, the website of an agency (in this case, a court) directs a user (such as the inquirer's clients) to a collection page hosted by Pay.gov. To make a criminal debt payment, the user inputs information about the payor, including a case number, a defendant number, a payment amount, and a transaction ID. For payment by direct debit, the user inputs the bank routing and account numbers; for payment by debit card, the user inputs the debit card number. The Pay.gov system allows third parties to make payments on behalf of other persons, as long as they know the case number and check the third-party payor box on the payment form.

5. Once Pay.gov receives payment information, Pay.gov processes ACH (Automated Clearing House) debits. The resulting collected funds are forwarded to the Collections Information Repository (CIR) of the U.S. Treasury's Bureau of the Fiscal Service, a data archive and reporting tool that allows agencies to view and download information for agency-settled transactions. CIR also interfaces with several revenue collection systems to facilitate the movement of funds from commercial banks to the U.S. Treasury. The ACH Network is a nationwide electronic fund transfer (EFT) system that provides for the inter-bank clearing of electronic credit and debit transactions and for the exchange of payment-related information among participating financial institutions. See 82 FR 42597 (Sept. 11, 2017) (explaining an amendment to 31 CFR Part 210, the Department of the Treasury, Bureau of Fiscal Service's rule governing the use of the Automated Clearing House Network by Federal agencies).

QUESTION:

6. May a lawyer make an otherwise-proper payment of funds from the lawyer's trust account in the form of an online payment through Pay.gov?

OPINION:

7. Rule 1.15 of the N.Y. Rules of Professional Conduct (the "Rules") sets forth the requirements a lawyer must follow in holding funds belonging to a client and in maintaining the special account, commonly referred to as a trust account, in which such funds must be held. Rule 1.15(e), entitled "Authorized Signatories," provides as follows:

(e) All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by **bank transfer**. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account. (Emphasis added.)

8. This provision was added to the former Code of Professional Responsibility in 1990 by the Appellate Divisions. Unlike many other Code provisions, it was not originally proposed by the N.Y. State Bar Association. An article written by one of our Committee members notes that one of the changes to this section "would allow lawyers to withdraw funds from the trust account by international (as well as domestic) bank wire transfer with the consent of the party entitled to the funds." See Marjorie E. Gross, *The Long Process of Change: The 1990 Amendments to the New York Code of Professional Responsibility*, XVIII Fordham Urban L. J. 283 (1991).

9. Unlike the phrase "electronic funds transfer," which is defined in a statute,¹ the phrase "bank transfer" is not a statutorily-defined term. Nevertheless, the Committee believes that the phrase "bank transfer" is sufficiently broad to include not only wire transfers, but also transfers

¹ The federal Electronic Funds Transfer Act (EFTA) defines "electronic fund transfer" to include online payments like those here at issue. See 15 U.S.C. § 1693a(7). The EFTA applies only to transfers from bank accounts "established primarily for personal, family, or household purposes." 15 U.S.C. § 1693a(2). We do not interpret statutes, which are beyond our jurisdiction, but we reference the statutory definition here to highlight the lack of a statutory definition of the term "bank transfer."

via the ACH network initiated through Pay.gov. The Washington State Bar Association reached the same conclusion in a similar context in its Advisory Opinion 2210 (2012), which stated:

... [W]hen a debit card is used to pay a filing fee, funds are transferred from the bank account associated with the debit card (here, the lawyer's trust account) to the bank account for the recipient of the filing fee (such as the court). Use of a debit card to pay a filing fee directly is therefore a bank transfer under RPC 1.15A(h)(5).

10. The purpose of Rule 1.15(e) is to prohibit cash withdrawals or other payments that would not be secure or readily traceable. A "bank transfer" allows a lawyer to make an otherwise-proper payment of funds from the lawyer's trust account in the form of an online payment through Pay.gov, which is consistent with that purpose. The Committee is sensitive to the desire of lawyers, clients and courts to use payment mechanisms that are quicker, cheaper and more convenient than older methods (such as paper checks).

11. The Committee notes that Rule 2(c) of the ABA Model Rules on Client Trust Account Records provides that trust account withdrawals "shall be made only by check payable to a named payee and not to cash, or by authorized *electronic transfer*." (Emphasis added.) As explained in Comment [4] to Rule 1.15(h), an "electronic transfer" includes a transfer in which "an electronic payment is initiated through a secure web environment."

12. We also conclude that making a payment from a trust fund account via Pay.gov would be permissible under 1.15(c)(4). Rule 1.15(c)(4) provides "that a lawyer shall promptly pay or deliver to the client or third person the funds...in the possession of the lawyer that the client or third person is entitled to receive."

13. In making a payment from a trust account via Pay.gov, a lawyer must follow the same requirements in Rule 1.15(d) and (e) that apply to other permissible withdrawals. Rule 1.15(d) provides that only a lawyer who is signatory to the trust account can initiate such a payment, payment confirmations must be retained, and payments must be recorded in the trust account ledger. In addition, because the payment is a "bank transfer," Rule 1.15(e) requires the client's advance written "approval" (which we interpret to have the same meaning as the client's advance written "consent"). However, lawyers should avoid authorizing scheduled or recurring automatic withdrawals from a trust account. Automatic withdrawals could result in an automatic ACH debit not covered by a cleared cash deposit from the client who owes the money, which would in turn lead to conversion of escrow funds belonging to other clients.

CONCLUSION:

13. With the client's prior written approval, a lawyer may make an otherwise proper payment of funds from the lawyer's trust account in the form of an online payment through Pay.gov.

(30-24)