

# The Lawyers' Fund for Client Protection

of the State of New York

119 Washington Avenue • Albany, New York 12210

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## M E M O R A N D U M



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Subject: Designation of Successor Signatories

Section 1200.46 (g) of the Rule of the Appellate Divisions of the Supreme Court (22 NYCRR 1200.46 (g)) provides as follows:

### **(g) Designation of Successor Signatories.**

**(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account who shall be a member of the bar in good standing and admitted to the practice of law in New York State.**

**(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this rule.**

**(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.**

The rule does not have official forms. To be helpful, I attach pleadings used by counsel in relevant applications to the Supreme Court under section 1200.46 (g).

In the event a court directs payment of client and escrow money to the Lawyers' Fund, it is important that you provide us with a copy of the application and order and all information from your files that identify the client or other beneficial owner of the funds. That information is needed in the event a claim is made to us for payment in the future.

Please feel free to call this office for assistance.



STATE OF NEW YORK  
SUPREME COURT: COUNTY OF QUEENS

-----X  
IN THE MATTER OF MARINE MIDLAND  
ACCOUNT NO. 008-81544-5

NEW YORK STATE GRIEVANCE COMMITTEE FOR  
THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

:  
:  
: NOTICE OF  
: PETITION

Petitioner,

-against-

MARINE MIDLAND BANK, N.A.,

Respondent.

022 732 / 95

-----X  
S I R S:

PLEASE TAKE NOTICE, that pursuant to 22 NYCRR 1200.46

(g) petitioner will make an application to this Court at an all-purpose term to be held at the Supreme Court, Queens County Courthouse, 88-11 Sutphin Blvd., Jamaica, New York 11435, on the 27 day of November 1995, at 9:00 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an Order directing that funds held in an escrow account under the name of Fred Gold, Esq. (Marine Midland Account No. 008-81544-5) be turned over to the Lawyers' Fund for Client Protection of the State of New York, and for such other relief as this Court deems just and proper.

Dated: Brooklyn, New York  
October 26, 1995

Yours etc.,

ROBERT H. STRAUS  
Attorney for Petitioner

DAVID C.Y. CHEUNG  
Of Counsel

GRIEVANCE COMMITTEE FOR  
THE SECOND AND ELEVENTH  
JUDICIAL DISTRICTS  
210 Joralemon Street  
Municipal Bldg., Room 1200  
Brooklyn, NY 11201  
(718) 624-7851

STATE OF NEW YORK  
SUPREME COURT: COUNTY OF QUEENS

-----x  
IN THE MATTER OF MARINE MIDLAND  
ACCOUNT NO. 008-81544-5

NEW YORK STATE GRIEVANCE COMMITTEE FOR :  
THE SECOND AND ELEVENTH JUDICIAL DISTRICTS, : PETITION

Petitioner,

-against-

MARINE MIDLAND BANK, N.A., :  
Respondent. :

-----x  
Petitioner, by its attorney, Robert H Straus, alleges:

1. At all times hereinafter mentioned, the Grievance Committee for the Second and Eleventh Judicial Districts (hereinafter "petitioner") has been an entity established pursuant to Judiciary Law Section 90 and the Rules of the Appellate Division, Second Judicial Department, Section 691.4 [22 NYCRR 691.4]. Its principal office has been located at 210 Joralemon Street, Room 1200, Brooklyn, New York 11201.

2. At all times hereinafter mentioned, the Lawyers' Fund for Client Protection of the State of New York (hereinafter "The Lawyers' Fund") has been an entity established pursuant to State Finance Law Section 97-t and Judiciary Law Section 468-b for the purpose of reimbursing the claims of those victimized by attorney dishonesty. It has been administered by a Board of Trustees appointed by the New York State Court of Appeals. Its principal offices have been located at 119 Washington Ave Albany, New York 12210.

3. Upon information and belief, at all times hereinafter mentioned, Marine Midland Bank, N.A., (hereinafter "Marine Midland") has been a banking institution created and existing in accordance with the applicable laws of the State of New York and the United States.

4. Upon information and belief, at all times hereinafter mentioned, Marine Midland maintained custody of certain funds in an attorney escrow account, number 008-81544-5, under the name of Fred Gold, Esq., 89-64 163rd Street, Jamaica, New York 11432.

5. Upon information and belief, the above account was maintained at a Marine Midland service branch located at 147-02 Hillside Avenue, Jamaica, New York 11435.

6. Upon information and belief, the balance in the above account is approximately seventy thousand dollars.

7. Upon information and belief, the above account was used as an escrow account by Fred Gold, an attorney who died on or about November 9, 1994.

8. Upon information and belief, Mr. Gold's estate has been handled by William R. Greenspan, Esq., of the the law firm of Baker and Greenspan, 1230 Jerusalem Avenue, North Merrick, New York 11556.

9. After Mr. Gold's death, Mr. Greenspan reported to petitioner that there would be claims against the funds in the above account which would exceed the amount of funds on deposit at the time of Mr. Gold's death.

10. Mr. Greenspan also reported this matter to Frederick Miller, Executive Director of and Counsel for The Lawyers' Fund for Client Protection of the State of New York.

11. Mr. Greenspan has requested The Lawyers' Fund to accept responsibility for the funds in the above account.

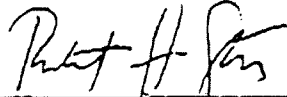
12. Mr. Miller has indicated that The Lawyers' Fund would accept responsibility for the funds.

13. Pursuant to NYCRR 1200.46(g) , this Court may order the funds in the above account to be turned over to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

14. No prior application for the relief sought herein has been made to this or any other court.

WHEREFORE, petitioner requests this Court to issue an order, pursuant to 22 NYCRR 1200.46(g) , directing that Marine Midland turn over all funds in attorney escrow account, number 008-81544-5, under the name of Fred Gold, with The Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

Dated: October 23, 1995

  
\_\_\_\_\_  
ROBERT H. STRAUS  
CHIEF COUNSEL  
NEW YORK STATE GRIEVANCE  
COMMITTEE FOR THE SECOND AND  
ELEVENTH JUDICIAL DISTRICTS



4. I have been informed by William R. Greenspan, the attorney for Mr. Gold's estate, that the claims against the funds in the account exceed the amount on deposit at the time of Mr. Gold's death.

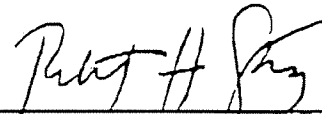
5. Mr. Greenspan has requested that the Lawyers' Fund accept responsibility for the funds in the above account.

6. I have been informed by Frederick Miller, Executive Director of and Counsel for Lawyers' Fund for Client Protection, that The Lawyers' Fund is willing to accept responsibility for the funds in the above account.

7. Pursuant to 22 NYCRR 1200.46( g ), this Court may order Marine Midland to turn over the funds in the above account to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

WHEREFORE, it is respectfully requested that this Court grant the relief requested in the annexed petition.

Dated: October 26, 1995



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ROBERT H. STRAUS  
CHIEF COUNSEL  
NEW YORK STATE GRIEVANCE COMMITTEE  
FOR THE SECOND AND ELEVENTH  
JUDICIAL DISTRICTS

THE STATE OF NEW YORK  
SUPREME COURT : COUNTY OF QUEENS

-----X  
IN THE MATTER OF MARINE MIDLAND  
ACCOUNT NO. 008-81544-5

NEW YORK STATE GRIEVANCE COMMITTEE FOR  
THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

AFFIRMATION

Petitioner,

-against-

MARINE MIDLAND BANK, NA,

Respondent.  
-----X

WILLIAM R. GREENSPAN an attorney duly admitted to the practice of law in the Courts of the State of New York, and a member of the firm of BAKER & GREENSPAN, ESQS., hereby affirms the following to be true under the penalties of perjury:

1. I make this Affirmation knowing full well that it will be relied upon by the Supreme Court of the State of New York, County of Queens in the above entitled proceeding.
2. I am the attorney for the Estate of Fred Gold in the Surrogate's Court, County of Queens under Index No. 5455/94. Mr. Gold passed away on November 9, 1994. At the time of his death, he was a practicing attorney in the County of Queens.
3. Mr. Gold had an attorney's escrow account at Marine Midland Bank, NA under Account No. 008-81544-5, which is the subject of this proceeding.
4. As the attorney for the estate, I have absolutely no objection to the relief requested herein. I have been asking, on behalf of the estate, for this proceeding to be brought since

January of 1995. The monies held in the escrow account do not belong to the estate and are not included in the estate since the monies represent client funds. It is also my belief that the funds in the account are not sufficient for the claims that already exist in connection with this account, and in fact, there may be additional claims.

5. Based upon the prospective insufficiency of the funds, it would seem logical to transfer the funds to the Lawyer's Fund for Client Protection of the State of New York for use in disbursement to the clients of Fred Gold, Esq., whose funds were placed in this account, and for no other purpose.

Dated: No. Merrick, NY  
October 24, 1995

  
WILLIAM R. GREENSPAN

BARRY KAMINS, ESQ.  
Chairman

State of New York  
Grievance Committee  
for the  
Second and Eleventh Judicial Districts

MUNICIPAL BUILDING - 12th FLOOR  
210 JORALEMON STREET  
BROOKLYN, N.Y. 11201

(718) 624-7851

ROBERT H. STRAUS  
Chief Counsel

DIANA MAXFIELD KEARSE  
Deputy Counsel

ROBERT J. SALTZMAN  
MARK F. DEWAN  
DIANA J. SZOCHET  
RICHARD LOMBARDO  
DAVID C.Y. CHEUNG  
Assistant Counsel

November 1, 1995

RECEIVED  
CLIENT PROTECTION  
STATE OF NEW YORK

PERSONAL & CONFIDENTIAL

Paul Holbrook, Esq.  
Marine Midland Bank  
One Marine Midland Center  
27th Floor  
Buffalo, New York 14203

NOV 3 1995

ALBANY, NEW YORK

Re: Fred Gold, Esq. (deceased)  
Account No. 008-81544-5  
Index No. 022732/95  
Our File No. M-7-95

Dear Mr. Holbrook:

Pursuant to our previous telephone conversations, I am enclosing copies of the Petition and Affirmations filed in the N.Y.S. Supreme Court, County of Queens, for an order directing that the funds in the above account be turned over to the Lawyers' Fund for Client Protection.

I have been informed that the return date of the petition will be December 6, 1995 and that the matter has been assigned to Judge Orin R. Kitzes (IAS Part 17).

As discussed, if you send me an affirmation indicating that Marine Midland is not opposed to the relief sought in the petition, I will file it with the Court on the return date.

Thank you for your attention in this matter.

Very truly yours,

*S/C*

David C.Y. Cheung

DC/bl  
encl.

cc: Arthur J. McGee, Esq.

William R. Greenspan, Esq.

Fred Miller, Esq.  
Lawyer's Fund for Client Protection

**SUPREME COURT OF THE STATE OF NEW YORK**

**OTSEGO COUNTY**

-----X

In the Matter of an Account Standing in  
The name of:

**PETITION**

**"ROBERT P. HYDAM, P.C., ATTY.  
IOLA ACCOUNT"**

**INDEX NO:**

-----X

The petition of **CHARLES W. NYDAM**, as Executor of the Last Will and Testament of **ROBERT P. NYDAM, Deceased**, respectfully shows to this Court:

1. The petitioner resides at 30 South Delaware Street, Stamford, New York.
2. **ROBERT P. NYDAM** died testate, a resident of Otsego County, New York on August 25, 1995.
3. Letters Testamentary upon the estate of said **ROBERT P. NYDAM** were issued to the petitioner by the Surrogate's Court of Otsego County on September, 1995, and remain in full force and effect.
4. Prior to his death, **ROBERT P. NYDAM** had been a duly licensed and practicing attorney with an office in Oneonta, New York. He retired from the practice of law and became an Otsego County Court Judge on January 1, 1994, and remained such until his death.
5. The decedent had been the sole stockholder and officer of a Professional Corporation, "**ROBERT P. NYDAM, P.C.**" until it was dissolved in 1993, prior to his assumption of the Otsego County Court Judgeship.
6. There has been discovered among the decedent's papers, a series of bank statements for an account maintained at the Oneonta, New York branch of Key Bank, entitled: "**ROBERT P. HYDAM P.C., ATTY IOLA ACCOUNT**", bearing account number **47137902**, with a balance of **\$821.50**.

7. It is believed that said account was in fact used by the decedent as his Trust Account while he was engaged in the practice of law, and that the spelling of the last name is a typographical error, because the account statements bear the decedent's home address.

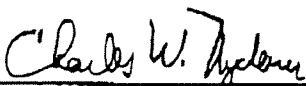
8. An extensive search has been conducted of the decedent's books, records and files in an effort to discover the identity of the true owners of such funds, to no avail.

9. Inquiries have been made of the decedent's former secretary and a former colleague, who acquired decedent's active files when he became a Judge, without success.

10. No inquiries have been received from any former clients of the decedent regarding monies held in escrow.

11. It is believed that the monies in the account may have been an earned fee that had not been withdrawn, or decedent's own funds which had been placed in the account to maintain a balance and act as a hedge against a dishonored check that might be negotiated through the account. However, no such claim is asserted to the funds.

**WHEREFORE, IT IS REQUESTED** that the Court grant an order pursuant to 22 NYCRR Art 1200 designating a successor signatory and directing that such funds be deposited with **THE LAWYERS' FUND FOR CLIENT PROTECTION** for safeguarding and disbursement to persons who are entitled thereto.

  
\_\_\_\_\_  
Charles W. Nydam, Executor/Petitioner

**INDIVIDUAL VERIFICATION**

**STATE OF NEW YORK :  
COUNTY OF DELAWARE:           SS:**

CHARLES W. NYDAM, being duly sworn, deposes and says that deponent is the petitioner in the within action; that deponent has read the foregoing Petition, and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Charles W. Nydam  
Charles W. Nydam, Executor/Petitioner

Sworn to before me this 15<sup>th</sup> day  
of December, 1997.

Beverly A. Munt  
Notary Public

BEVERLY A. MUNT  
Notary Public, State of New York  
No. 01-HU4521803  
Qualified in Delaware County  
Commission Expires 1/31/99

MEMORANDUM

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF QUEENS

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PART 17

HON. ORIN R. KITZES

IN THE MATTER OF MARINE MIDLAND  
ACCOUNT NO. 008-81544-5

INDEX NO.: 022732/95

NEW YORK STATE GRIEVANCE COMMITTEE FOR  
THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

MOTION DATE: 12/6/95

MOTION NO.: 2

Petitioner,

-against-

DATED: December 7, 1995

MARINE MIDLAND BANK, N.A.,

Respondent.

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Application for an order pursuant to 22 NYCRR 1200.46(g ), directing that MARINE MIDLAND BANK turn over all funds in attorney escrow account, number 008-81544-5, under the name of FRED GOLD, with the Lawyer's Fund for Client Protection is granted, without objection from respondent bank.

Submit order.

  
ORIN R. KITZES, J.S.C.

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At a Term, IAS Part 17, of the  
Supreme Court of the State of  
New York, held in and for the  
County of Queens, at 88-11 Sutphin  
Jamaica Ny 3<sup>rd</sup> day of January 1996

Present : Hon. Orin R. Kitzes, Justice

|   |   |                    |
|---|---|--------------------|
| In the Matter of Marine Midland             | ) |                    |
| Account No. 008-81544-5                     | ) |                    |
| New York State Grievance Committee for      | ) | Judgment           |
| the Second and Eleventh Judicial Districts, | ) | Index No. 22732/95 |
|   | ) |                    |
|   | ) | Petitioner,        |
| -against-                                   | ) |                    |
|   | ) |                    |
| Marine Midland Bank, N.A.,                  | ) |                    |
|   | ) | Respondent.        |
|   | ) |                    |

An application having been made pursuant to 22 NYCRR 1200.46  
( g ) for an order directing Marine Midland to turn over all  
funds in attorney escrow account number 008-81544-5, under the  
name Fred Gold, to The Lawyers' Fund for Client Protection of  
the State of New York for safeguarding and disbursement to  
persons entitled thereto, and the application having been  
regularly heard by the court, upon reading and filing the Notice  
of Petition, dated October 26, 1995, the Petition <sup>by Robert H. Straus dated</sup> verified on  
October <sup>23</sup> ~~26~~, 1995, and the affirmations of Robert H. Straus,  
Esq., Chief Counsel to the New York State Grievance Committee  
for the Second and Eleventh Judicial Districts, dated October

26, 1995, William R. Greenspan, Esq., dated October 24, 1995,  
and Arthur J. McGee, Esq., dated October 24, 1995,<sup>with exhibit Annexed</sup> in support  
thereof, with due proof of service, and there being no  
opposition thereto, and due deliberation having been had, and  
reading and filing the memorandum decision herein dated December  
7, 1995, now upon the motion of Robert H. Straus, attorney for  
petitioner (David C.Y. Cheung, of Counsel), it is

ORDERED, ADJUDGED AND DECREED that the petition be and the  
same hereby is in all respects granted; and it is further

ORDERED, ADJUDGED AND DECREED that respondent be and the  
same is hereby directed to turn over all available funds in  
attorney escrow account number 008-81544-5, under the name Fred  
Gold, to The Lawyers' Fund for Client Protection of the State of  
New York for safeguarding and disbursement to persons entitled  
thereto.

Enter: S/Divina R. Kitzes  
J.S.C.

Gloria O'Quinn

Clark

At an adjourned IAS term of the Supreme Court  
Of the State of New York, held in the County of  
Delaware for the County of Otsego at the Delaware  
County Court House in the Village of Delhi, NY, on  
the 19<sup>th</sup> day of December, 1997.

**PRESENT; HON. CARL J. MUGGLIN,**  
Justice Presiding.

-----X  
In the Matter of an Account Standing  
in the name of:

**ORDER**

**"ROBERT P. HYDAM, P.C.  
ATTY, IOLA ACCOUNT"**  
-----X

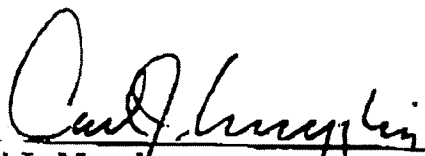
The petitioner, **CHARLES W. NYDAM**, having presented this Court with an application duly verified on the 15th day of December, 1997, pursuant to 22 NYCRR Article 1200 for an Order designating a successor signatory for a certain account maintained by **Key Bank**, and entitled **"ROBERT P. HYDAM, P.C., ATTY, IOLA ACCOUNT"** bearing account number 47137902 and further directing that the funds contained therein be deposited with **THE LAWYERS' FUND FOR CLIENT PROTECTION** for safeguarding and disbursement to persons who are entitled thereto,

**NOW**, upon reading said application and due deliberation having been had, it is

**ORDERED**, that **CARL F. BECKER**, of Stamford, New York, an attorney duly licensed to practice law in the State of New York, be and he hereby is appointed successor signatory over a certain account maintained by **Key Bank** entitled **"ROBERT P. HYDAM, P.C., ATTY, IOLA ACCOUNT"** and bearing account number 47137902 for the sole and exclusive purpose of facilitating the transfer of the funds presently on deposit in said account, amounting to approximately \$821.50 to **"THE LAWYERS' FUND FOR CLIENT PROTECTION"**, for safekeeping and disbursement to persons who are entitled thereto, and it is further

**ORDERED**, that **Key Bank**, its officers and employees be relieved of any further responsibility with respect to said funds upon the transfer of same to "**THE LAWYERS' FUND FOR CLIENT PROTECTION**".

DATED: December 19, 1997  
Delhi, New York

  
\_\_\_\_\_  
Carl J. Mugglin  
Justice of the Supreme Court.

**Disciplinary Rule 9-102. (22 NYCRR 1200.46) Preserving identity of funds and property of others; fiduciary responsibility; commingling and misappropriation of client funds or property; maintenance of bank accounts; record keeping; examination of records.**

**(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.**

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

**(b) Separate Accounts.**

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law, shall maintain such funds in a banking institution within the State of New York which agrees to provide dishonored check reports in accordance with the provisions of Part 1300 of the joint rules of the Appellate Divisions. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which he or she is a member, or in the name of the lawyer or firm of lawyers by whom he or she is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts which the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity, into which special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside the State of New York if such banking institution complies with such Part 1300, and the lawyer has obtained the prior written approval of the person to whom such funds belong which specifies the name and address of the office or branch of the banking institution where such funds are to be maintained.

(2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by section 1200.46 (b)(1) of this Part as an "Attorney Special Account," or "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or lawyer's firm.

(3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.

(4) Funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.

**(c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.**

A lawyer shall:

(1) Promptly notify a client or third person of the receipt of funds, securities, or other properties in

which the client or third person has an interest.

(2) Identify and label securities and properties of a client or third person 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 or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them.

(4) Promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive.

(d) Required Bookkeeping Records.

A lawyer shall maintain for seven years after the events which they record:

(1) The records of all deposits in and withdrawals from the accounts specified in section 1200.46(b) of this Part and of any other bank account which concerns or affects the lawyer's practice of law. These records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement.

(2) A record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed.

(3) Copies of all retainer and compensation agreements with clients.

(4) Copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf.

(5) Copies of all bills rendered to clients.

(6) Copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed.

(7) Copies of all retainer and closing statements filed with the Office of Court Administration.

(8) All checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips with respect to the special accounts specified in DR 9-102(B)(subdivision [b] of this section) and other bank account which records the operations of the lawyer's practice of law. (**Note: citation should probably read: "section 1200.46(b) of this Part".**)

(9) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.

(10) For purposes of section 1200.46(d) of this Part, a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

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 an attorney admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients. Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

(1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account who shall be a member of the bar in good standing and admitted to the practice of law in New York State.

(2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this rule.

(3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in section 1200.46 (d) of this Part. In the absence of agreement on such arrangements, any partner or former partner or member of a firm in dissolution may apply to the Appellate Division in which the principal office of the law firm is located or its designee for direction and such direction shall be binding upon all partners, former partners or members.

(i) Availability of Bookkeeping Records; Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this disciplinary rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any

investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this subdivision shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the lawyer-client privilege.

(j) Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Disciplinary Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

\*As amended effective June 30, 1999