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**Guide to E-filing and IOLTA Accounts**

The Illinois Supreme Court has ordered the implementation of mandatory e-filing in all Illinois civil cases effective January 1, 2018. Documents in civil cases will need to be filed electronically through a centralized manager called eFileIL. In addition, filing fees will need to be paid electronically. This guide responds to some of the common questions and concerns of lawyers as they make the transition to electronic payment of filing fees.

**Permitted E-filing Payment Methods**Illinois has designated eFileIL as the statewide centralized filing system manager. eFileIL and the electronic filing service providers (EFSPs) certified to work with eFileIL will accept only electronic fee payments via:

* Credit cards and debit cards
* E-checks, which are paperless transactions that are cleared through the ACH (Automated Clearinghouse) network. (*Note: Individual trial and reviewing courts may choose to opt out of accepting e-checks.)*

In addition to these methods, some Illinois-certified EFSPs offer monthly billing options. These are premium services that are paid for by the lawyer or firm, but they may be a worthwhile option for those with a high volume of court filings.

**Electronic Payments & Client Funds**Lawyers often pay filing fees from funds advanced by their clients. Since these funds belong to the client, they may be held only in an IOLTA account or a non-IOLTA client trust account established for the benefit of the client. Traditionally lawyers used paper checks to pay filing fees and other court costs from IOLTA accounts and other client trust accounts. Mandatory e-filing renders that practice obsolete and presents the question of which methods of electronic payment may be made from an IOLTA or client trust account.

Any payment method that involves client funds must comply with the requirements of the safekeeping of property rule, Illinois Rule of Professional Conduct 1.15. That rule rests on the axiomatic principle that a lawyer has a fiduciary duty and professional responsibility to safeguard client funds, and requires lawyers to hold client funds separate from the lawyer’s own funds.

**Service Fees**Electronic payments for e-filing will be accompanied by e-filing payment service fees. For payments made via credit or debit card, the payment service fee is capped at 2.89% of the underlying court filing fee. E-check transactions will have a smaller $.25 payment service fee. In addition, EFSPs may also assess a provider fee.

Lawyers may pass these fees on to their clients. However, when tracking the total expense incurred for each e-filing transaction, lawyers must remember to add the payment service fee and provider service fee (if any) to the court filing fee, and correctly attribute the entire amount to the right client. This is especially important if the costs are paid from client funds held in an IOLTA account. For example, an e-filing transaction involving a $248 court filing fee might include the underlying $248, plus a $7.25 payment service fee and $2.99 provider service fee, for a grand total of $258.24. To avoid misappropriating funds from other clients, the total transaction cost attributed to the client must be $258.24.

**Using a Debit Card**In Illinois, an IOLTA or non-IOLTA client trust account should be established as a demand deposit account. In addition to traditional check writing, lawyers may set up a debit card that draws on the balance of the IOLTA account. This practice is consistent with RPC 1.15. However, lawyers should take several precautions when using this payment method:

* **Keep a detailed record:** Electronic payments by debit card may generate transaction records that contain less information than a paper check. Lawyers should make a clear contemporaneous record of the date, purpose, and payee on any debit card transaction and ensure that the balance is deducted from the appropriate client ledger.
* **Keep track of fees:**Account for the complete cost of the e-filing transaction, including any payment and provider service fees.
* **Monthly reconciliation:** Because of the limited amount of information from debit card transactions, lawyers also should consider making the reconciliation reports required by RPC 1.15(a)(7) on a monthly basis instead of quarterly.
* **No ATM access:**The use of debit cards should be limited to electronic payments. A debit card that can be used to withdraw cash from an IOLTA account creates a needless risk that client funds will be misappropriated.
* **Note:** Lawyers who want to establish their debit card as a payment method with eFileIL should select the “Credit Card” option. The e-filing system does not differentiate between debit and credit cards as a payment method.

**Using E-Checks**This payment method is the most similar to using a paper check drawn on an IOLTA account. It also is consistent with RPC 1.15. There are several things lawyers should keep in mind when using E-checks:

* **Adequate records:**The record of an E-Check transaction may contain less detail than a paper check. Lawyers should make a clear, contemporaneous record of the date, purpose, and payee on any debit card transaction; ensure that the balance is deducted from the appropriate client ledger; and make a reconciliation report on a monthly basis.
* **Clearing:**E-checks may clear more quickly than paper checks. Lawyers who issue E-checks should ensure deposited funds (for example from a personal check from the client to advance costs) are available in the account when making an E-Check transaction.
* **Fees: “**Per-check” fees charged by the bank are covered by the Lawyers Trust Fund as an allowable reasonable fee under RPC 1.15(j)(8). LTF interprets this as covering the per-check charges associated with E-checks as well as paper checks. (LTF does not cover any e-filing payment or provider service fees.)

**Using a Credit Card**
Many lawyers and firms use a business credit card account to make electronic payments, including those for filing fees. The lawyer then transfers the appropriate amount of funds from the IOLTA account as reimbursement for the costs charged to the credit card. Reimbursing costs advanced for a client in this manner is appropriate under RPC 1.15, but lawyers should consider the following safeguards:

* **Use the IOLTA account:**Client advances for costs should be safeguarded in the IOLTA account until the lawyer pays the credit card bill and requires reimbursement. Holding these funds in the lawyer’s business account as a shortcut constitutes commingling.
* **Create an audit trail:**As with debit or E-Check payments, records of individual transactions may contain limited information. Lawyers should document the credit card transaction and scrupulously record transfers from the IOLTA account to the business or operating account.
* **Keep track of fees:**Account for the complete cost of the e-filing transaction, including any payment and provider service fees.
* **Direct payment to credit card issuer:**If the lawyer uses a credit card account exclusively for paying filing fees and costs that will be covered by client funds held in trust, the lawyer may choose to directly pay the credit card bill from the IOLTA account and bypass a transfer in the operating or business account.

**Fee Waivers**
Litigants who cannot afford to pay court fees may qualify for a fee waiver pursuant to 735 ILCS 5/5-105, for which they can file an under Supreme Court Rule 298. When a lawyer e-files of behalf of a client who cannot pay the court fees, the lawyer should select “waiver” as the payment option and file a [fee waiver application](http://www.illinoiscourts.gov/Forms/approved/procedures/fee_waiver.asp) in the same e-filing envelope as the pleading or document. Court clerks should accept documents and fee waiver applications filed in this manner, and the judge hearing the case will rule on the application at a later time.

**Additional Resources**

* **Rule of Professional Conduct 1.15:**Lawyers are encouraged to review the requirements of the safekeeping of property, including the recordkeeping provisions under RPC 1.15(a).
* [**The ARDC Client Trust Account Handbook**](https://www.iardc.org/clienttrustaccounthandbook.pdf): This is an authoritative resource for Illinois lawyers on handling client funds and maintaining client trust accounts.
* **Contact the Lawyers Trust Fund:**
	+ Terri Smith-Ashford, LTF Director of Banking: call 312-938-3001 or contact via email.
	+ David Holtermann, LTF General Counsel: call 312-938-3076 or contact [via email](http://ltf.org/lawyers/e-filing-and-iolta-accounts-guidance-for-illinois-lawyers/david%40ltf.org).
* **Contact the ARDC Ethics Inquiry Program:**Chicago (312-565-2600) or Springfield (217-522-6838)

*This guidance was prepared by the Lawyers Trust Fund of Illinois in collaboration with the Attorney Registration & Disciplinary Commission.*