

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.