

TRUST ACCOUNT BROCHURE

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A brochure explaining and illustrating proper procedures for keeping lawyer business and trust accounts was recently mailed to all resident Minnesota attorneys. The hope is that the brochure will help lawyers set up and maintain better books and records, and thereby provide better service to clients. Following the brochure's lead may also save some lawyers headaches, and even discipline.

The brochure is meant as a practical guide to implementing the requirements of the Rules of Professional Conduct, as interpreted by Lawyers Board Opinions. Rule 1.15, as interpreted by Opinion 9, sets out basic trust account requirements. Lawyers should also be aware of Opinion 12, which requires that trust account checks be signed by at least one lawyer; and Rule 1.5(c), which requires a written accounting to the client at the conclusion of a contingent fee matter.

The basic trust account "records" are the bank records, namely bank statements, original checks, annotated duplicate deposit slips, and records of receipt and delivery for any noncash property held for clients — such as an abstract. The bank statements will normally indicate, for the required Interest on Lawyer Trust Account (IOLTA) accounts, interest earnings and payment, as well as bank service charges, if any. Other than automatic bank payments of interest and service charges, all disbursements from trust accounts must be made by checks signed by an attorney.

The basic required trust account books are described in the brochure. There must be cash receipts and disbursement journals, client ledgers, and checkbook registers, each of which records trust account transactions in somewhat different ways. The ledgers, for example, answer for each client the question, "How much should be on hand?" The journals answer the questions, "What transactions occurred, in chronological order?"

At each month's end, to make sure that the basic records and books are complete and accurate, monthly trial balances and reconciliations must be performed. After the bank statement balance is adjusted for such items as outstanding transactions, interest and service charges, the adjusted balance should be reconciled with the trial balances of the ledgers, journals, and register. Without the reconciliation, the attorney cannot be certain that the amount on hand both suffices to cover obligations in the trust account and does not include an excess that could constitute commingling.

Honesty is the prerequisite, but honesty is not enough in trust account matters. An attorney needs also to be competent in handling funds and to have appropriate and required systems for ensuring proper handling of funds. The attorney operating a trust account should think of himself or herself as like a bank or trustee. A bank depositor wants to rely not only on the bank's integrity, but also on its accuracy.

Some attorneys muddle along with what might be called a “stub accounting” arrangement. Check stubs, crammed with information about each transaction, are kept in a three-ring binder. They list disbursements by date, amount, and, when the attorney remembers, client name. A running balance is also kept on the stub, as are receipts, at least when they are not forgotten. Client ledgers may also be kept in the individual client files. Aside from the fact that this “stub accounting” system does not meet the formal requirements of the board and court, it generally produces other deficiencies. There is no regular totaling of all client ledgers to ensure that the amount actually on hand, according to the adjusted bank statement, is sufficient to cover the amount that should be on hand for the clients. In practice, there is also the frequent problem of spotty annotations – for example, a deposit composed of several checks which should be posted to different client matters, but which are not annotated clearly. Without the formal required books and records, the monthly discipline of doing reconciliations is avoided, and problems may be detected only months after their occurrence.

“I never took a dime of client money. Never.” This statement has been made by more than one attorney whose trust account is short of funds due clients. Unintentional shortages most often result from inadequate books and records. Other poor trust account practices can produce similar results. For example, attorneys sometimes make disbursements for clients before receiving any client funds. Similarly, sometimes settlement funds are disbursed upon receipt of a settlement check, without waiting for the check to clear. Sometimes the check is dishonored and the trust account checks to clients have already been negotiated. If other client funds were in the trust account, there has been an unintentional misappropriation of the funds of one client to the benefit of another. If the lawyer cannot make the trust account whole, a very serious problem comes to exist. Another type of inadvertent shortage occurs when an attorney deposits a retainer in the business account, spends the money, and is discharged by the client before the retainer is earned. Unearned retainers and deposits for costs must be made into the trust account.

Commingling (depositing or retaining unnecessarily lawyer’s funds in the trust account, beyond an amount needed for service charges) often results from sloppy practices. Sometimes an attorney pays out personal or business expenses over a period of time directly from the trust account, instead of transferring earned funds from the trust to the business account. Some attorneys see commingling as an easier way of guarding against client trust fund shortages than keeping books and records. Once a proper books and records system is established, however, maintaining it is not unduly time-consuming. The brochure should provide lawyers with the means of establishing a sound beginning point for trust account management.

The brochure also includes a section concerning required business account books and records (i.e., cash receipts and disbursements journal, deposit slips, receipts, canceled checks, fees book and billing invoices). Business account record requirements are necessary to determine the income and expenses derived from the practice of law. Business account records are also used to verify whether payments from clients constitute “fees” or “client funds.”

The several major thefts of trust account funds in recent years were not the result of inadequate books and records. Old-fashioned greed led to the thefts. An educational effort, such as the brochure, will not prevent major thefts. The brochure should help lawyers who want to do the right thing and are willing to take a little bit of time to do it.

The brochure is part of an increased education effort by the Lawyers Board and Office of Lawyers Professional Responsibility. Brochures describing the operations of these organizations have also been developed and distributed to lawyers and to thousands of members of the public. An expanded advisory

opinion service by the board and office is also part of this effort. We hope these efforts are of help.