

Returning Unused Retainer by Online Bank Transfer

Hello Listserv,

I looked into the possibility of returning unused retainer deposits to clients via online bank transfers.

I rarely write checks anymore. I prefer to make payments electronically so that I can attach a memo to the payment entry which helps me identify what the payment was for at a later time.

The firm's bank, Wells Fargo, told me that the Virginia State Bar does not allow online billpay payments to be processed from IOLTA accounts. Indeed, there is no way to configure the billpay feature to the IOLTA account. I am at a loss to understand the rationale. Does anybody know why?

No idea why, but the California State Bar discourages the practice as well.

Jonathan G. Stein, California

Insufficient paper trail? I don't buy that, because you can still put a memo on the check that you ordered the bank to create. Go figure. It will take a while for state rules to catch up with technology.

Miriam Jacobson, Pennsylvania

In addition to the benefit of harnessing the efficiencies of automation, printed checks issued by billpay look more professional than hand-written checks. Many solo and small firm attorneys don't have a personal secretary on staff to make them look good by typing the checks. I wouldn't even know where to buy a typewriter or ink ribbons these days, except on eBay.

If there are no reasonable grounds for maintaining the prohibition of online billpay for IOLTA accounts, then the state bars should consider lifting the restriction.

Daniel R. Zim, Virginia

Are you doing it by billpay (like you'd pay a cellphone bill) or are you doing it by wire transfer? I have some clients who are overseas so wiring them is the only real way to do refund unused retainer money. I could, of course, fedex them a check, but I'd have to explain why I can't just do a wire transfer like the client did when they paid me originally.

I still write checks for IOLTA refunds for US-based clients, though. That's likely due to the ease of mailing and the fact I ordered too many IOLTA checks originally.

Andy I. Chen, California

Billpay is not available for IOLTA accounts in Virginia. So, I write checks to return to clients their unused retainer deposits, like most other attorneys do. Billpay should be an option for IOLTA accounts because a billpay check is just a computer generated check. For the client who receives payment, there is no material difference between a billpay issued check and a manually drafted check.

I don't know why lawyers are prohibited from using this technology. Maybe bar associations are spooked by the term "billpay." Perhaps the term generates fear that lawyers could unwittingly think they can use the attorney trust account for routine bill-paying. If that is the reason, it is a silly reason.

Daniel Zim

The bar associations invests in check printing companies?

John Davidson, Pennsylvania

Check paper is pretty cheap, and it's not all that difficult to print your own checks. Most banks (Chase, I think, excepted) don't even require MICR toner.

I realize it's all terribly old-fashioned, but in the pantheon of office problems, I think it's a pretty minor one.

Michael A. Koenecke, Texas

It is to make it a little harder to "accidentally" transfer IOLTA money for non-client related purposes. Here, you cannot do online transfers into your own law firm account after you earn the fee, it has to be a paper check. Harder to say "oops, I didn't know that was the wrong account" that way.

Elizabeth C. A. Johnson, California

Handwritten checks? Who does handwritten anything? Doesn't your accounting software offer check printing? Computer printed checks are easy, cheaper than pre-printed checks, more flexible, and very professional-looking on check stock. No MICR toner required, since checks are all scanned optically now.

I avoid electronic transfers out of IOLTA whenever possible, because paper trail. (Yes, you can add memos and such, but they still like to see a signature when you're disbursing someone else's money from a trust, especially a trust that's likely holding the commingled funds of several clients.

-Rick

Richard J. Rutledge, Jr., North Carolina

My understanding is that it's just too easy to click a button and move some money around and voila, your IOLTA account is overdrawn. Actually signing the check presumes a lot more thought has gone into making sure the right funds are going to the right client, and that the trust account is all properly in balance.

That said, my state doesn't require physical signatures on IOLTA checks.

Also, I'm with Rick - I used to handwrite checks, but now print them all on my printer using QuickBooks. Easy peasy. No need for a typewriter at all. I think most businesses do it this way...

Monica Elkinton, Alaska

Thanks Rick and Monica. I never thought of using QuickBooks to write checks. I will give it a try. For my operating account, I've been using Wells Fargo billpay to make payments to vendors and other payees. It is not that common that I have to issue refunds to clients from the IOLTA but I will use QuickBooks in the future.

Best,

Daniel R. Zim

You can use QuickBooks to print pre-printed checks, I know. I don't know whether the latest version (I'm one version behind) supports printing the entire check on blank stock. That's what I do, and have been doing for a decade or more, using VersaCheck. It creates a virtual printer, and lets you design your check layout, multiple accounts, etc. It takes the printer data stream from QuickBooks, which thinks it's filling out a printed check, and plugs it into your design, and prints the whole shebang. I started using it years ago with Quicken, when I was managing a personal account, a joint account with my partner, and my mother's books; it made it easier than keeping track of three sets of checks.

-Rick

Richard J. Rutledge, Jr

Citibank allows me to wire funds out of my IOLTA. I've done it a couple of times but had problems both times. One time was especially serious, and resulted in fees and charges that my client refused to bear. At one point, my client thought he had given me the wrong account number and we thought the funds were wired into someone else's account.

Never again.

However, I do regularly electronically transfer funds from the IOLTA into my corporate account to pay myself, which is very convenient.

I use Versacheck to print checks to clients from IOLTA.

Gene

Eugene Lee, California

The problem with wire transfers is that it depends heavily on the client giving you the correct bank information. In my experience, that's a very bad idea. Whereas issuing a check only requires that your client give his correct name and mailing address. When things go wrong with wire transfers, you can bet there will be a fight about who has to pay.

Eugene Lee

What specifically went wrong? Someone had to make a mistake, and the banks at either end are the least likely culprits. You are responsible for your end of the process, but only for your end.

If a bank will wire funds from an IOLTA or other trust account, wouldn't the bank use exactly the same process as it does to wire funds from any other checking account? Enormous sums of money are transferred by Fedwire daily, usually without mishap.

If you have resigned yourself not to wire funds (although you), at least use your bank's online bill payment service. Even better, have your accounting software effect online bill payment by your bank.

The goal: never key in data more than once, and assure that the each data entry is correct. Every keystroke is a potential error. Every human act involved in a process is a potential error.

Steven Finell, California

Three solutions (these apply to all wire transfers, not just wire transfers to clients):

1. Best: Have the payee send you the payee bank's wire transfer instructions as an electronic document (I do not mean something copied or scanned); all banks have these. Then all you need from the payee is the payee's account number and account title—which should be on the check with which you client nt paid you.
2. Second best: Use the information from the check with which you client paid you, but see if the payee bank has any special instructions for incoming wires.
3. Fifth (not a typo) best: Have the payee send you the wire transfer instructions in an electronic document, and explain, in writing, that if any of the information is incorrect, that is the payee's problem, not yours. I have even done this through opposing counsel when the opposing party wires a settlement payment to my client.

Steven Finell

Use QuickBooks to write paper checks only when you must--and that should be rare. A better use of QuickBooks is to initiate online bill payments, which gives you a single process from payment (which, after the first payment to that payee, uses previously entered data about the payee) through preparing your tax returns. If the payee is not set up to receive direct deposit of electronic payments, the bank sends a paper check to the payee.

If you are not using QuickBooks' integrations with electronic banking to keep constant track of your account balances and to reconcile your accounts, you should. Regarding Wells Fargo's electronic integration with QuickBooks, see https://www.wellsfargo.com/biz/financial_software/quickbooks.

Steven Finell

All my checks are handwritten preferably with my Harley Davidson fountain pen. The same pen I use to endorse pleadings and sign certificates of service.

To me signing stuff and knowing it means something is one of the best parts of being a lawyer.

John Davidson

The bank told me that electronic funds transfers weren't available either. I used them and kept good records. Not sure if I ever paid a paid from IOLTA though. Better to have all bills through operate for accounting purposes.

Mitchell Goldstein

My signature is always live, and more often than not, when I file pleadings, all of the copies are originals. (It took the clerks a while to get used to that; they always wanted to know which was the original for the court file.) I don't have a copier in my office, and the suite and the Clerk charge 10c/page for copies, so it's cheaper for me to print multiple copies and sign them all.

That's also why I'm picky about how my documents present; I want them to *look* important and legal.

I used to use a fountain pen, and I think I still have one. I grew fond of them when studying in France, where students often use cheap or disposable fountain pens in lieu of ball-point (at least they did in the 80s...). However, I'm very bad about leaving things behind in courthouse offices - pens, umbrellas, etc. That can get expensive...

-Rick

Richard J. Rutledge, Jr.

I have simple way of identifying the original. The staple is vertical for the original for the copies the staple is horizontal, That and I sign in blue ink.

John Davidson

With the *Proposed Rule 1.15-2(S), Signature on Trust Checks*, those of us in North Carolina will soon be using "wet" signatures on all our checks.

While I agree with the prohibition on signature stamps, I think the ban on electronic signatures is too broad. I assume that most software programs that provide for electronic signatures also permit/require a password, token or something to restrict access to the "signature". I guess I got a better perspective when I was commenting to a title company employee that I didn't think the prohibition on signature stamps was a big deal. His response was the prohibition sounds good unless you are issuing a thousand checks a day. I guess I am sheltered with my small practice.

I am curious as to whether the State Bar is hand-signing all of their checks these days.

Jim Pardue, North Carolina

I agree with Elizabeth. I have read that a huge number of IOLTA busts come about because of personal expenses being paid with an IOLTA check. Having electronic bill pay would not only increase the probability of an accident, but it would give an attorney a chance to say the transfer was a mistake.

William Chuang, New York
