

Other People's Money: Operating Lawyer Trust Accounts

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Office of the Director of Lawyers Professional Responsibility
Saint Paul**

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I. Introduction

One of the routine aspects of practicing law is receiving money from and on behalf of clients and third parties; one of a lawyer's most serious responsibilities is safeguarding and accounting for those funds.

Client funds take the form of unearned fee retainers, cost advances, settlements, escrow funds, estate assets, judgment awards and other fiduciary funds, to name the most common. Funds belonging to third parties that a lawyer may be required to hold include funds subject to doctors' liens, disputed funds, and court-ordered deposits.

Both common sense and the Minnesota Rules of Professional Conduct (MRPC) dictate that client funds must be segregated from a lawyer's own funds and accounted for in a manner that allows the lawyer to determine, *to the penny*, what funds are held on behalf of each and every client. Lawyers accomplish this by placing all client money in a separate bank account called a trust account. Rule 1.15, MRPC (Appendix A), and Appendix 1 to the Minnesota Rules of Professional Conduct (Appendix B) spell out the technical requirements for maintaining trust account books and records.

The purposes of this manual are to describe the trust account books and records requirements, explain the rationale for those requirements, provide a straightforward guide to following the requirements, and answer common questions that may arise.

II. Types of Trust Accounts

A. Pooled Accounts.

The Rules require that all client funds be deposited in an interest-bearing account at a financial institution, typically a savings or commercial bank. Most lawyers maintain one trust account into which all of their client funds are "pooled." Because most client funds are held for short periods of time (several days to several months) and are often for nominal amounts, insignificant amounts of interest are generated for each individual client. Nevertheless, the pooled funds in these accounts (called IOLTA, Interest on Lawyers Trust Accounts) earn cumulative interest. As in many other states, this interest is collected and forwarded to the IOLTA program which uses the money to fund various nonprofit groups that provide legal services to individuals and groups that would not otherwise be able to afford legal representation.

Virtually all banks in Minnesota are familiar with IOLTA accounts. Banks often do not charge monthly service fees on these accounts and can set up the account to automatically withdraw the interest each month and forward it to the IOLTA program. The Office of the Director of Lawyers Professional Responsibility ("Director's Office") maintains on its website

(<http://lprb.mncourts.gov>) a list of banks that have been approved to handle IOLTA accounts.

A lawyer may also open a pooled interest-bearing trust account for which the interest will not be forwarded to the IOLTA program. For this type of account, a lawyer must use sub-accounting to compute and pay out interest to individual clients. Few lawyers use this type of trust account due to the administrative burden and costs associated with allocating the interest to each client on an average daily balance.

B. Separate Accounts.

Some lawyers handle substantial individual amounts of client funds or funds that the lawyer expects to retain in trust for a long period of time. These funds may be deposited into a separate interest-bearing account and the interest, net of any transaction costs, paid directly to the particular client. Rule 1.15(f)(1), MRPC.

Regardless of which type of trust account a lawyer uses, the lawyer must maintain the books and records discussed below.

III. Defining Books and Records

A lawyer cannot fully account for client funds without documentation of all transactions involving such funds. Proper documentation both prevents mistakes and allows a lawyer to correct errors that are discovered later. Good recordkeeping also helps to prevent and to resolve disputes with clients. Failure to keep books and records may potentially result in ethical discipline, which may be public in severe cases. *See In re Reiter*, 567 N.W.2d 699 (Minn. 1997).

A. Records.

Records refer to documents created in the ordinary course of operating a bank account or handling other client property. They include bank statements, canceled checks or copies of canceled checks if they are provided with the bank statements, deposit slips, bank interest reports, service charge notices, and notices of interest payments to the IOLTA program. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(6).

Banks routinely provide most of these documents to the lawyer. Where a bank does not return with the bank statements either the original or copies of canceled checks, a lawyer need not make or retain copies of checks drawn on the trust account. Where a bank does not routinely return original deposit slips, however, a lawyer must create and retain duplicate deposit slips (usually using a book with carbon copies) because the lawyer needs a record of the clients on whose behalf funds were deposited. Each deposit entry must include an

identification of the client on whose behalf the funds are deposited. (Lawyers making electronic deposits into their trust account, pursuant to the 21st Century Act or otherwise, must request and retain image statements from their bank for each such deposit.) Similarly, a lawyer must identify the client on the memo line of each trust account check issued. It is improper for a lawyer to make ATM or other cash withdrawals from a trust account or to retain cash from a trust account deposit. It is also improper for a lawyer to issue trust account checks in payment of the lawyer's own personal or business expenses. Every withdrawal from a trust account must be signed by at least one lawyer associated with the firm. *See* Rule 1.15(j), MRPC.

Appendix 1 permits lawyers to withdraw funds from their trust account by bank wire, electronic or telephone transfer so long as the lawyer creates and signs a written memorandum authorizing the transaction.

Cash Payments. When a lawyer receives payment of a retainer or fees from a client in cash, the lawyer must create and keep a copy of a receipt signed by both the lawyer and the client. The receipt must identify the client from whom the cash payment was received. This rule was imposed to reduce the disputes over the amounts of cash payments to lawyers.

Other records lawyers must maintain include receipts or other statements of non-cash property held for clients (e.g., personal property from a divorce, an abstract from a real estate transaction, stock or bond certificates discovered in a decedent's safe deposit box, etc.). Lawyers must also have records identifying the trust accounts they maintain. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(1) and (6).

B. Books.

Books refer to the ongoing journals and ledgers a lawyer maintains on a daily basis to keep track of client funds. Lawyers must contemporaneously maintain all of the following books:

1. Checkbook Register.

Just like a personal checking account, a lawyer trust account must have a checkbook register. It tracks all the checks written from the account and all the deposits to the account, in chronological order. This provides a running balance of how much money would be in the account on a given day if all the checks written had cleared. This balance is very important; as part of the monthly reconciliation process (*see* Appendix 1 to the Minnesota Rules of Professional Conduct, I(5)) it is compared to the balances from the other books and to the bank statement to make sure the proper funds are in the trust account.

Each entry in the register, whether a check, transfer or deposit, must include the date, the client on whose behalf the transaction occurred, the amount, the purpose (e.g., retainer, fees, costs, payment to medical provider, etc.) and (for checks) the payee and the check number. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(2).

2. Receipts and Disbursements Journals (optional).

As of September 1998, LPRB cash receipts and disbursements journals are no longer required. Instead, lawyers are required to maintain detailed check registers and subsidiary ledgers.

In addition to a checkbook register, lawyers may also keep separate lists (“journals”) for the money they receive and for the money they pay out. At month-end, these journals provide the lawyer with separate totals of deposits and withdrawals, which can then be compared with the register and the bank statement. This is another way to check that no mistakes have been made during the month and that disbursements have not exceeded the available trust funds.

3. Client Subsidiary Ledgers.

For each client, a lawyer must keep a separate page on which all the trust account deposits and withdrawals for that client are recorded. Each entry must have the same details as the entries in the checkbook register: date, amount, payee, check number, and purpose. A subsidiary ledger must also reflect a running balance. By its nature, a client subsidiary ledger should never have a negative balance; a lawyer should never disburse funds on behalf of a client unless there are sufficient funds for that client to cover the check. When the representation ends, the subsidiary ledger balance should be zero. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(3)(a).

A lawyer must maintain a subsidiary ledger for the nominal funds the lawyer has in the account to cover bank fees. *See* Rule 1.15(a)(1), MRPC. The amount of a lawyer’s own funds in a trust account may not exceed \$200.

Failing to keep client subsidiary ledgers is one of the most common causes of errors – including inadvertent shortages of client funds. It is virtually impossible to reconcile a lawyer’s own records with the bank statement and safeguard clients’ funds without subsidiary ledgers. This is true regardless of how frequently the trust account is used or whether the trust account use is limited to real estate closings, personal injury settlements, or other “routine” transactions.

4. Monthly Trial Balances and Reconciliations.

At the end of each banking month, lawyers need to compare the balances of their various books to catch mistakes or oversights that might lead to shortages or commingling. Finding the balances for the register and the journals (if journals are being maintained) is easy enough: just take whatever balance is recorded for the banking month-end date. To find the balance for the client subsidiary ledgers, a lawyer must create a "trial balance." A trial balance is a listing of the clients with funds in the trust account as of the banking month-end date and the balance for each such client. All the individual client balances are added together to arrive at the subsidiary ledger trial balance. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(4).

This trial balance should be identical to the check register balance for the same date and to the balance of the cash receipts and disbursements journal (if these optional journals are being maintained). They should be identical because the same information should have been entered in all three places.

As noted earlier, no client subsidiary ledger balance should ever be negative. If, however, through error or oversight, a negative client balance occurs and has not been rectified when the trial balance is computed, that balance should be viewed as zero in computing the trial balance. A negative client balance may not serve to reduce the trial balance total.

5. Reconciliations.

The month-end balances from a lawyer's books often will not match the month-end balance on the bank statement because there may be checks that have been written but not yet cleared. There may even be deposits made before the end of the month and noted in a lawyer's records, but which missed the cut-off for the bank statement. After accounting for these items, however, the book balances should be identical to the bank statement balance. *See* Appendix 1 to the Minnesota Rules of Professional Conduct, I(5).

If the book balances cannot be reconciled with the bank statement balance, then either a mistake has been made in entering information in the books, or the trust account has a surplus or a shortage. These problems must be corrected immediately.

A lawyer must separately maintain the books detailed above for each of their individual trust accounts.

A lawyer must preserve trust account books and records for “at least six years following the end of the taxable year to which they relate.” *See* Rule 1.15(h), MRPC.

C. Manual vs. Computerized Record Keeping.

Lawyers may note that maintaining books and records by hand requires that the lawyer or an assistant record each trust account transaction several times: on the check or deposit itself, in the register, in the subsidiary ledger, and in a receipts or disbursements journal (if journals are being maintained). By using computer software programs designed for checking accounts, lawyers only need to enter information on the instrument itself and in the computerized register; the software will automatically create the ledgers and journals. Some programs will even print checks.

The Director’s Office has published a separate booklet with an example of how to use ordinary computer software to maintain trust account books and records. *See also*, Appendix 1 to the Minnesota Rules of Professional Conduct, I(7). Note that the electronic trust account check registers, trial balance reports and reconciliation reports must be either printed or saved in a PDF form to a separate electronic device on a monthly basis.

IV. Handling Trust Account Transactions

Maria Abogada has decided to open a solo practice after passing the bar in October. She opens a trust account with \$100 of her own funds to cover check printing costs and other charges that may arise. (Although lawyers are generally prohibited from keeping their own funds in their trust accounts, the rules do allow a deposit of a nominal amount of funds, \$200 or less, to cover bank charges and fees. *See* Rule 1.15(a)(1), MRPC.) She writes the deposit in her checkbook register and creates a subsidiary ledger page for “Law Firm Funds” and writes the deposit there as well.

Client name:	<u>Law Firm Funds</u>				
Description of representation:	<u>N/A</u>				
File or case number:	<u>N/A</u>				
Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/2/xx	Deposit			\$ 100	\$ 100

In January, Abogada settles a personal injury action for client Bates, receives a retainer and starts a lawsuit for new client Computer Circuit Corp. (CCC), and receives payment from a dissolution client, Davis, comprised of past due fees, an advance on future fees and costs that she has already paid. She records the transactions in her check register and ledgers as follows:

**Abogada Trust Account
Checkbook Register
Page 1**

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 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

Client Subsidiary Ledger

Client name: Computer Circuits Corp. (CCC)
Description of representation: Patent infringement litigation
File or case number: 98-2

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/7/xx	Retainer Received			\$5,000	\$5,000
1/15/xx	Ramsey Cnty Dist. Ct., filing fee	1006	\$ 132		4,868
1/31/xx	Maria Abogada, atty fees	1009	2,075		2,793

Client Subsidiary Ledger

Client name: Angela Davis
Description of representation: Davis v. Davis dissolution
File or case number: 98-3

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/22/xx	Funds Received			\$2,500	\$2,500
1/25/xx	Maria Abogada, costs reimb.	1007	\$ 152		2,348
1/25/xx	Maria Abogada, atty fees	1008	1,770		578

Note that Abogada issued herself separate checks for her costs and attorney fees in the Davis matter; she also could have issued one check and annotated her register and subsidiary ledger accordingly. Similarly, if she knew on January 25 that she had also earned fees and billed the client in the CCC matter, she could have written one check for all three transactions and annotated each ledger with the amount of the total check and the amount attributable to each client.

Handling IOLTA interest

Trust account interest activity must be entered into the checkbook register and posted to a separate "IOLTA Interest" subsidiary ledger, especially where the interest is credited in one month and debited the next month so that the interest debits and credits are not offsetting. Even where interest is credited and debited within the same month, banks occasionally make errors in crediting and debiting IOLTA interest. Maintaining a separate ledger for IOLTA interest transactions facilitates detection of these errors and proper reconciliation of the trust account. The IOLTA transactions should be entered into the checkbook register and "IOLTA Interest" ledger from the monthly bank statement prior to reconciling the account.

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

V. Reconciling the Trust Account

Trust account records should be reconciled monthly after receiving the bank statement. Before reconciling the account, the Director's Office recommends that paperless transactions appearing on the statement (e.g., IOLTA interest debits and credits, service charges, wire transfer fees, check printing charges, stop payment fees, returned check fees) be recorded in the checkbook register and posted to the appropriate ledgers.

The reconciliation for Abogada's first month is fairly straightforward. The check register balance is simply the balance on January 31: \$3,471 plus any paperless transactions added after reviewing the statement (i.e., \$19.19 IOLTA interest). The trial balance of the subsidiary ledgers looks like this:

January 20xx Trial Balance	
Bates	\$ 0.00
CCC	\$ 2,793.00
Davis	\$ 578.00
Firm	\$ 100.00
IOLTA Interest	<u>\$ 19.19</u>
Trial Balance	\$3,490.19

Notice that the Bates zero balance is included because funds for that client were held during the month, even though all client funds have been disbursed.

The check register and trial balances can now be reconciled with the bank statement, which looks like this:

Bank of Pottersville					
1215 Bailey Avenue Pottersville, MN 55632					
Maria Abogada, Attorney at Law IOLTA Trust Account 100 LaSalle Avenue South St. Paul, MN 55101			BUSINESS CHECKING ACCOUNT No: 4 440 6819		
STATEMENT PERIOD JAN. 1, 20XX TO JAN. 31, 20XX					
OPENING BALANCE	DEPOSITS	INTEREST	WITHDRAWALS	SERVICE CHARGE	CLOSING BALANCE
\$ 0	\$22,600.00	\$ 19.19	\$16,714.00	\$ 0	\$ 5,905.19

DEPOSITS					
Jan. 2	Counter	\$ 100.00	Jan. 22	Counter	\$ 2,500.00
Jan. 4	Counter	\$15,000.00	Jan. 31	Interest	\$ 19.19
Jan. 7	Counter	\$ 5,000.00		Paid	
CHECKS					
1001	Jan. 18	\$ 400.00	1006	Jan. 29	\$ 132.00
1002	Jan. 12	\$ 60.00	1007	Jan. 26	\$ 152.00
1004*	Jan. 11	\$ 9,200.00	1008	Jan. 26	\$ 1,770.00
1005	Jan. 11	\$ 5,000.00			

Right away, one can see that the check register and trial balances do not match the month-end bank statement balance. Abogada begins her reconciliation of the balances by noting all the transactions that have cleared during the month. She notices two checks have not yet cleared and that she has no record of the interest earned in her account. Her monthly reconciliation looks like this:

Monthly Reconciliation		
January 1 –31, 20xx		
Trust Account 4-440-6819		
Check Register Balance		\$3,490.19
Subsidiary Ledger Trial Balance		\$3,490.19
Bank Statement		
Balance on Jan. 31, 20xx	\$5,905.19	
+ Outstanding deposits	\$ -0-	
– Outstanding checks		
1003 (Bates)	\$(340.00)	
1009 (CCC)	\$(2,075.00)	
Adjusted Bank Statement Balance		\$3,490.19

Abogada’s books reconcile perfectly.

VI. Using the Reconciliation to Find Mistakes

Without client subsidiary ledgers, a lawyer may not detect errors in disbursing funds from the trust account, which may result in an inappropriate surplus or shortage. Consider the following example.

In February, Abogada accepts a retainer from Earl Evanson to represent him in his divorce trial, which is already scheduled for the end of the month. She also agrees to represent Phyllis Franke in her bankruptcy. Phyllis gives Abogada one check for the bankruptcy court filing fee and Abogada’s nonrefundable retainer. Abogada gets her bank statement in early March, posts the paperless transaction(s) appearing on the statement (i.e., IOLTA interest credit and debit) to the checkbook register and appropriate ledger(s) and then performs her reconciliation. The various books look like this (new entries to previous subsidiary ledgers are in bold).

Bank of Pottersville

1215 Bailey Avenue
Pottersville, MN 55632

Maria Abogada, Attorney at Law
IOLTA Trust Account
100 LaSalle Avenue South
St. Paul, MN 55101

BUSINESS CHECKING
ACCOUNT No:
4 440 6819

STATEMENT PERIOD FEB. 1, 20XX TO FEB. 28, 20XX

OPENING BALANCE	DEPOSITS	INTEREST	WITHDRAWALS	SERVICE CHARGE	CLOSING BALANCE
\$ 5,905.19	\$ 4,275.00	\$ 10.79	\$ 4,264.11	\$ 0	\$ 5,926.87

DEPOSITS

Feb. 3	Counter	\$ 3,500.00		Feb. 28	Interest	\$ 10.79
Feb. 17	Counter	\$ 775.00			Paid	

CHECKS

1009	Feb. 2	\$ 2,075.00	1012	Feb. 15	\$ 375.42
1010	Feb. 18	\$ 492.00	1013	Feb. 27	\$ 127.50
1011*	Feb. 11	\$ 575.00	1015*	Feb. 21	\$ 600.00

OTHER WITHDRAWALS

Feb. 28	Transfer to Third Party			\$ 19.19
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Abogada Trust Account Checkbook Register Page 2

Date	Payee or Deposit Source	Client	Check No.	Funds Paid	Funds Received	Balance
						\$ 3,471.00
2/3/xx	Retainer received	Evanson			\$ 3,500.00	6,971.00
2/8/xx	Price is Right, Inc., Appraisal	Evanson	1010	\$ 492.00		6,479.00
2/9/xx	Maria Abogada, fees, split	CCC Evanson	1011	575.00		5,904.00
2/10/xx	Jan. interest earned	IOLTA			19.19	5,923.19
2/11/xx	Pat Keel, GAL fees.	Davis	1012	375.42		5,547.77
2/11/xx	Metro Legal, subpoena service & witness fees	Evanson	1013	127.50		5,420.27
2/14/xx	Mayo Clinic, copy fees	Evanson	1014	36.23		5,384.04
2/17/xx	Retainer received	Franke			775.00	6,159.04
2/19/xx	Maria Abogada, flat fee	Franke	1015	600.00		5,559.04
2/27/xx	U.S. Bankruptcy Ct., filing fee	Franke	1016	175.00		5,384.04
2/28/xx	Maria Abogada, atty fees	Evanson	1017	2,382.27		3,001.77
2/28/xx	IOLTA program	IOLTA	Auto	19.19		2,981.58
2/28/xx	Deposit/Interest	IOLTA	Auto		10.79	2,993.37

Client Subsidiary Ledger

Client name: Computer Circuits Corp. (CCC)
 Description of representation: Patent infringement litigation
 File or case number: 98-2

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/7/xx	Retainer Received			\$5,000	\$5,000
1/15/xx	Ramsey Cnty Dist. Ct., filing fee	1006	\$ 132		4,868
1/31/xx	Maria Abogada, atty fees	1009	2,075		2,793
2/9/xx	Maria Abogada, atty fees (split \$50/575)	1011	50		2,743

Client Subsidiary Ledger

Client name: Angela Davis
 Description of representation: Davis v. Davis dissolution
 File or case number: 98-3

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
1/22/xx	Funds Received			\$2,500	\$ 2,500
1/25/xx	Maria Abogada, costs reimb.	1007	\$ 152		2,348
1/25/xx	Maria Abogada, atty fees	1008	1,770		578
2/11/xx	Pat Keel, GAL fees	1012	375.42		202.58

Client Subsidiary Ledger

Client name: Earl Evanson
 Description of representation: Evanson v. Evanson dissolution
 File or case number: 98-12

Date	Payee & Purpose	Check No.	Funds Paid	Funds Received	Balance
2/3/xx	Funds Received			\$3,500	\$3,500
2/8/xx	Price is Right, Inc. Homestead appraisal	1010	\$ 429.00		\$3,071.00
2/9/xx	Maria Abogada, atty fees (split \$525/575)	1011	525.00		\$ 2,546.00
2/11/xx	Metro Legal, subpoena service & witness fees	1013	127.50		2,418.50
2/14/xx	Mayo Clinic, copy fees for psych eval.	1014	36.23		2,382.27
2/28/xx	Maria Abogada, atty fees	1017	2,382.27		0.00

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		\$ 19.19		0
2/28/xx	Interest Credit			10.79	10.79

Before turning to the trial balance note the following aspects of some of Abogada’s February transactions:

- Abogada issued herself a check for fees on February 9. This may be outside her usual billing cycle. There is nothing wrong with the payment, but she should provide her client with a billing statement reflecting the withdrawal within her next regular billing cycle. *See* Rule 1.15(b), MRPC.
- In that same transaction, Abogada disbursed fees to herself from different clients’ cases. Note that Abogada properly indicated the split in her check register and that the notation in each client’s subsidiary ledger reflects the portion of the fees attributable to that client.
- Abogada required a flat fee pursuant to Rule 1.5(b) (which is the lawyer’s property subject to refund) from Franke for her bankruptcy. Because Franke gave Abogada one check for the court filing fee and the flat fee, the entire check had to be placed in the trust account. Abogada could then issue the flat fee portion to herself immediately, even though she did not file the bankruptcy until later in the month. If Franke had paid the fees with two checks, one for \$175 and one for \$600, and Abogada had a signed retainer agreement in accord with Rule 1.5(b), MRPC, then Abogada could have deposited her flat fee retainer directly into her business account.

The subsidiary ledgers for Franke and the law firm are not presented here but are maintained by Abogada and appear on the trial balance below.

February 20xx Trial Balance	
CCC	\$ 2,743.00
Davis	\$ 202.58
Evanson	\$ 0.00
Franke	\$ 0.00
Firm	\$ 100.00
IOLTA	\$ 10.79
Trial Balance	\$3,056.37

The February 28 checkbook register balance is only \$2,993.37. The subsidiary ledger trial balance is telling Abogada that there is a discrepancy between her check register and her ledgers, and that there may be a shortage of \$63.00. Abogada then uses the statement to perform the monthly reconciliation.

Monthly Reconciliation	
February 1–28, 20xx	
Trust Account 4-440-6819	
Check Register Balance	\$2,993.37
Subsidiary Ledger Trial Balance	\$3,056.37
Bank Statement	
Balance on Feb. 28, 20xx	\$5,926.87
+ Outstanding deposits	\$ -0-
— Outstanding checks	
1003 (Bates)	\$ (340.00)
1014 (Evanson)	\$ (36.23)
1016 (Franke)	\$ (175.00)
1017 (Evanson)	\$ (2,382.27)
Adjusted Bank Statement Balance	\$2,993.37

The reconciliation reveals that the check register reconciles with the bank statement. This means that all the transactions were accurately entered into the check register, i.e., the check and deposit amounts match those records. The error must lie somewhere in the subsidiary ledgers. Can you find it?

It took Abogada a little while, but fortunately she did not have very many transactions to review. She discovered that when she entered the Price is Right check in the Evanson ledger, she accidentally transposed two digits and entered \$429 instead of \$492. Then when she wrote a check to herself at the end of the month for her fees (which were over \$4,000), she simply wrote a check for the entire balance reflected in the ledger, \$2,382.27. In fact, the balance overstated the amount she was holding for Evanson by \$63.

Funds other than Evanson's were used to pay an additional \$63 to Abogada. Abogada should immediately deposit \$63 of her own money in the trust account (or indicate a \$63 "transfer" from the Law Firm Funds to the Evanson ledger) and indicate the transaction in her checkbook register and Evanson's subsidiary ledger. If Abogada had not performed her monthly reconciliation and the shortage continued to exist for a substantial period of time, she could be subject to discipline.

This type of error is common to manual trust account record keeping. Other common errors include mistakes in adding and subtracting transactions from the existing balance, omitting transactions, and entering transactions in the wrong check register (i.e., confusing the trust account register with the business account register). *Performing monthly reconciliations of both the check register and the subsidiary ledger trial balance with the bank statement is the only way to detect such errors and to correct them!*

VII. Frequently Asked Questions

Do I have to have a trust account?

If you do not receive any settlements on behalf of clients, you never receive advance fee or cost payments from clients, and you are never asked to hold other funds on behalf of clients, then you may not need a trust account. The better practice, however, is to maintain a trust account to accommodate those times you do need one. Most banks waive their service and transaction fees on IOLTA trust accounts, so costs are negligible.

My bank will not let me open an IOLTA account without a trust document. Where can I get one?

There is no trust document for an IOLTA (Interest on Lawyers Trust Accounts) account; the Minnesota Supreme Court authorizes these accounts through Rule 1.15, Minnesota Rules of Professional Conduct (MRPC). Show your banker a copy of the rule. If your bank has never handled an IOLTA before, it may not be an approved banking institution. *See* Rule 1.15(k). If that is the case, have your banker contact the Office of Lawyers Professional Responsibility ((651) 296-3952 or outstate 1-800-657-3601).

Can I have more than one IOLTA account?

You can have as many as you want. Because a single IOLTA account holds funds on behalf of many clients, few lawyers have a need for more than one pooled account. Multiple accounts can create mistakes caused by depositing funds to one account and disbursing funds from a different account. Multiple IOLTA accounts create additional record keeping responsibilities and duplicate balancing and reconciliation procedures. Each IOLTA account must be reconciled separately at the end of each month.

I don't recognize the tax ID number on my IOLTA account. Am I in trouble?

All IOLTA accounts have the same tax ID number. This way all the interest earned on IOLTA is reported to the IRS as having been paid directly to the IOLTA program.

How long do I need to wait for a check deposited into my trust account to clear before I issue checks from my trust account?

A lawyer must not disburse funds from a trust account until the instrument that serves as the source for the disbursement has cleared the bank on which it was issued and the lawyer's bank has collected those funds. An exception to this rule is made in the context of real estate closings. Generally, a local check will clear the issuing bank within three business days. It is acceptable to issue checks the same day as a deposit of cash, a deposit made by wire transfer, or of a certified check, as is the ordinary practice in real estate closings. In those situations, it is critical that the lawyer deposit the funds before the bank's cutoff for the day's business, which is usually three o'clock. Out of town checks may take up to ten days or longer to clear the issuing bank. Where the lawyer has reason to be concerned about whether a deposited instrument will clear the issuing bank, the lawyer should not issue trust account checks against that deposit until he or she has confirmed with the issuing bank that the deposited check has cleared.

What records do I need to maintain regarding my trust account?

Appendix 1 to the Minnesota Rules of Professional Conduct (formerly Lawyers Professional Responsibility Board Opinion No. 9) sets out the record keeping requirements. See Appendix B attached. The Director also publishes brochures that explain the record keeping requirements, which are available to Minnesota licensed lawyers by calling the Office ((651) 296-3952 or outstate 1-800-657-3601).

Can the controller of our law firm sign trust account checks? She's a CPA, but not a lawyer.

At least one lawyer must sign a trust account check. If your law firm requires two signatures on checks as an internal requirement, you may have a non-lawyer as the second signatory, but a lawyer must also sign every trust account check. This rule is true for all trust account checks, regardless of amount.

I practice in rural Minnesota. My clients live far away and, when I settle a case, I'd rather not make clients travel to my office twice (once to endorse the check and sign the release and then again to pick up their disbursement check). Should I issue the client a check and tell them not to cash it or should I post-date the check?

Neither. The Director has seen numerous cases in which clients have gone directly to the lawyer's bank to cash a check, despite having been told to wait several days. Moreover, banks routinely cash post-dated checks without regard to the date on the check. You must explain to your clients that the settlement funds are not available until they clear the Federal Reserve system, which takes several days (see check clearing question, above). Premature disbursing of funds essentially borrows other client funds in the trust account until the settlement check clears, which violates Rule 1.15.

Can I leave a couple thousand dollars in fees in my trust account as a cushion against errors that might otherwise cause an overdraft?

No. Rule 1.15, MRPC, permits lawyers to keep only a nominal amount of their own funds in the trust account to accommodate routine bank charges. For example, if a

lawyer deposits a check from a client and the check bounces, the bank will usually charge a fee to the account. This charge can be deducted from the lawyer's nominal funds in the account to avoid taking the funds from some other client, even if it is only for a short period of time. Rule 1.15, MRPC, as interpreted by Appendix 1 thereto, interprets nominal as no more than \$200. Higher amounts can constitute commingling of a lawyer's funds with client funds and sometimes lull lawyers into foregoing monthly reconciliations.

How do I set up a separate trust account for the funds of an individual client?

A separate interest bearing trust account should be established when the amount of client funds and the time the funds are expected to be held will generate sufficient interest to exceed the service charges and administrative expense associated with setting up a separate account. Some banks will allow you to set up the trust in your client's name and your client's tax ID number, with your law firm as the only signatory. Some banks will not permit firms to establish separate accounts using a client's tax ID number. In these situations, the account should be established as "Trust Account for <client's name>" with your law firm's tax ID number. When the interest is paid to the client, you can issue a Form 1099 to the client for the interest disbursed to the client. It is important that the name of the account indicate that it is held in trust for the client, to give notice to the world, e.g., creditors, that the funds are being held in a fiduciary capacity.

I have decided to move my IOLTA account to another bank. Whom should I notify?

When you close a trust account, 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. Be careful when you transfer the funds that you account for any outstanding checks and that you do not transfer interest that has been credited to the account but not yet paid to the IOLTA program. The bank's computer payment system may automatically transfer the credited interest amount after you have removed the funds, causing an overdraft.

Some of my clients want to pay advance fee retainers by credit card. Those transactions should go through my trust account, right?

Credit card payments present a problem because credit card issuers usually require the lawyer to authorize the issuer to reverse transactions or unilaterally debit the trust account for transaction fees, charges which exceed balance limits, and other costs. This gives a non-lawyer the power to withdraw client funds from a trust account, which is prohibited by Rule 1.15(j), MRPC. Unless the credit card company can credit the funds to the trust account, while debiting all fees exclusively from a business or other non-trust account, all credit card transactions must be processed through the lawyer's business account and any unearned portion immediately transferred to the lawyer's trust account. The lawyer must transfer the full amount of the unearned funds to his/her trust account and may not deduct any credit card fees from those funds.

I wrote a check for \$350 to my client's doctor 18 months ago, but it has never cleared the bank. I'm tired of tracking this check and ledger in my trial balances each month. What should I do with it?

After a period of time, usually 90 days, checks supposedly become "stale." Some banks will consider such checks too old to be cashed and will refuse to honor them. Other banks will allow checks to be negotiated regardless of their age. The only sure way to avoid having the bank pay a stale trust account check is to issue a stop payment order. Some trust account checks go uncashed for a variety of reasons – people misplace or lose them, the client paid the underlying obligation separately, etc. If a check to a third party isn't cashed after a reasonable period of time, you should contact that party to determine why and issue a new check if necessary. If you cannot locate that party or you issued the check to a former client, you should write to the client to inform them of the available funds. If you cannot locate the client, the procedure for dealing with abandoned client funds is outlined in *A Safe Solution for Attorneys Stuck with Abandoned Client Funds* at:

<http://lprb.mncourts.gov/articles/Articles/A%20Safe%20Solution%20for%20Attorneys%20Stuck%20with%20Abandoned%20Client%20Funds.pdf>

Once I have earned my fees on a client's case, can I write the check to a third party, such as my landlord, instead of to myself?

No. See e.g., Appendix 1 to the MRPC, paragraph I(2)(b), and *In re Edinger*, 700 N.W.2d 462 (Minn. 2005) (lawyer disciplined for personal use of trust account). Use of a trust account as a lawyer's general checking account, even when the fees have been earned, may void the fiduciary status of the trust account and subject client funds to claims by other parties, including the lawyer's creditors. All disbursements on behalf of a lawyer must be made by check directly to the lawyer or law firm.

I'm closing my practice to accept a job as in-house counsel for a client. What do I have to do to close my trust account?

Check your records to determine whether any checks are outstanding. If there are none, arrange for the bank to send the final interest payment (if any) to the IOLTA program and follow your bank's procedures for closing the account. If there are checks outstanding, the account must remain open until the checks clear. If the checks are old, you should follow the steps for handling stale checks, described above.

When the account has been closed, 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.