



EVERYTHING YOU NEED TO KNOW ABOUT TRUST ACCOUNTS

A COMPREHENSIVE GUIDE TO TRUST ACCOUNTING AND
FINANCIAL RECORD KEEPING FROM THE OFFICE OF
LAWYERS PROFESSIONAL RESPONSIBILITY.

WHY DO LAWYERS NEED A TRUST ACCOUNT & WHO MUST MAINTAIN ONE?

- What is a trust account?
- What is the purpose of a trust account?
- What rule governs a lawyer's obligation for maintaining a trust account? Rule 1.15, MRPC, as interpreted by Appendix 1
- Who is required to have a trust account?
- Who doesn't need a trust account?
- Certification requirements on annual lawyer registration.

SETTING UP A TRUST ACCOUNT

- What is an IOLTA account? Do I need a trust document to one?
- What funds go into an IOLTA account? See Rule 1.15(e), MRPC.
- What happens to interest in an IOLTA account? See Rule 1.15(o), MRPC.
- Can a lawyer calculate and pay interest to individual clients? See Rule 1.15(f)(2), MRPC.
- Where can a lawyer set up an IOLTA account? See Rule 1.15(j), MRPC.
- What name can appear on an IOLTA account?

ESTABLISHING AN INDIVIDUAL CLIENT TRUST ACCOUNT...

- Can a lawyer have more than one trust account?
- What are individual trust accounts? Where can this kind of trust account be set up? See Rule 1.15(f)(1), MRPC.
- Pooled versus individual account criteria. See Rule 1.15(g), MRPC.
- What are the record keeping obligations for individual trust accounts? How long must these records be maintained?

INDIVIDUAL TRUST ACCOUNTS CONTINUED...

- Whose name goes on an individual client trust account... the lawyer or the client?
- Tax ID numbers and 1099 concerns on individual client trust accounts and interest payments to clients.
- Are there tax concerns for interest payments on IOLTA accounts?

MOVING/CLOSING TRUST ACCOUNTS

- Whether moving or closing a trust account, the same steps are taken.
- Notify your bank to close the account then fax a letter to (651) 297-5636 Attn: IOLTA Program, with your name, the firm name (if applicable), the account number and the date it was closed.

DEFINING BOOKS AND RECORDKEEPING OBLIGATIONS

- Rule 1.15, MRPC, and Appendix 1 set forth the technical requirements for maintaining trust account books and records.
- Documentation, documentation!
- Can records be kept electronically?
- *In re Reiter*, 567 N.W.2d 699 (Minn. 1997).

WHAT ARE RECORDS?

- Bank statements, canceled checks, deposit slips, bank interest reports, service charge notices, and notices of interest payments to the IOLTA program. See Appendix 1, MRPC.
- Who provides records to a lawyer? How long must I keep these records?
- What if my bank does not return original or copies of canceled checks with my bank statements? See Appendix 1(I)(6), MRPC.
- What if my bank does not return original deposit slips? See Appendix 1(I)(6), MRPC.

WHAT INFORMATION DOES A LAWYER NEED TO RETAIN WHEN OPENING A TRUST ACCOUNT?

- Name of the financial institution.
- Account number.
- Account name.
- Date of account opening.
- Copy of the account application.
- See Appendix 1, I(1).

HOW TO ANNOTATE DEPOSIT AND WITHDRAWAL RECORDS?

- Deposits

- Physical deposit (original deposit slip or carbon copy of deposit slip)
- Substitute checks (form of electronic deposit)
- ATM deposits
- Cash payment for deposit

- See Appendix 1, I(6)

- Withdrawals

- Trust account checks
- Electronic, telephone or wire transfers
- See Appendix 1, I(6)

WHAT ARE BOOKS?

- Checkbook register.
- Client subsidiary ledgers.
- Monthly trial balances and reconciliations.
- Receipts and disbursements journal are optional.

CHECK REGISTER – See Appendix 1 (1) (2).

Abogada Trust Account

Checkbook Register

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Date	Payee or Deposit Source	Client	Check No.	Funds Paid	Funds Received	Balance
1/2/xx	Law Firm funds deposit	Firm			\$ 100	\$ 100
1/4/xx	Settlement received	Bates			15,000	15,100
1/7/xx	Retainer received	CCC			5,000	20,100
1/9/xx	Court Reporters, Inc.	Bates	1001	\$ 400		19,700
1/9/xx	Metro Wide Courier, Inc.	Bates	1002	60		19,640
1/9/xx	Dr. Bailey	Bates	1003	340		19,300
1/9/xx	Simon Bates	Bates	1004	9,200		10,100
1/9/xx	Maria Abogada	Bates	1005	5,000		5,100
1/15/xx	Ramsey Cnty Dist. Ct., filing fee	CCC	1006	132		4,968
1/22/xx	Retainer received	Davis			2,500	7,468
1/25/xx	Maria Abogada, cost. reimbursed	Davis	1007	152		7,316
1/25/xx	Maria Abogada, atty fees	Davis	1008	1,770		5,546
1/31/xx	Maria Abogada, atty fees	CCC	1009	2,075		3,471

CLIENT SUBSIDIARY LEDGERS – See Appendix 1(I)(3).

Client Subsidiary Ledger

Client name: Simon Bates
Description of representation: Car accident v. American States Ins.
File or case number: 97-10

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/4/xx	Settlement Received			\$15,000	\$15,000
1/9/xx	Court Reporters, Inc., costs	1001	\$ 400		14,600
1/9/xx	Metro Wide Courier, Inc., costs	1002	60		14,540
1/9/xx	Dr. Bailey, expert witness fee	1003	340		14,200
1/9/xx	Simon Bates, settlement dist.	1004	9,200		5,000
1/9/xx	Maria Abogada, atty fees	1005	5,000		0

SUBSIDIARY LEDGERS CONTINUED...

- Client subsidiary balance cannot be negative.
- At the conclusion of the representation, a client's subsidiary balance should be zero.
- Separate ledger requirements for lawyer's nominal funds and interest payments not made monthly by the bank to the IOLTA Program.
- How is interest recorded for individual client trust accounts?
- See Appendix 1, I(3)(a)-(c).

EXAMPLE OF CLIENT SUBSIDIARY LEDGER FOR INTEREST

Client Subsidiary Ledger

Client Name: IOLTA Interest
Description of representation: _____
File or case number: _____

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/31/xx	Interest Credit (Deposit)			\$19.19	\$19.19
2/28/xx	Interest Debit (Transfer to IOLTA Program)		\$19.19		0

TRIAL BALANCES & RECONCILIATIONS

See Appendix 1 (I)(4) and (5).

Abogada Trust Account

Checkbook Register

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TRIAL BALANCES AND RECONCILIATIONS CONTINUED...

January 20xx Trial Balance

Bates	\$ 0.00
CCC	\$2,393.00
Davis	\$ 578.00
Firm	\$ 100.00
Interest	<u>\$ 19.19</u>
Trial Balance	\$3,490.19

TRIAL BALANCES & RECONCILIATIONS CONTINUED...

Monthly Reconciliation January 31, 20xx

Check Register Balance
\$3,490.19

Subsidiary Ledger Trial Balance
\$3,490.19

Bank Statement

January 31, 20xx balance \$5,905.19

Plus outstanding deposits \$ 0.00

Less outstanding checks

1003 (Bates) \$ 340.00

1009 (CCC) \$2,075.00

Total (\$2,415.00)

Adjusted Bank Statement Balance \$3,490.19

TIME TO RECONCILE!

- Does the monthly trial balance reconcile with the month-end balance on the trust account bank statement?
- If not, the lawyer must account for uncleared checks or deposits that missed the bank statement's cut-off date.
- After accounting for these items, the trial balance and bank statement balance should match.
- A (significant) surplus or any shortage needs to be immediately rectified.

DEPOSITING FUNDS INTO A TRUST ACCOUNT

- Who can be a trust account signatory?
- How can deposits be made?
- Deposit of sums intact.
- Notice to client of receipt of settlement funds.



The image shows a Chase deposit form. At the top left is the Chase logo. To its right is the word "DEPOSIT" in bold. In the top right corner, there are three checkboxes: "CHECKING" (unchecked), "SAVINGS" (unchecked), and "CHASE LIQUID" (unchecked). Below these is the reference number "R/T 500001020".

The form has several fields for information entry:

- "Today's Date" with a date picker icon.
- "Customer Name (Please Print)" with a long horizontal line for text.
- "Sign Here (if cash is received from this deposit)" with a dashed line and an "X" mark.
- A small box containing "N13065-CH (Rev. 07/12) 30485161 10/13".
- A field labeled "Start your account number here" with a downward arrow icon.

On the right side of the form, there is a vertical column of labels with arrows pointing to a grid of boxes for recording amounts:

- "CASH" with a right-pointing arrow.
- "CHECK" with a right-pointing arrow.
- "TOTAL FROM OTHER SIDE" with a right-pointing arrow.
- "SUBTOTAL" with a right-pointing arrow.
- "CASH BACK" with a right-pointing arrow.
- "TOTAL \$" with a right-pointing arrow.

At the bottom left of the form, there is a MICR line: "⑈ 293965900⑈ ⑆ 50000 10 20⑆".

HOW TO HANDLE PAYMENT OF FEES BY CREDIT CARD

- Lawyers may accept fees paid by credit card. See Appendix 1, I(10).
- The type of fee determines how to process the credit card transaction.
 - Earned fees;
 - Flat fees pursuant to Rule 1.5(b)(1)(i)-(iv), MRPC;
 - Advance fee payments; and
 - Cost advances.
- Processing credit card transactions through Law Pay is okay.
- Credit card transaction fees and fee agreements.

DISBURSEMENTS FROM THE TRUST ACCOUNT. See Appendix 1(I)(11).

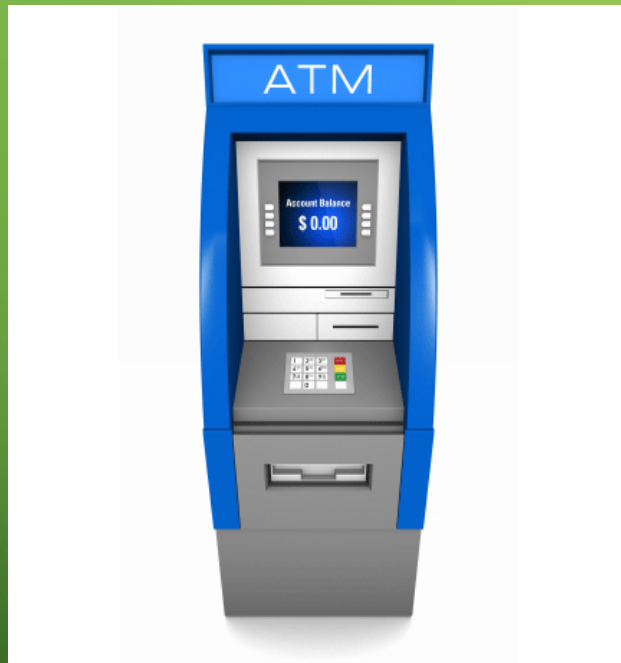


- What does it mean for a check to clear?
- How long do checks take to clear?
- Is same day disbursement of funds deposited into a trust account permissible?

DISBURSEMENTS FROM THE TRUST ACCOUNT CONTINUED...

- Can a lawyer post-date a check?
- Removal of earned fees from an advance fee or flat fee agreement from the trust account.
- Costs.
 - Costs advanced.
 - Costs reimbursed.

HOW CAN FEES BE REMOVED?



- **Check?**
- **Electronic, wire or telephone funds transfer?**
- **Cash withdrawals from the trust account?**
- **Debit card withdrawals?**

UNCASHED CHECKS

- Hypothetical: Lawyer wrote a check for \$350 to a client's doctor a year ago, but it has never cleared the bank. The lawyer is tired of tracking this check in ledger and trial balances each month. What can the lawyer do with it?

ABANDONED CLIENT FUNDS

- Hypothetical: Lawyer deposited a settlement check for a client four years ago but the client disappeared. Lawyer has exhausted all means by which to locate the client. Must the lawyer retain the client's funds in the trust account indefinitely?

OVERDRAFTS ON TRUST ACCOUNTS

- Around 65 overdrafts are reported to the Director each year.
- The majority of are closed without conversion to a disciplinary file.
- Top causes for overdrafts:
 - Check written in error on trust account.
 - Bank error.
 - Service or check charges.
 - Late deposit.
 - Mathematical/clerical error.
 - Deposit to wrong account.

TOP BOOKKEEPING ERRORS:

- No client subsidiary ledgers or monthly trial balance/reconciliations.
- Insufficiently detailed client deposit attributions.
- No computer back up system for trust account records (Appendix 1 (I)(7) MRPC).
- Failure to track and account for uncleared checks and deposits.
- Failure to appropriately handle/account for interest disbursements.
- Failure to have a lawyer signatory on every trust account check.
- Failure to track and/or cover check printing charges
- Failure to utilize accounting software such as Quickbooks or Quicken!



**AVOIDING DISCIPLINE:
COMMON RECORDKEEPING
ERRORS AND MISUSE OF A
TRUST ACCOUNT...**

FAILURE TO MAINTAIN TRUST ACCOUNT BOOKS AND RECORDS

- A lawyer's ignorance of recordkeeping obligations is not a defense to failure to maintain required trust account books and records.
 - *In re Porter*, 449 N.W.2d 713, 718-19 (Minn. 1990).
- A non-lawyer assistant's failure to maintain required books and records or a failure to supervise the non-lawyer assistant in the preparation thereof is also not a defense.
 - *In re LaChapelle*, 491 N.W.2d17 (Minn. 1992)
- Most common recordkeeping failure is not preparing client subsidiary ledgers and/or trial balance reports.
 - *In re Reiter*, 567 N.W.2d 699, 704 (Minn. 1997);

SHARED RESPONSIBILITY- SHARED DISCIPLINE

- Lawyers who share books and records responsibility also share accountability.
- If a lawyer has books and records responsibility, s/he also has the duty to supervise anyone s/he delegates bookkeeping duties to.
- Violations of Rules 5.1 and 5.3, MRPC, trending in addition to violation of Rule 1.15, MRPC.

COMMINGLING AND USE OF A TRUST ACCOUNT AS A PERSONAL ACCOUNT

- What is commingling?
 - Failure to timely remove earned fees from trust account.
 - Maintaining a “cushion” in the trust account.
 - “One check, one deposit.”
- Why is it prohibited?
- Discipline cases:
 - *In re Kurzman*, 2010 WL 10107647 (Minn. July, 16, 2010).
 - *In re Swaray*, 867 N.W.2d 925 (Minn. 2015).

MISAPPROPRIATION

- Misappropriation of client funds violates Rule 8.4(c), MRPC, and occurs when “funds belonging to a client are not deposited in a trust account and are used for any purpose other than that specified by the client.” *In re Westby*, 639, N.W.2d, 358, 370 (Minn. 2002).
- “Borrowing client funds” is not a defense to misuse of client funds.

HOW CAN MISAPPROPRIATION OCCUR?

- Failing to deposit filing fees into a trust account.
- Issuing checks from trust that exceed balance, resulting in other client funds being compromised and used.
- Failing to transfer credit card or electronic payments to the trust account.
- Paying non-client expenses out of a trust account.
- Accepting fees, failing to do any work and failing to refund.

VARIATIONS ON MISAPPROPRIATION

- Disbursing unearned client funds. *In re Eskola*, 891 N.W.2d 294, 298-299 (Minn. 2017).
- Negligent misappropriation: shortages created in a trust account by a lawyer's disbursement of funds to himself or other clients in excess of the balance of funds the lawyer should be holding for a specific client, usually related to lawyer's failure to maintain books and records and properly track client funds.
- Failure to supervise non-lawyer staff who misappropriate client funds.
- Misappropriation of law firm proceeds. *In re Eskola*, 668 N.W.2d 424 (Minn. 2003).

TRUST ACCOUNT SCAMS!

How to recognize a trust account scam? They all have several important things in common!

- Email solicitation by a foreign client.
- Legal matter involves collection of an unusually large, uncontested debt.
- The lawyer is not being asked to perform legal services other than processing a check from the debtor through the trust account.
- An urgent request from the client to disburse funds quickly.
- Scam perpetrator may request password and account number.
- *In re Crabtree*, 916 N.W.2d (Minn. 2018)
- *In re Olson*, 909 N.W.2d 58 (Minn. 2018)

ADVISORY OPINION SERVICES

- Available to licensed MN attorneys.
- OLPR attorneys will provide no cost verbal opinion on application of specific facts to rules. Confidential; non-binding on third parties.
- No opinion will be offered on (1) conduct of third parties, (2) where conduct has already occurred, and (3) lawyer advertising, but will advise rules relating to same.
- Options: Submit a written request on line (preferred where facts are complicated or detailed); call 651-296-3952 or toll-free 1-800-657-3601 and ask for the A/O attorney.
- Website: <http://lprb.mncourts.gov>.

LAWYER ASSISTANCE RESOURCES

- During 2016: 108 open disciplinary probations—39 included a disability related condition, either mental health (24) and/or chemical dependency (15).
- A recent ABA/Hazelden study indicates that one-fifth of U.S. attorneys may suffer from some level of problematic drinking, and a significant percentage of study participants reported mental health concerns.
- Study participants advised that barriers to seeking treatment included (1) not wanting others to find out they needed help; and (2) concerns regarding confidentiality or privacy.
- **Lawyer assistance programs like Lawyers Concerned for Lawyers are not required to report misconduct disclosed to them by an attorney seeking assistance. Rule 8.3(c), MRPC.**
- Please do not let concerns for your license interfere with seeking help from a lawyer assistance program.
- Lawyers Concerned for Lawyers: 651-646-5590 or help@mnlcl.org
- 24-hr crisis line: 612-332-4805