

## Is your trust account in order?

Handling other people's money carries with it serious responsibilities. I am glad I have never had to maintain a trust account. Large firms have the luxury of dedicating specific individuals (attorneys and bookkeepers) to that task; in-house counsel and lawyers in public service rarely handle client funds directly. My brother, an attorney, recently opened his own personal injury practice after several years as a prosecutor, and one of the first things he did (after setting up a website!) was to make sure he understood the rules applying to trust accounts. Like me, he did not learn the ins-and-outs in law school.

Rule 1.15 and Appendix 1 to the Minnesota Rules of Professional Conduct (MRPC) describe a lawyer's responsibilities regarding trust accounts. The requirements, while not complicated, are detailed and are designed to ensure that lawyers maintain books and records sufficient to appropriately safeguard and account for the funds they hold in trust for clients or third parties. Every day, the Office of Lawyers Professional Responsibility (OLPR) sees lawyers make several common errors, and receive discipline for conduct that can easily be avoided with prompt and ongoing attention to their trust accounts and accompanying books and records. Are you making these common errors?

### Common Errors

**1: Failing to prepare trial balance reports.** A trial balance report is a listing of all clients with funds in the trust account as of the banking month-end date and the balances for each client. All of the individual client balances are totaled to arrive at the subsidiary ledger trial balance.<sup>1</sup> This report is a

unique requirement of trust account bookkeeping, and is not something financial personnel generally prepare when keeping books according to generally accepted accounting principles. The 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 such a journal is maintained. They are all identical because the same information should have been entered in all three places. Because this is unique to trust account bookkeeping, the failure to maintain trial balance reports is a frequent error.

Related to this, please make sure you are maintaining subsidiary client ledgers for each client with funds in your trust account (used to prepare the trial balance report). There should be a separate page for each client on which all trust account deposits and withdrawals are recorded, with each entry containing the following detail: date, amount, payee, check number and purpose, as well as a running balance.<sup>2</sup> Also, do not forget to maintain a separate subsidiary

balance for the nominal funds you maintain in the account to cover bank fees.<sup>3</sup> The amount of a lawyer's own funds in the trust account may not exceed \$200.<sup>4</sup>

**2: Failing to perform monthly reconciliations.** Every month, the trial balance report must be reconciled with both the check register balance and the bank statement balance, adjusted for checks and deposits that have not cleared.<sup>5</sup> If you are not preparing a trial balance, it is difficult to perform this three-way reconciliation. Errors can be caught on a timely basis when this required reconciliation occurs. Please make sure that you, or someone who is trained, is performing this important monthly task.

**3: Failing to allow deposits to clear the issuing bank.**

Everyone knows that deposited funds, unless they are from cash, wire transfers, or certified funds, are not immediately available when deposited. While funds may post to your account within three business days, *posting is not the equivalent of clearing the issuing bank*. Only when funds have cleared the issuing bank are they "available" for disbursement.<sup>6</sup> It can take 10 days or longer for funds drawn on out-of-town checks to clear the issuing bank. This is especially important given the prevalence of trust account scams currently operating in Minnesota. I have been shocked to see the prevalence of scams and how many lawyers are falling for them—more than four in the last couple of months.

**4: Failing to account for bank charges.** Every month the OLPR receives overdraft notices on trust accounts as a result of lawyers failing to consider miscellaneous charges that may post to their trust account, such as monthly account fees, wire transfer fees, and the like. All banks that maintain trust accounts have an agreement with the OLPR to alert us to overdrafts. You can and should keep a nominal amount of operating funds in your trust account (not to exceed \$200) to cover such incidental charges.

**5: Failing to withdraw earned fees on a timely basis.** No more than \$200 of an attorney's funds may be in the trust account, and by rule, lawyers must withdraw earned fees and other sums due the lawyer within a reasonable time.<sup>7</sup> Failure to do so amounts to commingling, which can give rise to discipline.

**6: Failing to keep operating and trust accounts distinct.**

You cannot use funds in your trust account to pay your own personal or business expenses.<sup>8</sup> Sometimes this happens by mistake because checks for both the trust account and operating account look similar. A simple way to keep accounts straight is to have different colored checks for each account. Sometimes, lawyers directly disburse earned fees from a trust account to a third party to cover a business expense. Do not do that. Disburse the funds to your operating account, and then to the third party or your personal account.

**7: Failing to obtain and document proper approvals for disbursements.** Every trust account check must bear the signature of one lawyer, and all trust account disbursements



SUSAN HUMISTON is the director of the Office of Lawyers Professional Responsibility and Client Securities Board. She has more than 20 years of litigation experience, as well as a strong ethics and compliance background. Prior to her appointment, Susan worked in-house at a publicly traded company, and in private practice as a litigation attorney.

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must be accompanied by a lawyer's written approval.<sup>9</sup> This is sometimes confusing for lawyers who practice in several states. Some states do not require attorney signatures on trust checks. Minnesota does.

### Additional tips

Trust account records must be maintained for at least six years after the completion of the work to which they relate.<sup>10</sup> All cash payments must be documented with a receipt countersigned by the payor.<sup>11</sup> When earned fees are disbursed from your trust account, you *must* provide written notice to your client (or relevant third party) of the time, amount and purpose of the withdrawal, and an accounting of all remaining funds.<sup>12</sup>

Due to the importance of trust account requirements in ensuring the safekeeping of client funds, the OLPR expects strict compliance with these rules, and failure to maintain the required books and records in and of itself subjects an attorney to discipline. The OLPR has several resources available on its website to assist lawyers to meet their trust account obligations, including a brochure, *Other People's Money: Operating Lawyer Trust Accounts* (September 2015), and a list of frequently asked questions about trust accounts. You can also always call the OLPR for an advisory opinion (651-296-3952 or 1-800-657-3601) on specific trust account questions.

Every year as part of your annual lawyer registration you must certify, if you handle client funds, that you maintain books and records in accordance with the ethics rules.<sup>13</sup> Please take some time each year to ensure your certification is accurate, and let us know if you have any questions regarding your obligations.<sup>14</sup> ▲

### Notes

<sup>1</sup> Appendix 1, Minnesota Rules of Professional Conduct, I(4).

<sup>2</sup> Appendix 1, MRPC, I(3)(a).

<sup>3</sup> Rule 1.15(a)(1), MRPC.

<sup>4</sup> Appendix 1, MRPC, I(3)(b).

<sup>5</sup> Appendix 1, MRPC, I(5).

<sup>6</sup> Appendix 1, MRPC, I(11).

<sup>7</sup> Rule 1.15(a)(1), MRPC; Rule 1.15(b), MRPC.

<sup>8</sup> Appendix 1, MRPC, I(2)(b).

<sup>9</sup> Rule 1.15(j), MRPC; Appendix 1, MRPC, I(6).

<sup>10</sup> Rule 1.15(f), MRPC.

<sup>11</sup> Appendix 1, MRPC, I(6).

<sup>12</sup> Rule 1.15(b), MRPC.

<sup>13</sup> Rule 1.15(i), MRPC.

<sup>14</sup> Thank you to Cassie Hanson, senior assistant director, and Lynda Nelson, paralegal manager, for their assistance with this article.