

## **The basics of trust accounts**

**by**

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The proper maintenance of client trust account books and records is an important part of an attorney's practice of law. While this may at times seem inconsequential or a distraction, failing to maintain proper books and records can lead to serious consequences for a lawyer.

First, it is worth reviewing what funds are properly deposited into a trust account and what funds should not be deposited to a trust account. A very general rule of thumb is that if you have received funds in connection with a representation and the money isn't yours - it goes in the trust account. If the money represents payment on fees that have already been earned or expenses that have already been paid by you - the money doesn't go into your trust account. Rule 1.15(a) of the Minnesota Rules of Professional Conduct (MRPC), requires that, "All funds of clients or third persons held by a lawyer or law firm in connection with a representation" shall be held in a client trust account.

With one exception, depositing or retaining earned fees or other lawyer or law firm money in the trust account constitutes commingling and is prohibited. The exception is that you may hold in the account nominal funds intended to offset any bank service charges that may be assessed against the account.

Fees paid to you in advance that have not yet been earned - with one exception - must be held in the trust account until they have been earned. Once they have been earned, they should be disbursed from the account within a reasonable time and the client provided with an accounting as to how the funds were applied and the balance remaining in trust.

The exception to the rule requiring that advance fee payments be held in trust until earned is found in Rule 1.5(b). That rule permits characterizing an advance fee as nonrefundable so long as there is a written agreement to that effect with the client. The rule provides that such advance payments need not be held in the trust account. Note that there is a pending proposal to change these rules. The proposed changes will still permit the charging of advance flat fees or availability retainers that need not be held in trust with an appropriate written retainer agreement, but will prohibit designating those advance payments as nonrefundable.

Under Rules 1.15(a)(2) and 1.5(c), funds that belong, in part, to the client or a third person and, in part, presently or prospectively to you the lawyer (for example, personal injury settlements) must also be held in trust until such time as it is appropriate to disburse them to whomever is entitled to them.

Rule 1.15(b) requires that if your entitlement to funds held in your trust account is disputed, you must hold the disputed funds in the trust account until such time as the dispute is resolved. If you have already disbursed the funds and you are notified of the dispute within a reasonable time, you must restore the funds to the trust account and hold them there until the dispute is resolved.

Trust accounts must be interest earning accounts. Most commonly trust accounts are designated as IOLTA accounts with the interest earned on the account being paid to a program established by the Minnesota Supreme Court for the purpose of funding legal services organizations. If it is anticipated that a significant amount of interest will be earned on a client's funds held in trust, consideration should be given to holding those funds in a separate account with the interest accruing to the benefit of the client.

In maintaining a trust account, you are required to keep appropriate books and records regarding the funds deposited to, held in, and disbursed from the account. A detailed statement of the required books and records may be found in Appendix 1 to the MRPC. These records, at a minimum, must include:

- Bank statements, duplicate deposit slips and cancelled checks (if they are provided by the bank with your monthly statements);
- Check registers;
- A separate subsidiary ledger for each client whose funds are held in the account;
- Separate subsidiary ledgers for any law firm funds held in the account and interest accrued on and paid out from the account;
- A monthly subsidiary ledger trial balance - basically a listing of each client's funds held in the account as of the close of the banking month; and
- A monthly reconciliation of the checkbook balance, the subsidiary ledger trial balance, and the adjusted bank statement balance.

A more detailed listing of the required books and records with additional information regarding the maintenance of trust accounts may be found at:

<http://lprb.mncourts.gov/LawyerResources/Pages/TrustAccounts.aspx>.

The information there will also instruct you how to modify the Quicken(r) accounting software so that you may use it to track your trust account activity and generate the required reports. Information as to how to do the same with Quickbooks(r) may be found at: <http://www.practicelaw.org/232>.