

REPORT . . . LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

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Trust Accounts . . . Some Frequently Asked Questions

Too many Minnesota attorneys are failing to maintain proper trust accounts for clients' funds, and too many attorneys are misusing the trust funds in their possession. During the past year alone, I have seen:

- Attorneys who maintain only one bank account for the practice of law, into which fees, clients' funds, and all other income is deposited, and out of which all checks are drawn.
- Attorneys who maintain a trust account, but who hold fees in that account, either for purposes of shielding income from judgment creditors or for tax evasion.
- Attorneys who trust accounts have repeated overdrafts.
- Attorneys who "borrow" clients' money from trust funds.

These and other examples of the mishandling of client's money persist, notwithstanding intensive investigation of all ethics complaints by the district ethics committees and by the staff of the Lawyers Professional Responsibility Board that relates to handling of clients' funds.

The public is entitled to expect that money placed in the hands of an attorney will be accurately recorded, properly kept, and promptly remitted when due. The proper maintenance of trust funds is absolutely essential for upholding the integrity of an individual attorney.

Although no warning to the profession should be necessary in this area, all attorneys should be aware that ethics complaints relating to possible mishandling of clients' money will be investigated more carefully and more vigorously than any other type of complaint. When investigation shows probable cause to believe that the attorney is misusing clients' funds, the Board's staff will press for independent audit of the attorney's accounts in order to determine the extent and duration of any possible misuse of funds. Thorough investigations have shown in case after case that an attorney who has misused trust funds on one occasion has probably done so previously.

Some of the problems that arise in the keeping of trust accounts are attributable to ignorance on the attorney's part as to what is required. The following are some of the common questions put to the Board's staff relating to trust accounts:

Question: What is a trust account?

Answer: A trust account is an identifiable bank account maintained in the state in which the attorney's law office is situated into which funds belonging to clients are deposited, but into which no funds belonging to the lawyer should be deposited. The only exceptions to this general rule are that an attorney may deposit the small amount of funds reasonably sufficient to pay bank charges, or the attorney may deposit checks payable jointly to the attorney and client.

Question: May an attorney deposit fees into the trust account?

Answer: No. Depositing fees in the trust account results in commingling of clients' funds with the attorney's funds, which is prohibited.

Question: May a lawyer temporarily borrow clients' funds from the trust account, for purposes of meeting ordinary business expenses?

Answer: "Borrowing" of clients' funds constitutes temporary conversion, which is serious misconduct, and, potentially, a felony. Clients' funds must be kept separate and identifiable at all times, and the attorney has no right whatsoever to use those funds for any purpose.

Question: Is it permissible to place clients' funds in an interest bearing account?

Answer: Yes, as long as there is a separate account for each client, and provided that all interest is paid to the benefit of the client. The ordinary firm trust account is not an interest-bearing account, but when a lawyer is able to see that funds must be held for a significant period of time, the lawyer could and should open a separate interest-bearing account for that particular client.

Question: Must any record be kept in trust account transactions?

Answer: Yes. DR 9-103 requires the keeping of books and records sufficient to identify all funds held in trust and all disbursements made from the trust account. Although it is not required by rule, preferable practice would be to have a separate ledger sheet for each client for whom trust monies are held.

Question: If a lawyer receives money on behalf of a client and the client has unpaid fees in

an amount equal to or greater than the funds received, what should the attorney do with the collected funds?

Answer: If the client acknowledges and agrees to pay the fees as billed, the funds collected may be withdrawn immediately from the trust account. If the client disputes any portion of the bill, the disputed portion should be held in the trust account until the dispute is resolved.

Question: How soon after final settlement of a personal injury case must the attorney withdraw his portion of settlement from the trust account?

Answer: Although there is no fixed time limit, the attorney's portion of the settlement, as agreed upon by the client, should be withdrawn from the trust account by the attorney within a reasonable period after the settlement. Substantial delay in withdrawal of the attorney's portion of the settlement proceeds leads to commingling, which, in turn, undermines the trust nature of the account. Trust accounts should never be used as a repository for attempting to shield attorneys' funds from creditors or from the taxing authorities.

Any attorney who has questions about the proper use of a trust fund may contact the staff of the Lawyers Professional Responsibility Board for further information.