

ADDENDUM B

Maintaining Financial Records and Accounts in Compliance with USPTO Disciplinary Rules

The following shall serve as terms for maintenance of financial accounts and records in accordance with the USPTO Disciplinary Rules for Respondent, IRG any other entity engaged in the practice of law in which Respondent is associated or has an ownership interest:

Safekeeping property.

(a) All funds received or held by a practitioner or law firm on behalf of a client having immediate or prospective business before the Office, other than reimbursement of advances for costs and expenses, shall be deposited in one or more identifiable escrow accounts maintained at a financial institution in the State, authorized by Federal or State law to do business in the jurisdiction where the practitioner or law firm is situated and which is a member of the Federal Deposit Insurance Corporation, or the Federal Savings and Loan Insurance Corporation, or successor agencies or, in the case of a practitioner having an office in a foreign country, in said financial institution in the United States or in a comparable financial institution in a foreign country, and no funds belonging to the practitioner or law firm shall be deposited therein except as follows:

(1) Funds reasonably sufficient to pay service or other charges or fees imposed by the financial institution may be deposited therein;
or

(2) Funds belonging in part to a client and in part presently or potentially to the practitioner or law firm must be deposited in said financial institution, and the portion belonging to the practitioner or law firm must be withdrawn promptly after it is due unless the right of the practitioner or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) A practitioner having an arrangement with an invention promoter for payment of his or legal fees for legal services rendered for a client referred to the practitioner by the promoter must ascertain upon accepting said referral whether the client advances funds for legal services to the promoter, and must take all reasonable steps to safeguard the advanced funds.

(c) When in the course of representation before the Office a practitioner is in possession of property in which both the practitioner and another person claim interests, the practitioner shall keep the property separate until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the practitioner shall keep the portion in dispute separate until the dispute is resolved.

(d) A practitioner, in connection with a client having immediate or prospective business before the Office, shall:

- (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties;
- (2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the practitioner and render appropriate accounts to the client regarding them; and
- (4) Promptly pay and deliver to the client or another as requested by such person the funds, securities, or other properties in the possession of the practitioner that such person is entitled to receive.

(e) *Funds, securities or other properties.* Funds, securities or other properties held by a practitioner or law firm as a fiduciary in connection with a client having immediate or prospective business before the Office shall be maintained in separate fiduciary accounts, and the practitioner or law firm shall not commingle the assets of such fiduciary accounts in a common account (including a book-entry custody account), except in the following cases:

- (1) Funds may be maintained in a common escrow account subject to the provisions of paragraphs (a) and (c) of this section when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated; or
- (2) Funds, securities or other properties may be maintained in a common account when authorized by professional conduct rules for lawyers in the jurisdiction where the practitioner or law firm is situated.

(f) *Record-keeping requirements, required books and records.* Every practitioner in regard to his or her practice before the Office shall maintain or cause to be maintained, on a current basis, books and records that establish compliance with paragraphs (a) and (d). Whether a practitioner or a law firm maintains computerized records or a manual accounting system, such system shall produce the records or information required by this subsection.

(1) In the case of funds held in an escrow account subject to this rule, the required books and records include:

(A) A cash receipts journal or journals listing all funds received, the sources of the receipts and the date of receipts. Checkbook entries of receipts and deposits, if adequately detailed and bound, may constitute a journal for this purpose. If separate cash receipts journals are not maintained for escrow and non-escrow funds, then the consolidated cash receipts journal shall contain separate columns for escrow and non-escrow receipts;

(B) A cash disbursements journal listing and identifying all disbursements from the escrow account. Checkbook entries of disbursements, if adequately detailed and bound, may constitute a journal for this purpose. If separate disbursements journals are not maintained for escrow and non-escrow disbursements then the consolidated disbursements journal shall contain separate columns for escrow and non-escrow disbursements;

(C) Subsidiary ledger. A subsidiary ledger containing a separate account for each client and for every other person or entity from whom money has been received in escrow shall be maintained. The ledger account shall by separate columns or otherwise clearly identify escrow funds disbursed, and escrow funds balance on hand. The ledger account for a client or a separate subsidiary ledger account for a client shall clearly indicate all fees paid from trust accounts;

(D) Reconciliations and supporting records required under this section;

(E) The records required under this subsection shall be preserved for at least five full calendar years following termination of the fiduciary relationship.

(2) In the case of funds or property held by a practitioner or law firm as a fiduciary subject to paragraph (c), the required books and records include:

(A) An annual summary of all receipts and disbursements and changes in assets comparable to an accounting that would be required of a court supervised fiduciary in the same similar capacity. Such annual summary shall be in sufficient detail as to allow a reasonable person to determine whether the practitioner is properly discharging the obligations of the fiduciary relationship;

(B) Original source documents sufficient to substantiate and, when necessary, to explain the annual summary required under the preceding subparagraph (A), above;

(C) The records required under this subsection shall be preserved for at least five full years following the termination of the fiduciary relationship.

(g) *Required Escrow Accounting Procedures.* The following minimum accounting procedures are applicable to all escrow accounts subject to paragraphs (a) and (c) by practitioners in regard to practice before the Office.

(1) Insufficient fund check reporting.

(A) *Clearly identified escrow accounts required.* A practitioner or law firm shall deposit all funds held in escrow in a clearly identified account, and shall inform the financial institution in writing of the purpose and identity of the account. Practitioner escrow accounts shall be maintained only in financial institutions authorized by these rules.

(B) *Overdraft notification.* A financial institution may report to the Office of Enrollment and Discipline if any instrument which would be properly payable if sufficient funds were available, is presented against a practitioner escrow account containing insufficient funds, irrespective of whether or not the instrument is honored.

(C) *Overdraft reports.* All reports made by a financial institution shall be in the following format:

(i) In the case of a dishonored instrument, the report shall be identical of the overdraft customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the practitioner or law firm, the account name, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby;

(iii) *Practitioner cooperation.* Every practitioner or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

(2) *Deposits.* All receipts of escrow money shall be deposited intact and a retained duplicate deposit slip or other such record shall be sufficiently detailed to show the identity of each item.

(3) *Deposit of mixed escrow and non-escrow funds other than fees and retainers.* Mixed escrow and non-escrow funds shall be deposited intact to the escrow account. The non-escrow portion shall be withdrawn upon the clearing of the mixed fund deposit instrument.

(4) *Periodic trial balance.* A regular periodic trial balance of the subsidiary ledger shall be made at least quarterly, within 30 days after the close of the period and shall show the escrow account balance of the client or other period at the end of each period.

(A) The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total monies received in escrow for the period and deducting the total escrow monies disbursed for the period; and

(B) The trial balance shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(5) *Reconciliations.*

(A) A monthly reconciliation shall be made at month end of the cash balance derived from the cash receipts journal and cash disbursements journal total, the escrow account checkbook balance, and the escrow account bank Statement balance;

(B) A periodic reconciliation shall be made at least quarterly, within 30 days after the close of the period, reconciling cash balances to the subsidiary ledger trial balance;

(C) Reconciliations shall identify the preparer and be approved by the practitioner or one of the practitioners in the law firm.

(6) *Receipts and disbursements explained.* The purpose of all receipts and disbursements of escrow funds reported in the escrow journals and subsidiary ledgers shall be explained and supported by adequate records.

(h) All financial accounts kept by a registered practitioner must comply with the provisions of paragraph (f), except that:

(1) *Attorneys:* The financial records maintained by a practitioner who is an attorney in good standing of a bar of the highest court in a state will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) if the attorney's principal place of business is in the United States, and the financial records are in compliance with the financial recordkeeping requirements of the state bar of which he or she is a member in good standing; or

(2) *Patent agents employed by a law firm:* The trust account records maintained by a law firm with regard to a patent agent employed by the law firm will be deemed to be in substantial compliance with the provisions of paragraphs (f) and (g) for the patent agent if the principal place of business of the law firm and the patent agent are in the United States, the patent agent is employed by the law firm, and the financial records maintained by the law firm comply with the financial record-keeping requirements that apply to at least one attorney in the law firm at the principal place of business.

(i) Conduct that constitutes a violation of paragraph (a) of this section includes, but is not limited to:

(1) Misappropriation of, or failure to properly or timely remit, funds received by a practitioner or the practitioner's firm from a client having immediate or prospective business before the Office to pay a fee which the client is required by law to pay to the Office.