

Other People's Money: Operating Lawyer Trust Accounts

(Revised September 2010)

Minnesota Lawyers Professional Responsibility Board
and

Office of the Director of Lawyers Professional Responsibility

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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. (Credit unions are not among the approved institutions, because the federal deposit insurance requirements only apply to credit union deposits on behalf of individuals who are also credit union members.)

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 should identify the client on the memo line of each trust account check issued. It is rarely, if ever, appropriate for a lawyer to withdraw trust account funds in cash or to retain cash from a trust account deposit. 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 or electronic 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. 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(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 keep 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).

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.

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 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 off the 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).

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, generally \$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

The Director's Office recommends that IOLTA interest activity be entered into the checkbook register and posted to a separate "IOLTA Interest" subsidiary ledger. Many banks credit and debit IOLTA interest to trust accounts during the same month. Others credit the interest in month one and debit the account for the interest payment to the IOLTA program in the following month. In these situations the IOLTA interest debits and credits are not offsetting. Occasionally banks 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:		<u>IOLTA Interest</u>			
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	\$ 19.19
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 nonrefundable flat fee from Franke for her bankruptcy. Because Franke gave Abogada one check for the court filing fee and the retainer fee, the entire check had to be placed in the trust account. Abogada could then issue the nonrefundable 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 nonrefundable 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?

Generally, a local check will clear 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 (i.e. paid by the issuer's bank). Where the lawyer has reason to be concerned about whether a check being deposited will clear, 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. The Director's Office interprets nominal as between \$50 and \$100 for trust accounts with light or moderate activity; as much as \$200 or \$300 may be acceptable for accounts with a significant number of transactions each month. 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. While the use of credit cards for payment of funds that are to be held in trust is discouraged, it can be done. 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 should 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. *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 should 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.

APPENDIX A

RULE 1.15: MINNESOTA RULES OF PROFESSIONAL CONDUCT

Safekeeping Property

(a) All funds of clients or third persons held by a lawyer or law firm in connection with a representation shall be deposited in one or more identifiable trust accounts as set forth in paragraphs (d) through (g) and as defined in paragraph (o). No funds belonging to the lawyer or law firm shall be deposited therein except as follows:

(1) funds of the lawyer or law firm reasonably sufficient to pay service charges may be deposited therein;

(2) 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.

(b) A lawyer must withdraw earned fees and any other funds belonging to the lawyer or the law firm from the trust account within a reasonable time after the fees have been earned or entitlement to the funds has been established and the lawyer must provide the client or third person with: (i) written notice of the time, amount, and the purpose of the withdrawal; and (ii) an accounting of the client's or third person's funds in the trust account. If the right of the lawyer or law firm to receive funds from the account is disputed by the client or third person claiming entitlement to the funds, the disputed portion shall not be withdrawn until the dispute is finally resolved. If the right of the lawyer or law firm to receive funds from the account is disputed within a reasonable time after the funds have been withdrawn, the disputed portion must be restored to the account until the dispute is resolved.

(c) A lawyer shall:

(1) promptly notify a client or third person of the receipt of the client's or third person's funds, securities, or other properties;

(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 the funds, securities, or other properties in the possession of the lawyer which the client or third person is entitled to receive; and

(5) deposit all fees in advance of the legal services being performed into a trust account and withdraw the fees as earned, unless the lawyer and the client have entered into a written agreement pursuant to Rule 1.5(b).

(d) Each trust account referred to in paragraph (a) shall be an account in an eligible financial institution selected by a lawyer in the exercise of ordinary prudence.

(e) A lawyer who receives client or third person funds shall maintain a pooled trust account (“IOLTA account”) for deposit of funds that are nominal in amount or expected to be held for a short period of time.

(f) All client or third person funds shall be deposited in the account specified in paragraph (e) unless they are deposited in a:

(1) separate trust account for the particular third person, client, or client’s matter on which the earnings, net of any transaction costs, will be paid to the client or third person; or

(2) pooled trust account with subaccounting which will provide for computation of earnings accrued on each client’s or third person’s funds and the payment thereof, net of any transaction costs, to the client.

(g) In determining whether to use the account specified in paragraph (e) or an account specified in paragraph (f), a lawyer shall take into consideration the following factors:

(1) the amount of earnings which the funds would accrue during the period they are expected to be deposited;

(2) the cost of establishing and administering the account, including the cost of the lawyer’s services;

(3) the capability of financial institutions described in paragraph (d) to calculate and pay earnings to individual clients.

Only funds that could not accrue earnings for the client, net of the costs described in subparagraph (2) above, may be placed or retained in the account specified in paragraph (e).

(h) Every lawyer engaged in private practice of law shall maintain or cause to be maintained on a current basis, books and records sufficient to demonstrate income

derived from, and expenses related to, the lawyer's private practice of law, and to establish compliance with paragraphs (a) through (f). Equivalent books and records demonstrating same information in an easily accessible manner and in substantially the same detail are acceptable. The books and records shall be preserved for at least six years following the end of the taxable year to which they relate or, as to books and records relating to funds or property of clients or third persons, for at least six years after completion of the employment to which they relate.

(i) Every lawyer subject to paragraph (h) shall certify, in connection with the annual renewal of the lawyer's registration and in such form as the Clerk of the Appellate Court may prescribe, that the lawyer or the lawyer's law firm maintains books and records as required by paragraph (h). The Lawyers Professional Responsibility Board shall publish annually the books and records required by paragraph (h).

(j) Lawyer trust accounts, including IOLTA accounts, shall be maintained only in eligible financial institutions approved by the Office of Lawyers Professional Responsibility. Every check, draft, electronic transfer, or other withdrawal instrument or authorization shall be personally signed or, in the case of electronic, telephone, or wire transfer, directed by one or more lawyers authorized by the law firm.

(k) A financial institution, to be approved as a depository for lawyer trust accounts, must file with the Office of Lawyers Professional Responsibility an agreement, in a form provided by the Office, to report to the Office in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether the instrument is honored. The Lawyers Professional Responsibility Board shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon three days notice in writing to the Office.

(l) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial

institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

Such reports shall be made simultaneously with, and within the time provided by law for notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(n) 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.

(o) Definitions.

“Trust account” is an account denominated as such in which a lawyer or law firm holds funds on behalf of a client or third person(s) and is: 1) an interest-bearing checking account; 2) a money market account with or tied to check-writing; 3) a sweep account which is a money market fund or daily overnight financial institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities; or 4) an open-end money market fund solely invested in or fully collateralized by U.S. Government Securities. An open-end money market fund must hold itself out as a money market fund as defined by applicable federal statutes and regulations under the Investment Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. “U.S. Government Securities” refers to U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof. A daily overnight financial institution repurchase agreement may be established only with an institution that is deemed to be “well capitalized” or “adequately capitalized” as defined by applicable federal statutes and regulations.

“IOLTA account” is a pooled trust account in an eligible financial institution that has agreed to:

(1) remit the earnings accruing on this account, net of any allowable reasonable fees, monthly to the IOLTA program as established by the Minnesota Supreme Court;

(2) transmit with each remittance a report that shall identify each lawyer or law firm for whom the remittance is sent, the amount of remittance

attributable to each IOLTA account, the rate and type of earnings applied, the amount of earnings accrued, the amount and type of fees deducted, if any, and the average account balance for the period in which the report is made; and

(3) transmit to the depositing lawyer or law firm a report in accordance with normal procedures for reporting to its depositors.

An approved eligible financial institution must pay no less on IOLTA accounts than (i) the highest earnings rate generally available from the institution to its non-IOLTA customers on each IOLTA account that meets the same minimum balance or other eligibility qualifications, or, (ii) 80% of the Federal Funds Target Rate on all its IOLTA accounts. The rate to be paid shall be fixed on the first day of each month, subject to rate changes during the month reflected in normal month-end calculations. Accrued earnings and fees shall be calculated in accordance with the eligible financial institution's standard practice, but institutions may elect to pay a higher earnings rate and may elect to waive any fees on IOLTA accounts. A financial institution may choose to pay the higher sweep or money market account rates on a qualifying IOLTA checking account.

"Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, sweep fees and similar charges assessed against comparable accounts by the eligible financial institution. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account. Eligible financial institutions may elect to waive any or all fees on IOLTA accounts.

"Eligible financial institution" for trust accounts is a bank or savings and loan association authorized by federal or state law to do business in Minnesota, the deposits of which are insured by an agency of the federal government, or is an open-end investment company registered with the Securities and Exchange Commission authorized by federal or state law to do business in Minnesota.

"Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

"Notice of dishonor" refers to the notice which an eligible financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument that the institution dishonors.

APPENDIX B

APPENDIX 1 TO THE MINNESOTA RULES OF PROFESSIONAL CONDUCT MAINTENANCE OF BOOKS AND RECORDS

Adopted September 30, 2005
with amendments through July 1, 2010

Pursuant to Rule 1.15(i), Minnesota Rules of Professional Conduct (MRPC), the Lawyers Professional Responsibility Board adopted the following as the books and records required by Rule 1.15(h), MRPC:

Every attorney engaged in the private practice of law must maintain the books and records described in this Appendix to comply with the applicable provisions of the MRPC relating to funds and property received and disbursed on behalf of clients or otherwise held in a fiduciary capacity. Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. Books and records may be prepared manually or by computer.

I. Trust Account Records. The following books and records must be maintained for funds and property received and disbursed in a fiduciary capacity, whether for clients or for others:

1. An identification of all trust accounts maintained, including the name of the bank or other depository, account number, account name, date account opened, and an agreement with the bank establishing each account and its interest bearing nature. A record should also be maintained showing clearly the type of each such account whether pooled, with net interest paid to the IOLTA program, pooled with allocation of interest, or individual, including the client name. *See* Rules 1.15(e), (f)(1), and (f)(2), MRPC.
2. A check register for each trust account that chronologically shows all deposits and checks.
 - a. Each deposit entry must include the date of the deposit, the amount, the identity of the client(s) for whom the funds were deposited, and the purpose of the deposit.
 - b. Each check entry must include the date the check was issued, the payee, the amount, the identity of the client for whom the check was issued (if not the payee), and the purpose of the check.

3. Subsidiary ledgers for each client matter for whom the attorney receives trust funds.
 - a. For every trust account transaction, attorneys must record on the appropriate client subsidiary ledger the date of receipt or disbursement, the amount, the payee and check number (for disbursements), the purpose of the transaction, and the balance of funds remaining in the account on behalf of that client matter. An attorney shall not disburse funds from the trust account that would create a negative balance on behalf of an individual client matter.
 - b. A separate subsidiary ledger for nominal funds of the attorney held in the trust account pursuant to Rule 1.15(a)(1), MRPC, to accommodate reasonably expected bank fees and charges. This ledger should also record any monthly service charges not offset or waived by the bank in the same month. A separate ledger should be maintained to record interest accrued but not transferred by the bank to the IOLTA program in the same month it is credited.
 - c. An attorney maintaining non-IOLTA accounts pursuant to Rule 1.15(f), MRPC, shall record on each client subsidiary ledger the monthly accrual of interest, and the date and amount of each interest disbursement, including disbursements from accrued interest for costs of establishing and administering the account.
4. A monthly trial balance of the subsidiary ledgers identifying each client matter, the balance of funds held on behalf of the client matter at the end of each month, and the total of all the client balances. No balance for a client matter may be negative at any time.
5. A monthly reconciliation of the checkbook balance, the subsidiary ledger trial balance total, and the adjusted bank statement balance. The adjusted bank statement balance is determined from the month-end bank statement balance by adding outstanding deposits and subtracting outstanding checks.

[Sample trial balances and reconciliations are available from the Office of Lawyers Professional Responsibility].
6. Bank statements, canceled checks or copies of canceled checks if they are provided with the bank statements, bank wire or electronic fund transfer confirmations and duplicate deposit slips. Cash fee payments must be documented by copies of receipts countersigned by the payor. Attorneys

making deposits using substitute checks pursuant to the Check Clearing for the 21st Century Act must request and retain image statements from the bank for each such deposit. For withdrawal by bank wire or electronic fund transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The bank wire or electronic fund transfer must be entered in the check register and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Appendix.

7. **Electronic Record Retention.** An attorney who maintains trust account records by computer must print and retain, on a monthly basis, the checkbook register, the trial balance of the subsidiary ledgers, and the reconciliation report. The checkbook register must contain all of the information identified in paragraph 2. Electronic records should be regularly backed up by an appropriate storage device. The frequency of the back-up procedure should be directly related to the volume of activity in the trust account.
8. A record showing all property, specifically identified, other than cash, held in trust from time-to-time for clients or others, provided that routine files, documents and items, such as real estate abstracts, which are not expected to be held indefinitely, need not be so recorded but should be documented in the files of the lawyer as to receipt and delivery.

II. Business Account Records. An attorney or law firm must maintain at least one bank account, other than the trust account, for funds and property received and disbursed outside the attorney's fiduciary capacity. The following books and records should be maintained for such accounts:

1. A record in the form of a fees book or file of copies of billing invoices reflecting all fees charged and other billings to clients.
2. Copies of receipts, countersigned by the payor, for all cash fee payments.
3. Check registers, bank statements, canceled checks, and duplicate deposit slips sufficient to establish the receipt of earned fee payments from clients, costs advanced on behalf of clients, and similar receipts and disbursements.
4. A periodic reconciliation of the checkbook balance and the bank statement balance.