APPENDIX "A"

Rule 43. Trust Accounts

(a) Duty to Deposit Client Funds and Funds Belonging to Third Persons; Deposit of Funds Belonging to the Lawyer. Funds belonging in whole or in part to a client or third person in connection with a representation shall be kept separate and apart from the lawyer's personal and business accounts. All such funds shall be deposited into one or more trust accounts that are labeled as such. The location of the trust account shall be controlled by the provisions of ER 1.15(a). No trust account required by this rule may have overdraft protection. No funds belonging to the lawyer or law firm shall be deposited into a trust account established pursuant to this rule except as follows:

1. Funds to pay service or other charges or fees imposed by the financial institution that are related to operation of the trust account, but only in an amount reasonably estimated to be necessary for that purpose may be deposited therein.

2. Funds to pay fees or charges related to credit card transactions or to offset debits for credit card chargebacks, but only in an amount reasonably estimated to be necessary for those purposes may be deposited therein.

~~2~~3. Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm must be withdrawn when due and legally available from the financial institution, or within a reasonable time thereafter, unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the lawyer shall comply with ER 1.15(e).

(b) Trust Account Requirements.

1. *Standards of Performance.*

A. Due professional care must be exercised in the performance of the lawyer's duties under this rule.

B. Employees and others assisting the attorneys in the performance of such duties must be competent and properly trained and supervised.

C. Internal controls within the lawyer's office must be adequate under the circumstances to safeguard funds or other property held in trust.

2. *Trust Account Records.*

A. Every active member of the state bar shall maintain, on a current basis, complete records of the handling, maintenance and disposition of all funds, securities and other property belonging in whole or in part to a client or third person in connection with a representation. These records shall include the records required by ER 1.15 and cover the entire time from receipt to the time of

final disposition by the lawyer of all such funds, securities and other property. The lawyer shall preserve these records for a period of five years after termination of the representation.

B. A lawyer shall maintain or cause to be maintained an account ledger or the equivalent for each client, person or entity for which funds have been received in trust, showing:

(i) the date, amount and payor of each receipt of funds;

(ii) the date, amount and payee of each disbursement; and

(iii) any unexpended balance.

C. A lawyer shall make or cause to be made a monthly three-way reconciliation of the client ledgers, trust account general ledger or register, and the trust account bank statement.

D. A lawyer shall retain, in accordance with this rule, all trust account bank statements, cancelled pre-numbered checks (unless recorded on microfilm or stored electronically by a bank or other financial institution that maintains such records for the length of time required by this rule), other evidence of disbursements, duplicate deposit slips or the equivalent (which shall be sufficiently detailed to identify each item), client ledgers, trust account general ledger or register, and reports to clients.

E. A record shall be maintained showing all property, other than cash, held for clients or third persons in connection with a representation, including the date received, where located and when returned or otherwise distributed.

3. *Deposits from Credit Card Transactions.* A lawyer or law firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if the lawyer has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges. Permitting the deposit of funds from a credit card transaction into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees is at the risk of the lawyer permitting the deposit. If a debit is made from a lawyer's or law firm's trust account due to a credit card chargeback, the lawyer permitting the deposit must, within three business days of receipt of notice or actual knowledge that a chargeback has been made, act to protect the property of the lawyer's or law firm's clients and third persons by depositing into the trust account his or her own funds in an amount equal to the amount of the chargeback that exceeds the client's credit card funds remaining in the trust account, and any fees or charges associated with the chargeback. If within three business days of receipt of notice or actual knowledge that a chargeback has been made a lawyer uses his or her own funds to replace funds debited from the trust account, as

set forth above, the lawyer will not be considered to have committed professional misconduct based upon placement of those credit card funds into the client trust account.

~~3~~4. *Disbursement Against Uncollected Funds*. A lawyer generally may not use, endanger, or encumber money held in trust for a client or third person without the permission of the owner given after full disclosure of the circumstances. Except for disbursements based upon any of the four categories of limited-risk uncollected deposits enumerated in paragraph A below, a lawyer may not disburse funds held in trust unless the funds are collected funds. For purposes of this provision, "collected funds" means funds deposited, finally settled by the issuer's bank, and credited without recourse to the lawyer's trust account.

A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer's trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

(i) when the deposit is made by certified check or cashier's check;

(ii) when the deposit is made by a bank check, official check, treasurer's check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;

(iii) when the deposit is made by a check issued by the United States, the State of Arizona, or any agency or political subdivision of the State of Arizona; or

(iv) when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Arizona.

In any of the above circumstances, a lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds is at the risk of the lawyer making the disbursement. If any of the deposits fail, for any reason, the lawyer, upon ~~obtaining~~ receipt of notice or actual knowledge of the failure, must immediately act to protect the property of the lawyer's clients and third persons. If the lawyer accepting any such check personally pays the amount of any failed deposit within three business days of receipt of notice that the deposit has failed, the lawyer will not be considered ~~guilty of~~ to have

committed professional misconduct based upon the disbursement of uncollected funds.

B. A lawyer's disbursement of funds from a trust account in reliance on deposits that are not yet collected funds in any circumstances other than those four categories set forth above, when it results in funds of clients or third persons being used, endangered, or encumbered, will be grounds for a finding of professional misconduct.

45. *Methods of Disbursement.* All trust account disbursements shall be made by pre-numbered check or by electronic transfer, provided the lawyer maintains a record of such disbursements in accordance with the requirements of this rule. All instruments of disbursement shall be identified as a disbursement from a trust account.

(c) Certificate of Compliance. Every active member of the state bar shall on or before February 1 of each year file with the board a certificate certifying compliance with the provisions of this rule and ER 1.15 of the Arizona Rules of Professional Conduct, or that he or she is exempt from the provisions of this rule and ER 1.15. The certificate of compliance shall state as follows:

Annual Certificate of Compliance

I have read Rule 43, Rules of the Supreme Court, and ER 1.15, Arizona Rules of Professional Conduct, and certify that I am in compliance with the provisions thereof, or am exempt from such provisions as therein provided.

Dated:_____

Signature:_____

Type or print name:_____

As an alternative to filing a written certificate, the board may allow certification to be filed electronically in a method and form as approved by the board.

(d) Trust Account Examination; Random Examination.

1. *Authority.* The state bar shall evaluate all information coming to its attention by charge or otherwise indicating a possible violation of the trust account rules, and such information shall be treated and processed as is any other charge against a lawyer. In addition to trust account examinations that shall be conducted based upon information coming to the bar's attention, the state bar may also conduct random trust account examinations of any member's trust account(s), in accordance with Guidelines developed by the Board of Governors and approved by the supreme court.

2. *Scope of Examination.* The state bar may verify all funds, securities and other property held in trust by the member, and all related accounts, safe deposit boxes, and any other form of maintaining trust funds, securities or property, together with deposit slips, cancelled checks, and all other records pertaining to transactions concerning trust funds, securities and property.

3. *Rebuttable Presumption.* If a lawyer fails to maintain trust account records required by this rule or ER 1.15, or fails to provide trust account records to the state bar upon request or as ordered by a panelist, a hearing officer, the commission or the court, there is a rebuttable presumption that the lawyer failed to properly safeguard client or third person's funds or property, as required by this rule and ER 1.15.

4. *Limited Exception for Out-of-State Members.* All funds, securities and other property of clients and third persons held by an Arizona-licensed lawyer whose law office is situated in another state shall not be subject to investigation, examination or verification except to the extent such funds and property are related to matters affecting Arizona clients.

5. *Trust Account Examination and Verification Expenses.* A member whose trust account has been examined or verified pursuant to this rule shall not be responsible for the costs and expenses related to the examination or verification, unless such costs and expenses are imposed pursuant to an order of diversion as set forth in Rule 55(a) or in conjunction with imposition of a disciplinary sanction as set forth in Rule 54(b) or Rule 60(b).

(e) Confidentiality. The provisions of Rule 70(b) of these rules shall apply to records acquired during examinations conducted pursuant to this rule. In those instances where the state bar conducts a random examination of a member's trust account(s) that does not result in a disciplinary charge, all information received as a result of that examination shall be kept strictly confidential and shall not be released to any person(s).

(f) Pooled Trust Account; Separate Client Trust Account

1. Each trust account shall be at a regulated financial institution on which withdrawals or transfers can be made on demand, subject only to any notice period which the institution is required to reserve by law or regulation and, at the direction of the lawyer, invested to the extent practicable in the higher earning return of either:

A. An interest-bearing account insured by an agency of the United States government; or

B. United States Treasury obligations and repurchase agreements fully collateralized by such obligations, in the form of securities of, or other interests in, any no-load, open-end, management-type investment company, the shares of which may be redeemed on demand or readily sold, that is registered under the provisions of the Investment Company Act of 1940, as amended (54 Stat. 789; 15 U.S.C. § 80a-1 through 80a-64), that is rated in either of the highest two rating categories of a nationally recognized statistical rating organization, and

that operates as a money market fund pursuant to the Investment Company Regulation § 270.2a-7, as amended, through a regulated financial institution's pooled agency account if appropriate, if both of the following are true:

(i) The portfolio of the investment company is limited to United States Treasury obligations and repurchase agreements fully collateralized by United States Treasury obligations.

(ii) The investment company takes delivery of the collateral for any repurchase agreement either directly or through an authorized custodian.

A trust account shall be invested in a money market fund as described in subsection 1.B. above only if the dividend rate, net of all reasonable fees, exceeds the interest, net of all reasonable fees, that could be earned in an account described under subsection 1.A., as above.

2. A lawyer or law firm receiving client funds shall maintain a pooled interest-bearing or dividend-earning trust account for deposit of client funds unless the funds are expected to earn net income for the client in excess of the costs incurred to secure such income. The interest or dividends accruing on this account, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, shall be paid by the financial institution or investment company to the Arizona Foundation for Legal Services and Education, and shall be used solely for the following purposes: to pay the actual administrative costs of this interest or earnings on lawyers' trust accounts (IOLTA) program; to fund programs designed to assist in the delivery of legal services to the poor; to support law-related education programs designed to teach young people, educators and other adults about the law, the legal process and the legal system; to fund studies or programs designed to improve the administration of justice; and to maintain a reasonable reserve therefor.

3. All client funds shall be deposited in an account as specified in subsection 2 above unless they are deposited in:

A. A separate interest-bearing or dividend-earning trust account for the particular client or client's matter on which the interest or dividends, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, will be paid to the client; or

B. A pooled interest-bearing or dividend-earning trust account, with subaccounting provided by the lawyer or the law firm, which will provide for computation of interest or dividends earned by each client's funds and the payment thereof, net of any reasonable service or other charges or fees imposed by the financial institution or investment company in connection with the account, to the client.

4. In determining whether to use an account as specified in subsection 2 or an account as specified in subsection 3, a lawyer or law firm shall take into consideration the following factors:

A. the amount of funds to be deposited;

B. the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

C. the rates of interest or yield at financial institutions where the funds are to be deposited;

D. the cost of establishing and administering a separate non-IOLTA account for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

E. the capability of financial institutions to calculate and pay income to individual clients; and

F. any other circumstances that affect the ability of the client's funds to earn a net return for the client.

No disciplinary matter shall be pursued by the state bar against any lawyer or law firm solely by reason of the making of a good faith determination of the appropriate account in which to deposit or invest client funds.

5. Lawyers or law firms depositing client funds in accounts as specified in subsection 2 above shall direct the depository institution or investment company:

A. To remit interest or dividends, net of any reasonable service or other charges or fees imposed by the institution or company in connection with the account, as computed in accordance with the institution's or company's standard accounting practice, at least quarterly, to the Arizona Foundation for Legal Services and Education, such institution or company being permitted to remit the interest and dividends on all such accounts to the Arizona Foundation for Legal Services and Education in one payment; and

B. To transmit with each remittance to the Arizona Foundation for Legal Services and Education a statement showing the name of the lawyer or law firm on whose account the remittance is sent, the rate of interest applied or the dividends earned, and any service or other charges and fees imposed, with a copy of such statement to be transmitted to the lawyer or law firm. The manner of statement shall be determined by the Foundation.

(g) Authorized Financial Institutions. The State Bar and the Foundation shall establish regulations governing approval and termination of approval status for financial institutions, and shall annually publish a list of approved financial institutions. A

financial institution shall be approved as a depository for lawyer or law firm trust accounts only if the institution annually files with the State Bar, on the provided form, an agreement to comply with the rules and regulations. The agreement shall include the duty of the institution to report to the chief bar counsel in the event that any properly payable instrument is presented against a lawyer trust account containing insufficient funds, regardless of whether the instrument is honored or not. The manner of report shall be determined by the State Bar. No lawyer or law firm trust account shall be maintained in a financial institution in Arizona that does not agree to make such reports. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon thirty (30) days advance written notice to the State Bar.

1. All lawyers admitted to practice in this state shall, as a condition thereof, consent to the reporting and production requirements set forth in this rule.

2. Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(h) Suspension of Member. Any active member who fails to comply with requirements of this shall be suspended summarily by order of the board upon notice by the state bar pursuant to Rule 62(a)(4), provided that a notice by certified, return receipt mail of such non-compliance shall have been sent to the member, mailed to the member's last address of record in the state bar office at least thirty days prior to such suspension.

(i) Reinstatement of Member. A lawyer who has been suspended for failure to comply with this rule may be reinstated by compliance with those provisions and notice to the board by the state bar of such compliance.

(j) Applicability of Rule. Every lawyer admitted to practice law in Arizona shall comply with the provisions of this rule regarding funds received, disbursed or held in Arizona, and funds received, disbursed or held on behalf of an Arizona client or a third person in connection with the representation of an Arizona client.

Comment [2009 amendment]

In an attempt to balance the need to safeguard client and third-party property and encourage access to legal services to those who need them, lawyers may allow funds from credit card transactions to be deposited into their client trust accounts for advance fees, costs or expenses, and merchant or credit card transaction fees related thereto. Lawyers who choose to accept credit card payments for advance fees, costs or expenses must comply with the procedures and requirements in this rule.

For purposes of this rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the lawyer or law firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard). Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or

law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

Three methods of accepting credit card payments are permitted: (a) the lawyer or law firm may accept credit card payments for earned fees and the reimbursement of costs or expenses, in which case the funds must be deposited into the lawyer's or law firm's operating or business account (*see infra.* for only exception); (b) the lawyer or law firm may accept credit card payments for advance fees, costs or expenses, in which case the funds must be deposited into the lawyer or law firm's trust account; or (c) the lawyer or law firm may use a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction should be deposited (i.e., the lawyer or law firm must direct the deposit of funds for advance fees, costs or expenses into the trust account and the deposit of funds for earned fees and the reimbursement of costs or expenses into an operating or business account). Nothing in this rule prohibits lawyers from using one credit card account for the payment of earned fees and reimbursement of costs or expenses (with deposits made into an operating or business account) and another credit card account for the payment of advance fees, costs or expenses (with deposits made into the trust account).

Earned fees and funds for reimbursement of costs or expenses may be deposited into a lawyer's or law firm's trust account only if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses. In such case, the earned fees and funds for reimbursement of costs or expenses must promptly be withdrawn from the trust account. When a lawyer or law firm uses a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction will be deposited, earned fees and funds for reimbursement of costs or expenses may never be deposited into the trust account (a separate credit card transaction should be conducted for the payment of any earned fees or the reimbursement of costs or expenses). To further protect client and third-party funds, lawyers and law firms should strive to use a credit card processing service that deposits advance fees, costs and expenses into the trust account but which debits the operating or business account for all fees and charges related to credit card transactions (e.g., merchant or credit card transaction fees, chargebacks and fees associated therewith, other charges or fees related to credit card transactions).

Lawyers are responsible for knowing whether the company issuing a client's credit card allows charges for future services. If the company issuing a client's credit card does not permit the client to use the card for payment of future services, then the lawyer may not accept payment for advance fees or anticipated costs or expenses using that credit card.

Lawyers and law firms are permitted to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card

for advance fees, costs or expenses must at all times maintain sufficient funds of their own in their trust accounts to ensure that no bank or credit card fees or charges results in the conversion or misappropriation of funds belonging to clients or third parties. A lawyer violates this rule by failing to make the required deposit within three business days of receipt of notice or actual knowledge that a chargeback has been made to the trust account. When lawyers and law firms are required to maintain their own funds in their trust accounts to reimburse the account for trust account and credit card fees and charges, such funds must be deposited into their trust accounts before such fees or charges are imposed. Lawyers and law firms must maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all credit card fees and charges (e.g., merchant and credit card transaction fees, chargeback fees, minimum monthly transaction fees, address verification fees). Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers who maintain an unreasonable amount of their own funds in their trust accounts will be subject to a finding of misconduct. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts since no client or third-party funds will be at risk due to debits from the trust account.

When credit card funds are appropriately deposited into a trust account, the merchant or credit card transaction fees paid by the client as part of the credit card transaction must remain in the trust account until those funds are debited from the account. A lawyer or law firm, however, may agree to pay merchant or credit card transaction fees for the client. In that event, the lawyer or law firm must have funds of their own in their trust account in an amount at least equal to the merchant or credit card transaction fees before conducting the transaction. A failure to do so will result in the conversion or misappropriation of client or third-party funds when the merchant or credit card transaction fees are debited from the trust account.

ER 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account ~~for the sole purpose of paying~~ only for the following purposes and only in an amount reasonably estimated to be necessary to fulfill the stated purposes:

(1) to pay ~~bank~~ service or other charges or fees imposed by the financial institution ~~on that account, but only in an amount necessary for that purpose~~ that are related to operation of the trust account; or

(2) to pay any fees or charges related to credit card transactions or to offset debits for credit card chargebacks.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement between the client and the third person, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer possesses property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Comment [2009 amendments]

For purposes of this rule, "merchant fees" and "credit card transaction fees" are fees that are deducted from the amount of the credit card charge to pay the company that issued the client's credit card, the lawyer or law firm's credit card processing service, and the credit card association (e.g., Visa, MasterCard). Those fees typically include a percentage of the total amount billed plus a fixed fee, which, unless paid by the lawyer or law firm, reduces the amount that can be credited to the client's account. A "chargeback" (or reversal of charges) occurs when a client or former client writes to the credit card company that issued the credit card used to pay a lawyer to dispute the amount that should be paid to the lawyer or law firm. When a client or former client does so, the lawyer's or law firm's account is debited an amount equal to the disputed amount, plus a chargeback fee.

Three methods of accepting credit card payments are permitted: (a) the lawyer or law firm may accept credit card payments for earned fees and the reimbursement of costs or expenses, in which case the funds must be deposited into the lawyer's or law firm's operating or business account (*see infra.* for only exception); (b) the lawyer or law firm may accept credit card payments for advance fees, costs or expenses, in which case the funds must be deposited into the lawyer or law firm's trust account; or (c) the lawyer or law firm may use a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction should be

deposited (i.e., the lawyer or law firm must direct the deposit of funds for advance fees, costs or expenses into the trust account and the deposit of funds for earned fees and the reimbursement of costs or expenses into an operating or business account). Nothing in this rule prohibits lawyers from using one credit card account for the payment of earned fees and reimbursement of costs or expenses (with deposits made into an operating or business account) and another credit card account for the payment of advance fees, costs or expenses (with deposits made into the trust account).

Earned fees and funds for reimbursement of costs or expenses may be deposited into a lawyer's or law firm's trust account only if they are part of a single credit card transaction that also includes the payment of advance fees, costs or expenses. In such case, the earned fees and funds for reimbursement of costs or expenses must promptly be withdrawn from the trust account. When a lawyer or law firm uses a credit card processing service that permits the lawyer or law firm to identify the account into which funds from each credit card transaction will be deposited, earned fees and funds for reimbursement of costs or expenses may never be deposited into the trust account (a separate credit card transaction should be conducted for the payment of any earned fees or the reimbursement of costs or expenses). To further protect client and third-party funds, lawyers and law firms should strive to use a credit card processing service that deposits advance fees, costs and expenses into the trust account but which debits the operating or business account for all fees and charges related to credit card transactions (e.g., merchant or credit card transaction fees, chargebacks and fees associated therewith, other charges or fees related to credit card transactions).

Lawyers are responsible for knowing whether the company issuing a client's credit card allows charges for future services. If the company issuing a client's credit card does not permit the client to use the card for payment of future services, then the lawyer may not accept payment for advance fees or anticipated costs or expenses using that credit card.

Lawyers and law firms are permitted to place their own funds into their trust accounts in very limited circumstances. Lawyers and law firms that accept payment by credit card for advance fees, costs or expenses must at all times maintain sufficient funds of their own in their trust accounts to ensure that no bank or credit card fees or charges results in the conversion or misappropriation of funds belonging to clients or third parties. A lawyer violates this rule by failing to make the required deposit within three business days of receipt of notice or actual knowledge that a chargeback has been made to the trust account. When lawyers and law firms are required to maintain their own funds in their trust accounts to reimburse the account for trust account and credit card fees and charges, such funds must be deposited into their trust accounts before such fees or charges are imposed. Lawyers and law firms must maintain in their trust accounts sufficient funds of their own to pay fees and charges related to operation of the trust account, and to pay all credit card fees and charges (e.g., merchant and credit card transaction fees, chargeback fees, minimum monthly transaction fees, address verification fees). Lawyers and law firms must make a reasonable determination of the amount of their own funds that may appropriately be kept in their trust accounts to pay trust account and credit card fees and charges. Lawyers who maintain an unreasonable amount of their own funds in their trust

accounts will be subject to a finding of misconduct. Lawyers and law firms that use credit card processing services that debit all chargebacks and credit card fees and charges from an operating or business account are not required to maintain their own funds in their trust accounts since no client or third-party funds will be at risk due to debits from the trust account.

When credit card funds are appropriately deposited into a trust account, the merchant or credit card transaction fees paid by the client as part of the credit card transaction must remain in the trust account until those funds are debited from the account. A lawyer or law firm, however, may agree to pay merchant or credit card transaction fees for the client. In that event, the lawyer or law firm must have funds of their own in their trust account in an amount at least equal to the merchant or credit card transaction fees before conducting the transaction. A failure to do so will result in the conversion or misappropriation of client or third-party funds when the merchant or credit card transaction fees are debited from the trust account.