

WEST VIRGINIA CLIENT TRUST ACCOUNT HANDBOOK

(2017)

A Guide to Creating and Maintaining Client Trust Accounts

The Client Trust Account Handbook is intended solely for educational and informational purposes and nothing contained in this book is to be considered as providing legal advice or advisory opinion and is not a substitute for doing independent legal research or seeking the advice of legal counsel with respect to specific legal problems.

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I. Introduction – The Importance of Client Trust Accounting

A. A Lawyer’s Ethical Obligations

The ethical importance of the creation and maintenance of the client trust account is rooted in the general principle that a lawyer who holds the funds or property of a client or third person in trust, even if for a brief time or intermittently, has the duty as a fiduciary to safeguard and segregate those assets from the lawyer’s personal and business assets.

Rule 1.15 sets forth the ethical duties a lawyer must fulfill in holding the funds of clients or third persons that are received by the lawyer in connection with a representation. The duties set forth in Rule 1.15 are intended to eliminate not only the actual loss of client or third person funds, but also their risk of loss while in the lawyer’s possession. To fulfill the duties set forth in Rule 1.15, a lawyer’s handling of trust funds must be: (1) separate, i.e., client or third person funds must be segregated from the lawyer’s own property; (2) accountable, i.e., the lawyer must be easily able to account to the a client or third person through updated and accurate records of the funds being held in trust; and (3) identifiable, i.e., the funds being held in trust must be readily recognized as the property of others.

Holding property in trust is a non-delegable, personal fiduciary responsibility as long as that property remains in the lawyer’s possession. This responsibility cannot be transferred and is not excused by ignorance, inattention, incompetence or dishonesty of the lawyer or by the lawyer’s associates or non-lawyer employees. Although a lawyer may employ others, through adequate training and supervision, to assist the lawyer in fulfilling his or her duties under Rule 1.15, the lawyer is solely responsible for ensuring that the duties imposed by Rule 1.15 are being met.

The need to handle with scrupulous care funds entrusted to a lawyer by a client or third person should be self-evident. Nonetheless, cases continue to arise where practicing lawyers, either inadvertently or intentionally, mishandle client funds, subjecting clients and third persons to the risk of economic hardship and undermining public confidence in the legal profession. The purpose of this *Handbook* is three-fold:

1. To describe the rules for handling trust funds and property;
2. To provide a practical guide to the basics of opening and maintaining the client trust account; and
3. To give guidance on certain unresolved questions concerning the handling of trust funds.

The *Handbook* will serve its purpose if it promotes better safeguarding of trust funds, facilitates greater accountability and reduces the number of complaints received relating to the maintenance of trust funds. It is not intended to address all the ethical issues that might arise when handling client or third person property. To help you find answers to these and other professional responsibility questions, you may call for informal advice at the Office

of Lawyer Disciplinary Counsel at: (304) 558-7999. Informal advice provides general guidance on your own questions of ethics issues and the Rules of Professional Conduct.

B. Disciplinary Treatment of Management of Trust Property and Funds

The primary objective of the disciplinary system is “not to punish but rather the protection of the public and the reassurance of the public as to the reliability and integrity of attorneys.” *Committee on Legal Ethics v. Pence*, 171 W.Va. 68, 74, 297 S.E.2d 843, 849 (1982).

The mishandling of client funds continues to be a problem. The improper handling of client funds is consistently one of the alleged type of misconduct found in charges filed before the Supreme Court of Appeals of West Virginia.

The Supreme Court of Appeals of West Virginia has made clear that:

keeping good time records would be the more prudent course. The burden of proof is always upon the attorney to show the reasonableness of the fees charged. The same burden to prove reasonableness remains with the attorney under any fee structure. Attorneys who fail to effectively document their efforts on behalf of a client run the risk of being unable to convince a reviewing court, based on their word alone, of the reasonableness of the fee charged or, in cases where it applies, the full and proper value of fees to be awarded on a quantum merit basis.

Bass v. Coltelli Rose, 216 W.Va. 587, 592, 609 S.E.2d 848, 853 (2004).

The Office of Lawyer Disciplinary Counsel approaches every complaint that suggests the mishandling of client funds as a potentially serious case meriting close scrutiny. Such complaints usually require inspection of a lawyer’s account/timekeeping records, related client files, and bank records to assure that no impropriety has occurred.

Where the evidence shows misuse of funds, formal charges will be pursued whether or not the client has ultimately been reimbursed. Sanction for improper handling of client funds range from reprimand to disbarment. In cases where the evidence suggests dishonest motives or reckless disregard for the client’s or third person’s property, disbarment or a lengthy suspension will usually be sought.

II. Overview of a Lawyer’s Duties in Holding Property in Trust

Whenever a lawyer holds the property of a client or third person in connection with a representation, Rule 1.15 applies. Rule 1.15 governs the requirements and procedures a lawyer must follow while holding that property. Entitled “Safekeeping Property,” Rule 1.15 applies to both funds and tangible property. Since lawyers are most frequently holding funds on behalf of a client, this *Handbook* will discuss the requirements of Rule 1.15 mainly in the context of holding client funds, i.e. any form of money. Rule 1.15(a) is clear that the requirements and duties expressed in Rule 1.15 apply with equal force to tangible property held in trust by the lawyer. All property that is the property of clients or third persons, including prospective clients, held by the lawyer should be held with the care required of a professional fiduciary. *See* Comment [1] to Rule 1.15. Also, by using the word “safekeeping” in its title, Rule 1.15 requires the lawyer to do more than just hold property, the lawyer must take adequate precautions to “safekeep” or protect the property from actual or potential loss.

A. General Duties Under Rule 1.15

Rule 1.15 imposes several affirmative duties upon lawyers governing their handling of property held in trust for clients or third persons in connection with a representation. Those duties include:

1. Duty to Notify Promptly

A lawyer has a duty to notify clients or third persons promptly upon the receipt of funds or other property in which the client or third person has an interest. The rationale for this duty is that since the funds belong to the client or third person, the client or third person must make necessary decisions about what to do with their property. *See* Rule 1.15(d).

2. Duty to Segregate

A lawyer has a duty to keep client or third person funds or property separate from the lawyer’s own property, so that the property is protected from actual or potential loss. *See* Rule 1.15(a).

3. Duty to Maintain Complete Records

A lawyer has a duty to properly maintain complete records of client trust account funds and other property held in trust pursuant to Rule 1.15 for a period of no less than five years after the end of the representation. *See* Rule 1.15(a). West Virginia State Bar Administrative Rules 10.02 requires all West Virginia lawyers, on a yearly basis, to disclose whether the lawyer or law firm has an Interest on Lawyers Trust Accounts (“IOLTA”) along with the name of the financial institution, the routing number and account number of the account. An administrative penalty of \$200 can be assessed for failure to comply with the yearly requirement. Further, Comment [2] to Rule 1.15 states that “[a] lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practices and comply with any recordkeeping rules establish by law or court order.”

4. Duty to Account to Client

A lawyer has a duty to promptly render a full accounting, upon request, to the client or third person regarding the funds or property held or distributed by the lawyer. *See* Rule 1.15(d).

5. Duty of Prompt Payment or Delivery of Client or Third Person Property

A lawyer has a duty to promptly pay over or deliver to the client or third person any funds or property that the client or third person is entitled to receive. *See* Rule 1.15(d).

6. Duty to Preserve the Integrity of Trust Property

The single most important duty in handling trust property is the duty to refrain from using that trust property for any purpose whatsoever, other than as directed by the client or third person on whose behalf the lawyer is holding property in trust. This includes any unauthorized use by the lawyer of the client's or third person's funds entrusted to the lawyer, including not only stealing, but also unauthorized temporary use for the lawyer's own purpose, whether or not the lawyer derives any personal gain or benefit. Misappropriation occurs not only when the lawyer uses the trust funds to pay the lawyer's own personal obligations, but also, for example, when the lawyer disburses trust funds to one client before the deposits, which are the source of the disbursement, have either cleared or are at least available for withdrawal, thereby using one client's funds to pay another client.

B. Definitions

1. "Trust" Account

The word "trust" is used to reflect the fiduciary role in which a lawyer receives or holds property in connection with a representation on behalf of a client or a third person. When such property takes the form of funds, the word "trust" is an important label to distinguish those accounts where funds are being held in trust from the accounts containing the lawyer's own property.

2. Commingling

Commingling occurs when a lawyer either deposits trust funds belonging to a client or third person into the lawyer's own personal or business account or when the lawyer maintains the lawyer's own personal funds in the client trust account, other than as permitted by Rule 1.15(b), such as whether the lawyer does not withdraw promptly from the client trust account his earned fees. Commingling of a lawyer's funds with trust funds is often the "first step" toward conversion of trust funds.

3. Conversion

Conversion, a common law tort, has been defined by the West Virginia Supreme Court in the context of attorney disciplinary proceedings as "the unauthorized use of entrusted funds for the

lawyer's own purpose. It includes temporary use. It also includes use that does not result in personal gain or benefit to the lawyer." *Lawyer Disciplinary Board v. Kupec*, 202 W.Va. 556, 569, 505 S.E.2d 619, 632 (1998). Conversion of trust funds occurs when a lawyer uses those funds for a purpose other than that for which they were delivered. Conversion is typically proven when the client trust account is either overdrawn or when the lawyer allows the balance in the client trust account to become less than the sum total of all client and/or third person funds the lawyer is required to maintain in trust.

4. "Client Trust Account"

A "client trust account" is defined under Rule 1.15(a) as an account "in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated." It is a "special" bank account, usually a checking or savings account that is a depository for all funds belonging to clients and other persons coming into the lawyer's possession in connection with a representation. It will be either a separate and identifiable interest- or dividend-bearing client trust account opened on behalf of one client or matter (usually in situations where there is a large amount of money being held for a long period of time), where the interest earned on the account can be calculated and remitted to the individual client or third person or it will be a pooled account where the money of several clients is held (usually nominal or short-term funds), where the interest earned on the account is remitted to the IOLTA program (*see* discussion of IOLTA accounts below). A lawyer may have one or more client trust accounts depending on need. Rule 1.15(a) does allow the lawyer to keep funds in a separate account elsewhere "with the consent of the client or third person."

5. IOLTA Trust Accounts

Rule 1.15(f) states that "client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds at an eligible financial institution in compliance with State Bar Administrative Rule 10. Rule 10.06 requires remittance of "interest or dividends . . . to the West Virginia State Bar."

6. Eligible financial institution

Funds held in an IOLTA Trust Account must be maintained at an "eligible financial institution" selected by the lawyer in the exercise of ordinary prudence. *See* Rule 10.04 of the State Bar Administrative Rules.

Rule 10.04 indicates that to qualify as an "eligible financial institution," the financial institution must (1) be certified by the West Virginia State Bar; (2) be a federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West Virginia, or an open-end investment company registered with the federal Securities and Exchange Commission; (3) provide overdraft notification; and (4) offer IOLTA accounts as required by Rule 10.05.

III. Identifying and Protecting Trust Property

A. Key Characteristics of Holding Trust Funds and Property

To understand and fulfill the requirements of Rule 1.15, property held in trust must have all of the following three distinct and essential characteristics: (1) separate; (2) accountable; and (3) identifiable. A lawyer cannot discharge those duties unless the manner in which the property is held in trust can satisfy all of these requirements.

1. Separate

Under Rule 1.15(a), property of clients or third persons that is in a lawyer's possession in connection with a representation must be kept separate from the lawyer's own property. A lawyer holding property of clients or third persons in trust should exercise the care required of a professional fiduciary. *See* Comment [1] to Rule 1.15. For funds, the monies must be maintained in an interest- or dividend-bearing account that is separate and identifiable from the lawyer's personal and business accounts. Holding client or third person funds in a safety deposit box, file cabinet or desk drawer is usually not an acceptable way of safekeeping trust funds unless there is consent of the client or third person.

Separation:

- protects funds from levy by the lawyer's or law firm's creditors, including levy by the IRS;
- allows the account to be found in the event the lawyer becomes ill, incompetent or dies;
- protects the funds from being considered part of the lawyer's estate in the event the lawyer files for bankruptcy, is going through a marital dissolution proceedings or dies; and
- discourages the lawyer from recklessly or intentionally misappropriating client funds for the lawyer's own personal use.

2. Accountable

The lawyer must be able to make a full and accurate accounting at any time to the client or third person for whom the funds or property are held in trust. This is done through updated and accurate record keeping. For trust funds, the lawyer **MUST** be able to tell the client or third person the following:

- exactly how much money was deposited;
- how the money was disbursed; and
- how much money remains in the account for each client or third person on whose behalf the funds are being held.

3. Identifiable

The account must be clearly labeled as a client trust account and should use such designations as “client’s trust account,” or “(Attorney or Firm Name), IOLTA Trust Account” for an IOLTA account under Rule 1.15 of the Rules of Professional Conduct and Rule 10 of the State Bar Administrative Rules. Therefore, the account must be opened as a client trust account or IOLTA Trust Account, with the checks and deposit slips imprinted with that title. Merely opening an account in the lawyer’s or law firm’s name and treating the account as a client trust account or IOTLA Trust Account is not enough.

Identifying the account as a client trust account or IOLTA Trust Account serves as notice to any interested party that the funds in this account are not the lawyer’s or law firm’s personal or business assets and further safeguards the trust funds from any attempts to get at the lawyer’s or law firm’s assets through the trust fund account.

B. Funds to be Held in the Client Trust Account

1. What MUST be held in a Client Trust Account

- a. All funds or property belonging to a client or third person entrusted to the lawyer in connection with a representation, regardless of whether the lawyer regularly handles trust funds. *See* Rule 1.15(a). E.g., advances for filing fees or costs of retaining an investigator or expert; money to pay the client’s creditors; rents collected on behalf of the client.
- b. Funds to secure payment of legal fees and expenses to be withdrawn by the lawyer only as fees are earned and expenses incurred. *See* Rule 1.15(c).
- c. All funds or property in the lawyer’s possession in which a client or third person has an interest. *See* Rule 1.15(a). E.g., escrow funds held back in a real estate closing; escrow funds held pending the disposition of property in a dissolution of marriage proceeding.
- d. Those funds or property being held by the lawyer or law firm in which two or more persons (one of whom may be the lawyer or law firm) have competing claims to the funds or property and ownership claims that are unresolved. *See* Rule 1.15(e) and Comments [3] & [4] to Rule 1.15. E.g., amounts in dispute where the lawyer is holding funds as an escrowee; a dispute over the amount of a lien asserted by a medical provider on settlement funds; a dispute with a client over the lawyer’s fees or expenses.
- e. All nominal or short-term funds of clients or third persons held by the lawyer or law firm, including advances for costs and expenses, and funds belonging in part to a client or third person and in part, presently or potentially, to the lawyer or law firm. *See* Rule 1.15(f). E.g., settlement funds; bond refund checks.

2. What funds MAY be held in Client Trust Account

Funds of the lawyer necessary to pay bank services charges such as the bank's minimum balance requirements to open or maintain the client trust account. *See* Rule 1.15(b). Any bank fees for the trust account should be reflected in a Trust Account Sub Ledger for Service Charges reflecting the deposit date of the funds and the withdrawal date from the bank.

3. What funds MUST NOT be held in a Client Trust Account

- a. Lawyer's own personal funds.
- b. Lawyer's business and investment monies.
- c. Fees that have been earned.

4. What MUST go into an IOLTA Trust Account

Client funds that are nominal in amount or expected to be held for a short period of time shall be deposited into one or more "pooled" interest-bearing client trust accounts with the interest paid to the West Virginia State Bar under Rule 1.15(f) of the Rules of Professional Conduct and Rule 10 of the State Bar Administrative Rules. E.g., most settlement funds are typically considered short-term since they must be promptly paid to the client once the settlement check has cleared.

Rule 1.15(g) of the Rules of Professional Conduct and Rule 10.03 of the State Bar Administrative Rules provides that the decision as to whether funds are long-term or short-term, substantial or nominal, rests in the sound judgment of the depositing lawyer or law firm and no charge of ethical impropriety or other breach of professional conduct shall arise out of the lawyer's reasonable judgment on what is nominal or short-term.

In determining whether funds must be deposited into an IOLTA or non-IOLTA client trust account, Rule 10.03 of the State Bar Administrative Rules sets forth the following factors that ordinarily the lawyer or law firm would take into consideration:

- a. the amount of the funds to be deposited;
- b. the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- c. the rates of interest or yield at financial institutions where the funds are to be deposited;
- d. the cost of establishing and administering non-IOLTA accounts for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;

- e. the capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients; and
- f. any other circumstances that affect the ability of the client's funds to earn a net return for the client.

C. Trust Property Other Than Cash

The duties of safekeeping property under Rule 1.15 apply both to funds and tangible property. *See* Rule 1.15(a). As funds must be kept in a separate, identifiable and interest- or dividend-bearing client trust account, other property must also be appropriately identified as trust property and adequately safeguarded. *See* Rule 1.15(a). When the lawyer receives tangible trust property, as with money held in trust, the lawyer must (1) clearly identify or label it as trust property; (2) keep trust property separate from the lawyer's own property; and (3) take appropriate safeguards to protect and preserve trust property. This means that the lawyer should identify and label the trust property promptly upon receipt and place it in a safe deposit box or other place of safekeeping as soon as possible. The safe deposit box, like the client trust account, should bear a label that clearly identifies it as the repository of property not belonging to the lawyer, but property held in trust on behalf of clients, such as "Clients' Safe Deposit Box," and must not contain any of the lawyer's property. *See* Comment [1] to Rule 1.15.

The lawyer must also keep records that sufficiently describe the items that are being held in trust, for whose benefit, and where they are being held. Below is an example of the type of record that could be made with respect to items being held in a safe deposit box:

Trust Safe Deposit Box

Received this ____ day of _____, 20__, by _____

(Description of item(s) being placed into safe deposit box – if items are numbered such as stocks or bonds, specify numbers.)

Item(s) being held in trust for: _____

Firm Name: _____

Client Name: _____

Item(s) being placed into safe deposit box by : _____

Any questions regarding contents should be addressed to: _____

Name and Address of bank where Safe Deposit located _____

Safe Deposit Box ID Number: _____

Anticipated period of time item(s) will be held: _____

IV. Basics of Opening and Operating a Client Trust Account

A. Determining the Kind of Client Trust Account

Under Rule 1.15(a), there are two types of client trust accounts: an account opened on behalf of one client or client matter (usually in situation where there is a large amount of money being held for a long period of time, such as an estate matter) where the interest earned on the account can be calculated and remitted to the individual client or an account where the funds of several clients are held (usually nominal or short-term funds), where the interest earned on the account goes to the IOLTA program. A lawyer may have one or more client trust accounts depending on the need.

In determining the type of account to deposit funds for a client, the lawyer or law firm in the exercise of reasonable judgment would ordinarily take into consideration the amount of interest that the funds would earn during the period they are expected to be held, the costs of establishing and maintaining the account, and the capability of the financial institution, through subaccounting, to calculate and pay interest net of any transaction costs. *See* Rule 10.03 of the State Bar Administrative Rules.

B. IOLTA Client Trust Accounts

Rule 1.15(f) requires that all funds of clients which are nominal in amount or are expected to be held for a short period of time, must be deposited in one or more IOLTA client trust accounts. An IOLTA client trust account is defined in Rule 10.02 of the State Bar Administrative Rules as “a pooled, interest or dividend-bearing account for the deposit of such funds, at an eligible financial institution. The separate IOLTA trust account must comply with this rule and participate in the Interest on Lawyers Trust Accounts (IOLTA) Program administered by the West Virginia State Bar.”

The net interest or dividends earned on IOLTA client trust accounts is paid directly to the West Virginia State Bar, which uses the money to fund legal assistance and other programs benefiting the public throughout the state, as approved by the Supreme Court of Appeals of West Virginia.

The decision as to whether funds are nominal in amount or are expected to be held for a short period of time rests within the reasonable judgment of the lawyer or law firm and no charge of ethical impropriety or breach of professional conduct will result from the lawyer’s or law firm’s reasonable exercise of reasonable judgment on what is nominal or short term. *See* Rule 1.15(g) of the Rules of Professional Conduct and Rule 10.03 of the State Bar Administrative Rules.

All IOLTA and non-IOLTA client trust accounts must be maintained “in an institution whose accounts are federally insured and maintained in the state where the lawyer’s office situated.” Further, an IOLTA client trust account must be maintained only at an “eligible financial institution.” An “eligible financial institution” is a “federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West

Virginia, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in West Virginia.” Further, the institutions must provide overdraft notification and meet certain requirements as stated in Rule 10.05 of the State Bar Administrative Rules.

C. Opening the Client Trust Account

1. Form

Rule 1.15(a) sets forth the general requirements of all client trust accounts, IOLTA and non-IOLTA, which must be (1) separate and identifiable as a client trust account, and (2) maintained at an institution whose accounts are federally insured and maintained in the state where the lawyer’s office is situated. Generally, the client trust account can be a savings account, checking account or certificate of deposit at a federally insured bank or savings and loan. For IOLTA client trust accounts, the account must also meet the requirements as set forth in Rule 10.04 of the State Bar Administrative Rules.

2. Location

The account must be maintained in the state where the lawyer’s office is located or elsewhere with the consent of the client or third person as provided in Rule 1.15(a). For an IOLTA client trust account, it must be established at an eligible financial institution that is federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West Virginia, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in West Virginia. *See* Rule 10.04 of the State Bar Administrative Rules. If the client trust account is located outside West Virginia because the lawyer is licensed and practices in that other jurisdiction or because the client or third person has otherwise directed the lawyer, care must be taken that the client trust account complies with that state’s trust accounting rules. *See also* WVRPC Rule 8.5(b) (Choice of Law).

In situations where the client or third person wants the client trust account opened in another state, it is advisable to get the consent of the client or third person in writing.

3. Eligible Financial Institution

All IOLTA client trust accounts must be maintained at an “eligible” financial institution. Rule 10.04 of the State Bar Administrative Rules defines “eligible financial institution” as “federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West Virginia, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in West Virginia.”

For a list of eligible financial institutions, please select the IOLTA tab under the Attorneys tab of the West Virginia State Bar’s website at www.wybar.org.

4. Know Your Financial Institution

Know the financial institution's charges and fees for maintaining such accounts and obtain a copy of the account agreement with the financial institution. Know the financial institution's schedules for posting and crediting deposits. Know what the federally insured limits are on deposits. Some IOLTA client trust accounts may have FDIC deposit insurance coverage and proper inquiry should be done. Investigate the financial institution's requirements for opening and maintaining a client trust account such as a minimum balance to earn interest, bank charges to handle the account, check printing charges, and the collection process to clear intrastate and interstate checks and other instruments. The West Virginia State Bar website (www.wvbar.org) has a section on its site with information for financial institutions describing the IOLTA program, how a financial institution can become certified by the West Virginia State Bar, and the forms necessary to set up an IOLTA account.

5. Naming the Client Trust Account

Non-IOLTA trust accounts must bear the designation as "Client Trust Account," and should include the lawyer or law firm's name. *See* Rule 1.15(a). IOLTA client trust accounts shall be named "(Attorney or Firm Name), IOLTA Trust Account." *See* Rule 10.05(f) of the State Bar Administrative Rules.

6. Opening an IOLTA Client Trust Account

For an IOLTA account, the lawyer or firm enrolls in the IOLTA program by completing the sign up forms. The enrollment forms instruct the bank to establish an IOLTA account. The taxpayer identification number (TIN) on the account is the West Virginia State Bar. The IOLTA enrollment forms may be submitted electronically or downloaded from the West Virginia State Bar website at www.wvbar.org under the attorney tab, and then the IOLTA tab.

7. Select Client Trust Account Checks that are Distinguishable from Business Account Checks

Select checks that have the client trust account name on them and are of a different color than those of the operating account so that checks written on the client trust account can be more easily distinguished from checks written on the attorney's operating account. Also, some lawyers maintain their business and personal accounts at a different financial institution from where they have their client trust accounts so that no client trust account moneys will be inadvertently accessed.

8. Select Signatories with Care

West Virginia does not prohibit a lawyer from delegating check-signing authority to someone other than the lawyer. However, the lawyer has a non-delegable duty to protect and preserve the funds in the client trust account and can be disciplined for failure to supervise subordinates. An attorney in *Lawyer Disciplinary Board v. Santa Barbara*, 229 W.Va. 344, 729 S.E.2d 179 (2012) was suspended for a year for various violations of the Rules of Professional Conduct involving a personal injury claim where \$15,000 was withheld from a settlement, and though

he relied on a secretary to handle IOLTA and other bank accounts, and the same secretary may have been involved in stealing the trust funds.

D. Handling Certain Types of Funds and Property

1. Litigation Expenses

If a client advances money to the lawyer for litigation costs and expenses to be incurred in the future, the money shall be deposited and maintained in the client trust account until the expense has been incurred. *See* Rule 1.15(c). If a lawyer advances the court costs and expenses of litigation on behalf of a client, which is permitted under Rule 1.8(e), and bills the client for the expense, the funds received by the lawyer would not be deposited in the client trust account since the client is reimbursing the lawyer. Expenses must be reasonable as governed by Rule 1.5.

2. Handling Settlement Checks

Settlement checks in contingent fee matters typically will have as payees the client, the lawyer or lawyer's law firm and any third persons who have served a notice of a lien on the proceeds (often a medical provider). The settlement check must be deposited in the client trust account. Some lawyers might be tempted to deposit the settlement check into the lawyer's business account and write the client's portion of the proceeds from the lawyer's own business account. This is a violation of the rule which requires that funds belonging, in whole or in part, to a client shall be deposited in the client trust account. *See* Rule 1.15(a).

When disbursing the funds the proper procedure is to secure the signatures of all the payees and deposit the settlement check into the client trust account. A deposit in the client trust account may not be disbursed until the funds are at least available for withdrawal as determined by the account agreement with the financial institution. If a lawyer writes a check to the client or others for settlement proceeds before the settlement has been credited to the account on the theory that there is other money in the client trust account, if the check is honored it will be drawing on the funds of other clients. This is conversion because it is the unauthorized use of one client's money to pay another client.

3. Real Estate Transactions

Lawyers who act as closing agents for real estate transactions face the dilemma of the commercial necessity of immediately issuing checks from the client trust account on funds that have not even been deposited, much less cleared the banking process. This should involve a separate account so that other clients' money is not taken.

4. Non-Client and Third Person Claims

The duties of prompt notification, delivery and accounting of trust property may also extend to third persons. Medical providers who have perfected their lien on the settlement funds or a lawyer who has agreed to hold earnest money as an escrowee in a real estate transaction are

common examples in which a lawyer has a fiduciary duty to non-clients to protect and preserve funds the non-client is presently or potentially entitled.

5. Disputed Amounts

When there is a dispute over property held in trust, whether it be between the client and a third person or between the client and lawyer, Rule 1.15(e) requires the lawyer to maintain the disputed portion of the funds in the client trust account until the dispute is resolved. Typical examples arise in connection with amounts the lawyer is holding as an escrowee in a real estate transaction or when there is a dispute over the amount of lien asserted by a medical provider or when the client disputes the amount of the fees the lawyer claims are earned. For fee disputes with the client, Comment [3] of Rule 1.15 instructs:

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed . . .

For third parties that may have lawful claims to the funds, Comment [4] of Rule 1.15 gives the following guidance:

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

6. Retainers and Advances for Fees

Funds advanced by a client to secure payment of legal fees and expenses, to be withdrawn only as fees are earned and expenses incurred, shall be deposited in the lawyer's client trust account. *See* Rule 1.15(c).

Fixed/Flat Fee Agreements. This type of agreement is where the lawyer agrees to provide a specific service (e.g., defense of a criminal charge, a real estate closing, or preparation of a will or trust) for a fixed amount paid by the client. A fixed fee is generally not subject to the obligation to refund any portion to the client; however, a fixed fee is subject, like all fees, to scrutiny and the fee charged must be reasonable under the circumstances, as set forth in Rule

1.5(a), and any portion of the fee must be refunded to the client under Rule 1.16(d) if retention of the entire fee would be unreasonable and excessive under the circumstances. Further, an attorney must ensure that the fee is sufficient for the attorney to provide representation.

General Considerations for All Fee Agreements. All fee agreements must be in the best interest of the client. The reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.

Also, a client has an unqualified right to discharge a lawyer and, if discharged, the lawyer may retain only a sum that is reasonable in light of the services the lawyer performed prior to being discharged. All fee agreements are subject to the requirements of Rule 1.5(a), which provides that a lawyer may not charge or collect an unreasonable fee, and any fees that have not been earned must be refunded to the client.

All retainer agreements must be in writing under Rule 1.5, and signed by the client if it is a contingency agreement.

7. Handling Credit Card Payments for Legal Fees and Expenses

The use of credit cards by clients to pay for legal fees and/or expenses has become increasingly common. While lawyers may use such forms of payment, when credit cards are taken for unearned fees and expenses which must be deposited in the client trust account, the lawyer's duties to protect trust property are triggered. To avoid commingling and conversion, the lawyer must carefully consider how credit card payments will be processed (e.g., designation of a "merchant" account, bank services fees and chargebacks) and take adequate precautions to protect what the lawyer is required to maintain in trust. Whether the client will be responsible for credit card charges needs to be clearly indicated in the writing to the client regarding fees.

8. Withdrawing Earned Fees

A lawyer must promptly withdraw funds held in the client trust account from which the lawyer's fees are to be withdrawn once the fees have been earned and there is no dispute over the amount of funds to be withdrawn. While a lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. Therefore, any disputed portion of the funds must be kept in a client trust account until there is a prompt resolution of the dispute, such as arbitration. The undisputed portion should be promptly distributed. *See* Comment [3] to Rule 1.15. For contingent fee matters, this is accomplished in the settlement statement required by Rule 1.5(c), which shows the amount that will go to the lawyer. For hourly-fee agreements, where the lawyer has received a retainer and the funds are held in the client trust account, the lawyer would send a billing statement indicating the services rendered and the amount the lawyer intends to withdraw from the client trust account, and the money may be withdrawn unless the lawyer hears otherwise from the client within a reasonable period of time.

In withdrawing the undisputed portion, the lawyer should promptly write a check, payable to the lawyer's law firm, for the full amount of the fee earned. The lawyer must not let earned

fees accumulate in the client trust account and cannot withdraw fees on “as needed” basis; otherwise, commingling occurs and, consequently, the trust funds are put at risk. Also, the appearance may be created that the lawyer is hiding money in the account to avoid creditors or income taxes, thereby exposing the client trust account to possible attachment or levy by the lawyer’s creditors.

In withdrawing earned fees, the lawyer should make the trust check payable to the lawyer’s law firm and indicate in the memo portion of the check the purpose of the payment and the client matter, as well as make the appropriate entries in the checkbook register, client ledger, and disbursement journal.

Practice Pointer – The payee on a trust check for earned fees should be made payable to the lawyer’s law firm. Trust checks for earned fees made payable to the lawyer’s own creditors or made out to cash make it difficult to trace the source and purpose of the payment and could create the appearance that the lawyer is using the client trust account as a personal account, thereby endangering the account’s status as a client trust account, or that the lawyer is using client funds for personal purposes.

9. Dealing with Unclaimed or Unidentified Funds

Situation may arise where there is an unclaimed or unidentified amount of funds in the client trust account due to (1) the disappearance of a client or third person before a client trust account check could be issued; (2) the fact that the client trust account check has not been cashed; or (3) there is an unexplained amount of money that cannot be traced as belonging to either a client, a third person or the lawyer. Whatever the situation, the bottom line is that the lawyer is not entitled to take the money:

a. Unclaimed Funds

When the person for whom trust funds are being held disappears before the lawyer has issued a check to that person, the lawyer must first take all reasonable steps to locate that person. *See* Rule 10.09(a). How much effort a lawyer must undertake to find the missing client or third person will vary in each case. Typically, a lawyer would check with the post office to see if the client or third person left a forwarding address. The lawyer would then send a letter to the person’s last known address by regular mail and by certified return receipt advising that person that the lawyer is holding their funds and asking that person for direction in disbursing the money. The lawyer may attempt to contact the person’s relatives, employers, neighbors and friends, publish notice in places where that person might frequent, use an investigator or check with the Social Security Administration.

If the client or third person cannot be located and the funds have remained unclaimed for four or more months, under Rule 10.09(a), the lawyer shall remit the funds to the West Virginia State Bar and notify the Executive Director, under oath, of the efforts made to locate the owner, whether client or third party.

b. Unidentified Funds

Sometimes ownership of the funds cannot be traced to either a client, a third person or the lawyer. This could be typically due to mathematical error, faulty bookkeeping or the lawyer's failure to withdraw past earned legal fees, and the attorney now lacks sufficient records to claim the money.

If funds can be identified and the funds have remained unclaimed for four or more months, under Rule 10.09(b), the lawyer shall remit the funds to the West Virginia State Bar and notify the Executive Director, under oath, of the efforts made to identify and locate the owner or owners.

The procedures for Unclaimed funds and Unidentified funds apply when the amount is more than \$500 or more. *See* Rule 10.09(d) of the State Bar Administrative Rules. If the amount is less than \$500, the funds shall be remitted directly to the West Virginia State Bar.

Further, Rule 10.09(c) provides if the owner of funds remitted to the West Virginia State Bar is identified and located within two years after the funds were remitted to the West Virginia State Bar, the attorney must contact the West Virginia State Bar IOLTA Advisory Committee and request a refund of the amounts paid. The lawyer, law firm or trustee is responsible for proper distribution of those funds.

10. Bank Charges and Fees

Rule 1.15(b) specifically provides that “[a] lawyer may deposit the lawyer’s own funds in the client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.” Rule 10.05(d) allows “reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest or dividends earned on an IOLTA account.” No fees or charges are allowed to be collected from the principal balance deposited in an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account, including bank overdraft fees and fees for check returns for insufficient funds.

Practice Pointer – Any deposits of the lawyer’s own funds to cover bank charges and fees must be entered into and accounted for in the trust accounting records that must be maintained. *See* Rule 1.15(a); Comment [2] to Rule 1.15.

V. Client Trust Accounting

A. Establishing Accountability

A lawyer has the duty to give an accurate and complete accounting to the client or third person. See Rule 1.15(d). In order to fulfill that duty, Rule 1.15(a) also requires that all complete records of all client trust account funds and other property held pursuant to Rule 1.15 must be kept for five years after the end of the representation. There are various manual and automated accounting systems that are available. In the first instance, many lawyers will consult with an accountant to set up an appropriate accounting system. Whichever accounting method or system is used, it must be one that the lawyer understands, puts into practice and follows, and that others auditing the lawyer's account can follow.

In establishing an accounting system that meets the requirements of Rule 1.15, the following accounting principles and specific account and recordkeeping requirements of Rule 1.15 should be kept in mind:

1. Separate Clients Should be Thought of as Separate Accounts

When an IOLTA client trust account, where the funds of more than one client or third person are being held at any given time (a/k/a pooled), it is important to keep in mind that while funds deposited in the client trust account belong to more than one person, the lawyer must know and account for each client or third person's funds as if each client or third person had a separate account. Client A's funds have nothing to do with Client B's funds. NEVER allow the funds being held for one client or third person to be used, even momentarily, to satisfy the obligations of another client or third person. Separation is obtained by maintaining a separate log or subsidiary ledger sheet for each client or third person. In this way, the lawyer will be able to account exactly for all money received or paid out on behalf of each client or third person at any given time as well as know the total balance of all client and third person funds the lawyer is required to maintain in the client trust account. Also, for FDIC insurance to cover such funds the name and ownership of each client or third person must be ascertainable from the client trust account records maintained by the lawyer.

2. You Can't Spend What You Don't Have or Timing is Everything

A deposit in the client trust account cannot be disbursed until the deposited item has cleared the banking process and been credited to the client trust account. The funds in the client trust account cannot be used by anyone other than the client or third person who owns them, and the lawyer is responsible for assuring that the funds are not, even inadvertently, diverted to another person. The rule of uncollected funds is simple: if you write a check from the client trust account after you have deposited a check or draft on behalf of a particular client, but before the deposited monies have cleared the banking process and have been credited to the client trust account, if the check is presented, either it will bounce or you will be drawing on funds belonging to other clients or third persons. This is considered conversion even if the lawyer has no dishonest motive, and no client or third person is ultimately harmed. Conversion

is defined as any unauthorized use of trust funds that deprives the client or third person of the use of those funds even temporarily.

For example, do not be tempted to do your client a favor by writing a check to the client for settlement proceeds before the settlement check has cleared on the theory that there is other money in the client trust account. By doing so, you are putting at risk the funds of other clients or third persons.

Therefore, it is important to know the financial institution's check clearing procedures and schedules of when funds can be withdrawn. The time it takes for funds to become available after deposit can vary between a day to several weeks depending on the form in which the money is deposited. Ask your financial institution for their schedule of when deposits are posted to the account. Many banks have automated account information systems where you can check the activity on an account.

Automatic Overdraft Notification Rule: Rule 1.15(a) of the Rules of Professional Conduct and 10.04 of the State Bar Administrative Rules requires all IOLTA and non-IOLTA client trust accounts be established at financial institutions that have agreed to notify the West Virginia State Bar when a client trust account is overdrawn. A bounced check drawn on a client trust account can be an early warning that a lawyer is engaging in conduct that could injure clients. Experience in other states demonstrates, however, that most lawyer regulatory action under an overdraft notification rule does not result in lawyer disciplinary charges. Instead, the rule helps identify those lawyers who simply need education on managing their client trust accounts.

Practice Tip: Normally, checks will be presumed good and many financial institutions will automatically honor and credit a deposit a certain number of banking days after deposit without actually having received verification from the drawee bank that the funds have been paid. In such cases, the lawyer can safely disburse funds against the check when the lawyer's bank credits the deposit to the account. However, even after an item has been posted to an account, it still may be returned due to insufficient funds, stop payment or improper endorsement and a lawyer may not learn of the dishonor until several days after the item was posted. When a lawyer has any concerns that a check might be dishonored, the safest way to determine that an item has cleared is to call the bank upon which it is drawn to find out if the item has been honored.

3. Always Maintain a Paper Trail

Accountability requires that all aspects of the transaction be traceable from the time of receipt of the funds, including the disbursement of the funds by check, proper negotiation of that check by the payee and clearance through the banking process. In a typical transaction, where the client gives money to the lawyer, who then deposits it in the client trust account and pays the money out at the direction of the client, the following documents would provide a paper trail for the lawyer of what actions were taken:

- the initial deposit slip or copy of a bank receipt, which would show the date of deposit, the amount of deposit, the name of the client or third person on whose behalf the money

has been received, the source of the funds and the date stamp showing the date the deposit was received by the bank;

- the bank statement, which would show that the bank credited the deposit and when it was credited;
- the checkbook stub, which would show when disbursements were made and to whom;
- the disbursement check, which would show the date it was drawn, the amount and the name of the payee, the purpose of the check, the order of negotiation (from the endorsements) and the date deposited for collection;
- the bank statement, which would show the date the client trust account was actually charged for the check; and
- any file documentation that would explain the deposit or the authority for how the money should be distributed, such as a closing statement, a court order or a signed authorization by the client for the disbursement of funds.

Each deposit and disbursement should describe the client or third person and the matter to which it relates. Those records may be maintained by electronic, photographic, or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

4. There Should NEVER be a Negative Balance

All balances are either positive (while monies are being held for clients) or zero (when the matter is closed and no monies remain in the client trust account). The balance in the client trust account should always equal the aggregate balance due all clients. If a negative balance occurs, it is, at best, a sign of negligence and, at worst, a sign of theft.

B. Essential Accounting System

Rule 1.15 requires lawyers to do more than just deposit client or third person funds into a separate and identifiable client trust account. The lawyer also has the duty to give an accurate and complete accounting to the client or third person concerning how their property was handled by the lawyer. Trust account records required under the rule can be kept manually or electronically through some type of accounting software program so long as printed copies can be produced and the records are readily accessible to the lawyer.

There are various manual and automated accounting systems that are available. In the first instance, the lawyer should consult with an accountant to set up an appropriate accounting system. For records kept manually, the lawyer must record each trust account transaction a number of different times. For example, for a trust account check, the lawyer would have to prepare the check, enter the check into the check register, enter the check in the subsidiary client ledger, and enter the check in the disbursement journal or general ledger.

In comparison, the use of computer software for trust accounting permits the lawyer to only make one computer entry and the software will enter the information into the correct ledgers and journals, assuming the software is properly setup. This ensures that all the required journal entries are up-to-date and saves time for the lawyer. While a lawyer can purchase software specifically designed for attorney trust accounting, two commonly used generic accounting programs that can be modified to provide the necessary trust account records are Quicken® and Quickbooks. Whichever accounting system is used, it must be one that the lawyer understands, puts into practice, and follows, and that others auditing the lawyer's account can follow.

1. Receipts and Disbursements Journals or General Ledger

These journals lists all receipts and disbursements chronologically for all amounts being held in trust that sufficiently identifies the date, source and purpose of each transaction.

TRUST ACCOUNT RECEIPTS JOURNAL

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	SOURCE	CLIENT	CASE/FILE NO.	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

TRUST ACCOUNT DISBURSEMENT JOURNAL

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	CHECK NO.	PAYEE	PURPOSE	CASE/FILE NO.	AMOUNT

TRUST ACCOUNT GENERAL LEDGER
 (This is one ledger that can be used instead of separate journals
 for receipts and disbursements.)

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE

2. Client Ledger Pages

The ledger records chronologically all receipts, disbursements and balances for each client or third person for whom funds are held in trust. Without a subsidiary ledger, the lawyer would likely be unable to know the amount of funds that must be maintained for a given client or third person, and thus unable to provide an accurate and complete accounting on request. Each subsidiary ledger would include:

- separate subsidiary ledger pages for each client or third person for whom funds are held in trust.
- posting transactions (receipts and disbursements) by date, purpose and amount.
- if the client trust account is opened for the benefit of one client or third person or if the account allocates interest to each client or third person, any net interest (accrued interest less service charges) credited to the client or third person.

TRUST ACCOUNT CLIENT LEDGER PAGE

NAME OF CLIENT/THIRD PERSON: _____

LEGAL MATTER/ADVERSE PARTY: _____

FILE OR CASE NUMBER: _____

DATE	DESCRIPTION OF TRANSACTION	PAYOR/ PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE

3. Checkbook Register

A client trust account checkbook register is like any other checkbook register. It is used to record deposits and client trust account checks in sequential order and is also used to maintain a running balance. To properly maintain the checkbook register, check stubs, bank statements, records of deposit, and checks or other records of debits must also be maintained.

TRUST ACCOUNT CHECKBOOK REGISTER

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION _____

DATE	CHECK NO.	PAYEE OR DEPOSIT SOURCE	CASE/FILE NO.	AMOUNT OF CHECK	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

4. Sub Ledger for Service Charges

This ledger keeps a records of the deposits and withdrawals regarding any bank charges regarding the account. A bank statement or other document reflecting the charge should be maintained.

TRUST ACCOUNT SUB LEDGER FOR SERVICE CHARGES

SERVICE CHARGE SUB ACCOUNT DATE	TRANSACTION	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE

5. Monthly Bill to Client

Prepare and send monthly bills to clients, as that is the best practice to show the client the disbursement from the retainer.

(Date of Bill) Bill

Name of Client: _____
Legal Matter / Adverse Party : _____
File or Case Number : _____

DATE	DESCRIPTION	HOURS	AMOUNT	BALANCE

6. Reconciliation Report

Prepare and maintain reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances. The following three balances should be the same and equal to the bank statement (less for outstanding checks & net interest for IOLTA accounts, plus in-transit deposits).

TRUST ACCOUNT RECONCILIATION REPORT
PERIOD OF _____ **to** _____

TRUST ACCOUNT NO.: _____
ACCOUNT NAME: _____
FINANCIAL INSTITUTION: _____

Checkbook Balance: \$ _____
 Receipts Minus Disbursement Journals Balance (_____)
 Subsidiary Ledger Pages Balance: _____

Bank Statement
 Balance on _____ \$ _____
 Plus outstanding deposits _____
 Less net interest accrued _____
 Less outstanding checks _____

Adjusted Bank Statement Balance: _____

All record must be maintained for a period of five years after termination of the representation. The records can be maintained by electronic, photographic or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

Also, Comment [5] to Rule 1.3 indicates that the duty of diligence may require a sole practitioner to have a succession plan in place in the event of death or disability.

C. Tracking Client Trust Account Funds: Record Entries

1. Depositing Client Trust Account Funds

Deposit client funds in the client trust account promptly upon receipt. Generate the following:

- a. Deposit slip (receipt for cash), which identifies the client or file for whom deposit is being made;
- b. Checkbook register deposit entry;
- c. Subsidiary ledger entry; and
- d. Cash receipts journal entry.

Checks payable jointly to the client and the lawyer should be deposited in the client trust account and not endorsed over to the client.

2. Disbursing Client Trust Account Funds

Disbursements to the client or on behalf of the client must be made promptly after the deposit has been credited. Generate the following:

- a. Check made payable to the client or third party, with notation of the client matter and purpose in memo portion of the check;
- b. Checkbook register disbursement entry;
- c. Subsidiary ledger entry; and
- d. Cash disbursements journal entry.

3. Proper Methods For Withdrawing Legal Fees

Before an earned legal fee may properly be withdrawn from a client trust account, the client should be given notice of the nature of the services rendered and the amount of the legal fee proposed to be paid to the lawyer. If no objection is received within a reasonable time, the lawyer may withdraw the fee from the client trust account.

Moreover, if no dispute exists over the lawyer's fees, which are justly due and owing, the fees may not remain in the client trust account, but **MUST** be promptly withdrawn. *See* Comment [3] to Rule 1.15. If not, the lawyer is commingling his or her own funds with the clients' funds and, as a consequence, is endangering the integrity of the client trust account.

Disbursements out of the client trust account for earned legal fees should be made payable to the lawyer only and not to a third party creditor of the lawyer. Otherwise, a lawyer creates the

appearance of using the client trust account for the lawyer's own personal or business expenses. This could potentially subject the client trust account to attachment by the lawyer's creditors, thereby endangering existing client funds and the status of the account as a client trust account.

4. Reconciling Account Records with Monthly Bank Statements

Before a client trust account can be reconciled with the monthly bank statement, the following balances must equal one another:

- the cash receipts and cash disbursements journals;
- the subsidiary ledger pages; and
- the checkbook register.

Step 1: Add together the monthly ending balances of all subsidiary ledger pages.

Step 2: Take the figure you arrived at the previous month when you reconciled your cash receipts and cash disbursements journals. Add the cash receipts journal balance for the month in question and subtract the cash disbursements journal balance for that month.

Step 3: Take the balance in the checkbook register at the end of the month in question.

The figures for Step 1, 2, and 3 must be equal. If they are not, look for entries that do not match, or addition or subtraction errors, until all three figures are the same.

5. Interest and Bank Costs

- a. For IOLTA accounts, certain reasonable bank costs are paid by the account. If your monthly bank statement reflects interest credited but not yet paid out to the West Virginia State Bar or reasonable bank costs has been paid, you should adjust the balance shown on the monthly bank statement accordingly. The interest and the charges should not be entered on your ledgers, cash journals, or checkbook register. A sub ledger reflecting the bank costs should be kept to show the reason for such deposits and withdrawals.
- b. For non-IOLTA client trust accounts, where the interest is credited to individual clients or beneficiaries, after bank costs are deducted, you will not adjust the balance shown on the bank statement, but you must add the net interest to your subsidiary ledger pages, your cash receipts journal or general ledger, and your checkbook register.

6. Monthly client trust account reconciliation

The bank statement balance must reconcile with the other ledger balances as follows:

- a. Take the balance shown on the monthly bank statement. (For IOLTA accounts, that balance may have to be adjusted as discussed in (5)(a) above.)
- b. Add any deposits not credited on the bank statements.
- c. Subtract checks not debited on the bank statement.
- d. The balance should be equal to the three balances described in Step 1, 2 and 3 on Pages 43-46-- the subsidiary ledger pages balance, the cash disbursements and receipts journals balance or general ledger, and the checkbook register balance.

Practice Tips:

- **Have an Accounting System** – You must have a way of accounting to a client or third persons as to how their funds were handled. Rule 1.15 does not prescribe any particular accounting system or method but does mandate that records be maintained. Some common accounting record systems are discussed below. However, you must have a system that you and anyone else looking at your records can understand. If you don't know how to set up an accounting system, consult with an accountant.
- **Reconcile Monthly** – You should have a practice where you reconcile all of your accounts on a monthly basis, regardless of whether you do your own accounting or you have someone assisting you. If you fail to reconcile, you may not be aware of bank errors, miscalculations or employee embezzlement. *See* discussion on Pages 45-46.
- **Don't Share Client Trust Accounts With Lawyers Not in the Same Firm** – A lawyer has a non-delegable fiduciary duty to safeguard client or third person property entrusted to the lawyer during a representation. If you are in a law firm, each lawyer in the law firm need not open up a separate client trust account for each lawyer in the firm. However, you must not allow lawyers that not in your law firm to deposit trust funds into the law firm's client trust account; you are responsible for those funds. Conversely, if you deposit funds entrusted to you by a client or third person for safekeeping, you cannot deposit those funds into another lawyer's client trust account.
- **Do Not Withdraw Your Fees in the Form of Trust Checks Payable for Your Own Personal Expenses** – Only client related charges, such as court costs, expert witness fees or lawyers' fees, may be paid out of the client trust account. The lawyer should not withdraw earned fees from the client trust account in the form of trust checks payable to the lawyer's own creditors. An earned fee must be withdrawn promptly from the client trust account and deposited in the lawyer's own personal or business account. For example, a trust check made payable to the gas or electric company to pay the lawyer's gas or electric bill creates the appearance that the lawyer is using the client

trust account as a personal account, and thereby endangers its status as a client trust account, or that the lawyer is using client funds for personal purposes.

- **Withdraw Your Fees Promptly from the Client Trust Account Once You have Earned Them** – When a fee has been earned, the lawyer must promptly write a check, payable to the lawyer or the lawyer’s law firm, for the full amount of the fee earned. The lawyer must not let earned fees accumulate in the client trust account and withdraw fees on an “as needed” basis; otherwise, commingling occurs and, consequently, the trust funds are put at risk. Also, the appearance is created that the lawyer is hiding money in the account to avoid creditors or income taxes. In which case, the client trust account could be subject to attachment or levy by the lawyer’s creditors.
- **Avoid ATM Withdrawals** – Because the lawyer has a duty to account to the client or third person as to how the trust property was handled, writing a check from the client trust account creates an automatic audit trail that makes it easy to trace who the money came from and where it went. A client trust account with ATM access makes it possible for a lawyer and anyone else with the access code to withdraw the client’s money in cash, and it is very difficult to account for cash. ATMs can be an audit trail disaster. With an ATM withdrawal, the only record of what happened to the money is a little slip of paper what shows the date and the amount of the withdrawal; there is nothing that shows which client’s or third person’s money was withdrawn, who withdrew it or to whom the money was paid. ATM withdrawals are a bad practice for all purposes, including withdrawing lawyers’ fees, since there is no paper trail recording the case from which the fees are owed. Even if you put all the descriptive information on an ATM receipt, it cannot properly be considered to be proof of what happened to the money if there is a disciplinary investigation.
- **Let Deposits Clear Before Writing Checks** – The important thing to remember is that disbursing funds before the deposit has cleared puts the funds of other clients or third persons at risk of loss, thereby resulting in conversion. Also, if there are insufficient funds at the time the trust check is presented for payment, the trust check will be dishonored and the financial institution will report the overdraft to the West Virginia State Bar, irrespective of whether or not the trust check is honored. *See* discussion “You Can’t Spend What You Don’t Have or Timing is Everything” on Pages 20-21.
- **If a Mistake Happens, Don’t Panic** – If you find that an error occurred in making calculations or deposits, don’t panic. Take remedial action. Call your financial institution. Failure to act not only may compound the problem, but failure to notify the financial institution of any errors, forgeries, unauthorized signatures or alterations within a certain period of time may waive all claims that you may have against the financial institution regarding these problems.

7. Retention of Records

“Complete records” of all client trust account funds and other property maintained in trust must be kept by the lawyer for a period of five years after termination of the representation under

Rule 1.15(a). Financial records include, but are not limited to, bank statements, time and billing records, checks, check stubs, journals, ledgers, audits, financial statements, tax returns and tax reports. If a computer accounting software package is used for client trust accounting, to guard against the potential loss of such computer-stored data, some experts suggest that you print out a hard copy of the accounting records on a monthly basis. Also, it is suggested that the data is backed up on a regular basis.

VI. Sample Client Trust Account Transactions, Trust Account Trial Balances and Trust Account Reconciliation

West Virginia Rules of Professional Conduct do not specify what type of records must be maintained, but Rule 1.15(a) requires the preservation of “[c]omplete records of such account funds and other property” for “five years after termination of the representation.” The following forms are different examples as a way to maintain records.

A. Sample Client Trust Account Transactions

Julian Dolan is a sole practitioner. On January 31, 2010, the bank statement balance for Dolan’s IOLTA client trust account is \$10,241.66. These funds are identified as follows:

- a. \$10,000 represents escrow money which was deposited into Dolan’s client trust account on January 1, 2010, on behalf of her client Ron Roper.
- b. \$200 represents funds of Julia Dolan which were deposited into the client trust account in order to maintain a minimum balance necessary to avoid bank service charges.
- c. \$41.66 represents the interest credited for the month of January which has yet to be paid by the bank to IOLTA.

The only subsidiary ledger pages with outstanding balances on January 31, 2010, are those for Roper and Dolan. Because this is an IOLTA account, the interest figure (\$41.66) does not appear on the subsidiary ledger.

SUSDSIDIARY LEDGER PAGE CLIENT TRUST ACCOUNT NO. 123-456

Name of Clients: Ron Roper
Legal Matter/Adverse Party: Real Estate Escrow-Hadley
File or Case Number: 10-161

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
01/01/10	Deposit- Escrow			\$10,000		\$10,000

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: Julia Dolan, Attorney at Law
Legal Matter/Adverse Party: None
File or Case Number: None

SERVICE CHARGE SUB ACCTOUNT	TRANSACTION	DEPOSIT	WITHDRAWAL	BALANCE
01/01/10	Minimum balance amount to avoid service charge	\$200		\$200

On February 1, 2010, Joan Smith, a client, gives Dolan a \$1000 retainer.

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: Joan Smith
Legal Matter/Adverse Party: Marital Dissolution
File or Case Number: 10-1057

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/01/10	Retainer-Smith		2398	\$1,000 #50062		\$1,000

**Cash Receipt Journal
Client Trust Account No. 123-456
February 2010**

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/10	Smith – Check # 2398	Joan Smith	50062	\$1,000

OR Trust Account General Ledger
 Client Trust Account No. 123-456
 February 2010

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000

On February 5, 2010, client James Johnson is ordered to endorse his federal and state tax refunds of \$2,000 and deposit them into Dolan's client trust account. The refunds will be distributed upon further order of the court.

SUSIDIARY LEDGER PAGE
 CLIENT TRUST ACCOUNT NO. 123-456

Name of Clients: James Johnson
 Legal Matter/Adverse Party: Dissolution
 File or Case Number: 09-1058

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/05/10	Fed/State Refund			\$2,000		\$2,000

Cash Receipt Journal
 Client Trust Account No. 123-456
 February 2010

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/10	Smith - Check # 2398	Joan Smith	50062	\$1,000
02/05/10	Fed/State Refund	James Johnson	50145	\$2,000

OR Trust Account General Ledger
 Client Trust Account No. 123-456
 February 2010

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000

On February 13, 2010, Dolan receives a settlement check in the amount of \$15,000 from Ace Insurance Company for her client Bill Grey. Dolan prepares a written settlement statement, in accordance with the terms of the written contingent fee agreement and Rule 1.5(c):

**Personal Injury
Settlement Statement
Bill Grey vs. Ace Insurance Co.**

Settlement Amount from Ace Insurance Co.		\$15,000.00
Court Reporter Inc.	\$400.00	\$
Process Server Inc.	\$ 60.00	\$
Dr. Bailey, Expert	<u>\$340.00</u>	\$
Total Expenses		\$ 800.00
Attorney Fees (1/3 gross rec.)		<u>\$ 5,000.00</u>
Amount Due Bill Grey		<u>\$ 9,200.00</u>

On February 20, 2010, Dolan makes the disbursements in accordance with the settlement statement after allowing seven days for the insurance company check to clear.

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: Bill Grey
Legal Matter/Adverse Party: Personal Injury-Ace Ins. Co.
File or Case Number: 05-1002

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/13/10	Settlement from Insurance Co.	Ace Insurance Co.		\$15,000		\$15,000
02/20/10	Payment from Settlement	Court Reporter, Inc.	1005		\$400	\$14,600
02/20/10	Payment from Settlement	Process Server Inc.	1006		\$60	\$14,540
02/20/10	Payment from Settlement	Dr. Bailey	1007		\$340	\$14,200
02/20/10	Payment from Settlement - Client	Bill Grey	1008		\$9,200	\$5,000
02/20/10	Payment from Settlement - Fees	Julia Dolan	1009		\$5,000	\$0

Cash Receipt Journal
Client Trust Account No. 123-456
February 2010

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/10	Smith – Check # 2398	Joan Smith	50062	\$1,000
02/05/10	Fed/State Refund	James Johnson	50145	\$2,000
02/13/10	Ace Insurance Co.	Bill Grey	62001	\$15,000

Cash Disbursements Journal
Client Trust Account No. 123-456
February 2010

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/10	1005	Court Reporter Inc.	Costs	Grey	\$400
02/20/10	1006	Process Server Inc.	Costs	Grey	\$60
02/20/10	1007	Dr. Bailey	Costs	Grey	\$340
02/20/10	1008	Bill Grey	Settlement	Grey	\$9,200
02/20/10	1009	Julia Dolan	Fees	Grey	\$5,000

OR Trust Account General Ledger
Client Trust Account No. 123-456
February 2010

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000
02/13/10	62001/1001	Ace Ins. Co.	Settlement	Grey	\$15,000	\$18,000
02/20/10	1005	Ct. Repr. Inc	Costs	Grey	(\$400)	\$17,600
02/20/10	1006	Pro. Ser. Inc	Costs	Grey	(\$60)	\$17,540
02/20/10	1007	Dr. Bailey	Costs	Grey	(\$340)	\$17,200
02/20/10	1008	Bill Grey	Settlement	Grey	(\$9,200)	\$8,000
02/20/10	1009	Julia Dolan	Atty Fees	Grey	(\$5,000)	\$3,000

On February 21, 2010, the court orders that \$1,500 be paid to Johnson's wife from the escrowed income tax refunds.

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: James Johnson
Legal Matter/Adverse Party: Dissolution
File or Case Number: 09-1058

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/05/10	Fed/State Refund			\$2,000		\$2,000
02/21/10	Court ordered payment	Mrs. James Johnson	1010		\$1,500	\$500

**Cash Disbursements Journal
Client Trust Account No. 123-456
February 2010**

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/10	1005	Court Reporter Inc.	Costs	Grey	\$400
02/20/10	1006	Process Server Inc.	Costs	Grey	\$60
02/20/10	1007	Dr. Bailey	Costs	Grey	\$340
02/20/10	1008	Bill Grey	Settlement	Grey	\$9,200
02/20/10	1009	Julia Dolan	Fecs	Grey	\$5,000
02/21/10	1010	Mrs. J. Johnson	Ct. Order	Johnson	\$1,500

**OR Trust Account General Ledger
Client Trust Account No. 123-456
February 2010**

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000
02/13/10	62001/1001	Ace Ins. Co.	Settlement	Grey	\$15,000	\$18,000
02/20/10	1005	Ct. Repr. Inc	Costs	Grey	(\$400)	\$17,600
02/20/10	1006	Pro. Ser. Inc	Costs	Grey	(\$60)	\$17,540
02/20/10	1007	Dr. Bailey	Costs	Grey	(\$340)	\$17,200
02/20/10	1008	Bill Grey	Settlement	Grey	(\$9,200)	\$8,000
02/20/10	1009	Julia Dolan	Atty Fees	Grey	(\$5,000)	\$3,000
02/21/10	1010	Mrs. J. Johnson	Ct. ordered payment	Johnson	(\$1,500)	\$1,500

On February 28, 2010, Dolan is retained by Sam Spade and paid a \$5,000 retainer.

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: Sam Spade
Legal Matter/Adverse Party: Business Litigation-Olson
File or Case Number: 10-1096

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/28/10	Retainer			\$5,000		\$5,000

**Cash Receipt Journal
Client Trust Account No. 123-456
February 2010**

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/10	Smith – Check # 2398	Joan Smith	50062	\$1,000
02/05/10	Fed/State Refund	James Johnson	50145	\$2,000
02/13/10	Ace Insurance Co.	Bill Grey	62001	\$15,000
02/28/10	Spade Retainer	Sam Spade	64662	\$5,000

**OR Trust Account General Ledger
Client Trust Account No. 123-456
February 2010**

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000
02/13/10	62001/1001	Ace Ins. Co.	Settlement	Grey	\$15,000	\$18,000
02/20/10	1005	Ct. Repr. Inc	Costs	Grey	(\$400)	\$17,600
02/20/10	1006	Pro. Ser. Inc	Costs	Grey	(\$60)	\$17,540
02/20/10	1007	Dr. Bailey	Costs	Grey	(\$340)	\$17,200
02/20/10	1008	Bill Grey	Settlement	Grey	(\$9,200)	\$8,000
02/20/10	1009	Julia Dolan	Atty Fees	Grey	(\$5,000)	\$3,000
02/21/10	1010	Mrs. J. Johnson	Ct. ordered payment	Johnson	(\$1,500)	\$1,500
02/28/10	64662	Julia Dolan	Retainer	Spade	\$5,000	\$6,500

On February 28, 2010, Dolan bills Joan Smith \$250 for court costs paid by Dolan on Smith's behalf during February and issues a client trust account check for that amount made payable to herself.

**SUBSIDIARY LEDGER PAGE
CLIENT TRUST ACCOUNT NO. 123-456**

Name of Clients: Joan Smith
Legal Matter/Adverse Party: Marital Dissolution
File or Case Number: 10-1057

DATE	DESCRIPTION OF TRANSACTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE
02/01/10	Retainer-Smith		2398	\$1,000 #50062		\$1,000
02/28/10	Court costs	Julia Dolan	1011		\$250	\$750

Cash Disbursements Journal
Client Trust Account No. 123-456
February 2010

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/10	1005	Court Reporter Inc.	Costs	Grey	\$400
02/20/10	1006	Process Server Inc.	Costs	Grey	\$60
02/20/10	1007	Dr. Bailey	Costs	Grey	\$340
02/20/10	1008	Bill Grey	Settlement	Grey	\$9,200
02/20/10	1009	Julia Dolan	Fees	Grey	\$5,000
02/21/10	1010	Mrs. J. Johnson	Ct. Order	Johnson	\$1,500
02/28/10	1011	Julia Dolan	Costs	J. Smith	\$250

OR Trust Account General Ledger
Client Trust Account No. 123-456
February 2010

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000
02/13/10	62001/1001	Acc Ins. Co.	Settlement	Grey	\$15,000	\$18,000
02/20/10	1005	Ct. Repr. Inc	Costs	Grey	(\$400)	\$17,600
02/20/10	1006	Pro. Ser. Inc	Costs	Grey	(\$60)	\$17,540
02/20/10	1007	Dr. Bailey	Costs	Grey	(\$340)	\$17,200
02/20/10	1008	Bill Grey	Settlement	Grey	(\$9,200)	\$8,000
02/20/10	1009	Julia Dolan	Atty Fees	Grey	(\$5,000)	\$3,000
02/21/10	1010	Mrs. J. Johnson	Ct. ordered payment	Johnson	(\$1,500)	\$1,500
02/28/10	64662	Julia Dolan	Retainer	Spade	\$5,000	\$6,500
02/28/10	1011	Julia Dolan	Costs	Smith	\$250	\$6,250

B. Sample Monthly Client Bills

February 28, 2010 Bill
Name of Client: Joan Smith
Legal Matter / Adverse Party : Marital Dissolution
File or Case Number : 10-1057

DATE	DESCRIPTION	HOURS	AMOUNT	BALANCE
02-01-10	Retainer received from client			\$1,000
02-28-10	Payment of court costs – check # 1011		\$250	\$750

C. Sample Client Trust Account Total Balance

Before Dolan’s IOLTA client trust account can be reconciled, the checkbook register, the cash balance and the subsidiary ledger pages must balance.

1. Checkbook Register Balance.

On February 1, 2010, Dolan’s checkbook register balance is \$16,450.

CHECKBOOK REGISTER

CHECK	DATE	PAYEE OR DEPOSIT SOURCE	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
	01/31/10	Balance			\$10,200
	02/01/10	Joan Smith		\$1,000	\$11,200
	02/05/10	Johnson Tax Ref		\$2,000	\$13,200
	02/13/10	Ace Ins. Co.		\$15,000	\$28,200
1005	02/20/10	Court Reporter	\$400		\$27,800
1006	02/20/10	Process Server	\$60		\$27,740
1007	02/20/10	Dr. Bailey	\$340		\$27,400
1008	02/20/10	Bill Grey	\$9,200		\$18,200
1009	02/20/10	Julia Dolan	\$5,000		\$13,200
1010	02/21/10	Mrs. Johnson	\$1,500		\$11,700
	02/28/10	Sam Spade		\$5,000	\$16,700
1011	02/28/10	Julia Dolan	\$250		\$16,450

2. Subsidiary Ledger Pages Trial Balance.

Dolan's subsidiary ledger pages trial balance for February is calculated by totaling all of the subsidiary ledger pages that have an outstanding balance on February 28, 2010.

**SUBSIDIARY LEDGER TRIAL BALANCE
PERIOD OF 02/01/10 – 02/28/10
CLIENT TRUST ACCOUNT NO. 123-456**

CLIENT	BALANCE ON 02/28/10
Julia Dolan	\$200
Ron Roper	\$10,000
Joan Smith	\$750
James Johnson	\$500
Sam Spade	\$5,000
Trial Balance Total	\$16,450

3. Cash Balance.

Dolan's cash balance for February is calculated by taking the cash balance from January and adding the total February receipts and subtracting the total February disbursements.

**Cash Receipt Journal
Client Trust Account No. 123-456
February 2010**

DATE	SOURCE	CLIENT	DEPOSIT	AMOUNT
02/01/10	Smith – Check # 2398	Joan Smith	50062	\$1,000
02/05/10	Fed/State Refund	James Johnson	50145	\$2,000
02/13/10	Ace Insurance Co.	Bill Grey	62001	\$15,000
02/28/10	Spade Retainer	Sam Spade	64662	\$5,000
03/01/10		FEBRUARY TOTAL		\$23,000

Cash Disbursements Journal
Client Trust Account No. 123-456
February 2010

DATE	CHECK	PAYEE	PURPOSE	CLIENT	AMOUNT
02/20/10	1005	Court Reporter Inc.	Costs	Grey	\$400
02/20/10	1006	Process Server Inc.	Costs	Grey	\$60
02/20/10	1007	Dr. Bailey	Costs	Grey	\$340
02/20/10	1008	Bill Grey	Settlement	Grey	\$9,200
02/20/10	1009	Julia Dolan	Fees	Grey	\$5,000
02/21/10	1010	Mrs. J. Johnson	Ct. Order	Johnson	\$1,500
02/28/10	1011	Julia Dolan	Costs	J. Smith	\$250
03/01/10			FEBRUARY TOTAL		\$16,750

OR Trust Account General Ledger
Client Trust Account No. 123-456
February 2010

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE
02/01/10	50062/2398	Julia Dolan	Retainer	Smith	\$1,000	\$1,000
02/05/10	50145	Fed/State Refund	Court ordered deposit	Johnson	\$2,000	\$3,000
02/13/10	62001/1001	Ace Ins. Co.	Settlement	Grey	\$15,000	\$18,000
02/20/10	1005	Ct. Repr. Inc	Costs	Grey	(\$400)	\$17,600
02/20/10	1006	Pro. Ser. Inc	Costs	Grey	(\$60)	\$17,540
02/20/10	1007	Dr. Bailey	Costs	Grey	(\$340)	\$17,200
02/20/10	1008	Bill Grey	Settlement	Grey	(\$9,200)	\$8,000
02/20/10	1009	Julia Dolan	Atty Fees	Grey	(\$5,000)	\$3,000
02/21/10	1010	Mrs. J. Johnson	Ct. ordered payment	Johnson	(\$1,500)	\$1,500
02/28/10	64662	Julia Dolan	Retainer	Spade	\$5,000	\$6,500
02/28/10	1011	Julia Dolan	Costs	Smith	\$250	\$6,250

-Using Receipts and Disbursements Method

**CASH BALANCE
PERIOD OF 02//01/10 – 02/28/10
CLIENT TRUST ACCOUNT NO. 123-456**

Cash Balance from January		\$10,200
Plus February Receipts	\$ 23,000	
Minus February Disbursements		<u>\$(16,750)</u>
February Cash Balance	<u>\$ 16,450</u>	

OR

-Using General Ledger Method

**CASH BALANCE
PERIOD OF 02//01/10 – 02/28/10
CLIENT TRUST ACCOUNT NO. 123-456**

Cash Balance from January		\$10,200
Plus February General Ledger	<u>\$ 6,250</u>	
February Cash Balance	<u>\$ 16,450</u>	

4. February Trial Balances.

The checkbook register balance, cash balance, and subsidiary ledger pages trial balance must be identical.

Checkbook Register Balance	\$16,450
Cash Balance	\$16,450
Subsidiary Ledger Pages Trial Balance	\$16,450

D. Sample Monthly Client Trust Account Reconciliation

After the checkbook register, cash balance, and subsidiary ledger pages have been balanced, the February bank statement is reconciled with the February trial balances figure (i.e., \$16,450).

Julia Dolan, IOLTA Trust Account
 124 Practice Avenue
 Charleston, WV 00000-0000

ACCOUNT NUMBER: 123-456

CHECKING ACCOUNT SUMMARY FOR 02/01/10 THROUGH 02/28/10

Continued

<u>OPENING</u> <u>BALANCE</u>	<u>DEPOSITS</u>	<u>WITHDRAWALS</u> <u>INTEREST</u>	<u>SERVICE</u> <u>& CHECKS</u>	<u>CLOSING</u> <u>CHARGE</u>	<u>BALANCE</u>
\$10,241.66	\$18,000.00	\$62.50	\$16,451.66	\$0.00	\$11,852.50

CHECKING ACCOUNT TRANSACTIONS

<u>DEPOSITS</u>	<u>DATE</u>	<u>AMOUNT</u>
50062	02/01/10	\$1,000.00
50145	02/05/10	\$2,000.00
62001	02/13/10	\$15,000.00
Net Interest For February	02/28/10	\$62.50

<u>WITHDRAWALS</u>	<u>DATE</u>	<u>AMOUNT</u>
Net Interest paid to IOLTA for January	02/28/10	\$41.66

<u>CHECKS</u>			<u>BALANCES</u>	
<u>ITEM</u>	<u>DATE</u>	<u>AMOUNT</u>	<u>DATE</u>	<u>BALANCE</u>
1005	02/25/10	\$400.00	02/06/10	\$13,241.66
1006	02/24/10	\$60.00	02/13/10	\$28,241.66
1008*	02/21/10	\$9,200.00	02/26/10	\$12,081.66

1009	02/23/10	\$5,000.00	02/28/20	\$11,852.50
1010	02/26/10	\$1,500.00		
1011	02/28/10	\$250.00		

*Denotes gap in check sequence

The bank statement balance is reconciled with the trial balance figure by adding: (1) any outstanding deposits; and by subtracting: (2) net interest accrued, and any outstanding checks. (Accrued interest is subtracted because it will be paid directly to IOLTA and will thus never be added to the checkbook balance or the journal or ledger pages balance. See discussion at Page 28). In this example, the bank statement and the checkbook register reflect that check number 1007 in the amount of \$340 is outstanding and that the \$5,000 Spade deposit has not yet been credited. There are no monthly service charges and the interest accrued figure is taken from the bank statement.

**MONTHLY RECONCILIATION
PERIOD OF 02/01/10 – 02/28/10**

CLIENT TRUST ACCOUNT NO. 123-456

Checkbook Balance		\$16,450.00
Cash Balance From Journals		\$16,450.00
Subsidiary Ledger Pages Trial Balance		\$16,450.00
Bank Statement		
Balance on 02/28/10	\$11,852.50	
Plus outstanding deposits	\$5,000.00	
Less net interest accrued	\$(62.50)	
Less outstanding checks	\$(340.00)	
Adjusted Bank Statement Balance		\$16,450.00

All of the records discussed above must be kept for a period of five years after termination of the representation. The foregoing sample is used to illustrate the typical daily procedures that should be used to maintain proper client trust account records. Lawyers may consult with a reputable accountant to help them set up an accounting system that they can understand and follow.

E. Sample Trust Account Record Forms

Trust Account Receipt Journal

List all receipts chronologically for all deposits in the trust account and identifies the date and source of each receipt.

TRUST ACCOUNT RECEIPTS JOURNAL

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION: _____

DATE	SOURCE	CLIENT	CASE OR FILE NO.	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

Trust Account General Ledger

List all receipts and disbursements chronologically for all transactions in the trust account and identifies the date and source of each receipt. This one ledger can be used instead of separate receipt and disbursement journals.

TRUST ACCOUNT GENERAL LEDGER

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION: _____

DATE	DEP./CHECK NO.	PAYEE/OR	PURPOSE	CLIENT	AMOUNT	BALANCE

Trust Account Client Ledger Page

A separate page for each client/matter showing chronologically all receipts, disbursements and balances for each client/matter.

TRUST ACCOUNT CLIENT LEDGER PAGE

Name of Client: _____

Legal Matter / Adverse Party : _____

File or Case Number : _____

DATE	TRANSACTION DESCRIPTION	PAYOR/PAYEE	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE

Trust Account Sub Ledger for Service Charges

List all payments for the sole purpose of paying bank service charges and needs to be an amount of what the bank actually charges.

TRUST ACCOUNT SUB LEDGER FOR SERVICE CHARGES

TRUST ACCOUNT NO. _____
ACCOUNT NAME: _____
FINANCIAL INSTITUTION: _____

SERVICE CHARGE SUB ACCOUNT DATE	TRANSACTION	CHECK NO.	DEPOSIT	WITHDRAWAL	BALANCE

Trust Account Checkbook Register

Lists sequentially all trust account deposits and checks, and reflects
a current and accurate daily balance on the trust account.

TRUST ACCOUNT CHECKBOOK REGISTER

TRUST ACCOUNT NO. _____

ACCOUNT NAME: _____

FINANCIAL INSTITUTION: _____

DATE	CHECK #	PAYEE OR DEPOSIT SOURCE	CASE OR FILE NO.	AMOUNT OF CHECK	AMOUNT OF DEPOSIT	TOTAL DAILY BALANCE

Trust Account Monthly Reconciliation Report

(Should be done at least quarterly)

Balance in the Trust Account Journals:
Receipts Journal – Disbursement Journal

Balance in Client Ledger Pages:
Amount of All Client Ledger Pages

Balance in Checkbook Register

- All three balances should be the same and equal to the bank statement (less for outstanding checks & net interest for IOI.TA accounts, plus in-transit deposits)

TRUST ACCOUNT RECONCILIATION REPORT

TRUST ACCOUNT NO. _____

PERIOD OF _____ **to** _____

CLIENT LEDGER BALANCES

Amount

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Client _____ \$ _____

Attorney Funds for Bank Charges, if any \$ _____

Total Client Ledger Balances \$ _____ *

Trust Account Journal Balance \$ _____ *
(Receipts minus Disbursements or General Ledger Amount)

Trust Account Checkbook Balance \$ _____ *

BANK STATEMENT BALANCE \$ _____

Less Outstanding Checks - _____

Less net interest accrued - _____

Plus In-Transit Deposits + _____

Adjusted Bank Statement Balance \$ _____ *

*These amounts must be identical to each other.

Monthly Bill to Client

_____(Date)____ Bill

Name of Client: _____

Legal Matter / Adverse Party : _____

File or Case Number : _____

DATE	DESCRIPTION	HOURS	AMOUNT	BALANCE

Trust Account Record Retention Checklist

TRUST ACCOUNT RECORD RETENTION CHECKLIST

Account Information:

Name of Client Trust Account: _____

Trust Account #: _____

Financial Institution: _____

Type of Account:

IOLTA Account: _____

Non-IOLTA Account: _____

Client: _____

Tax I.D.#: _____

Location of Records: _____

Account Journals

Check Register _____ to _____

Receipts Journal _____ to _____

Disbursements Journal _____ to _____

Client Ledger Journal _____ to _____

Reconciliation Report _____ to _____

Bank Statements _____ to _____

Deposits Slips _____ to _____

Time/Billing Records _____ to _____

Reconciliations _____ to _____

VII. Where to Find Help

- **Informal Ethics Advice** – a telephone call or written request will provide answers to questions about your own conduct. Call the Office of Lawyer Disciplinary Counsel at (304) 558-7999. Can also request a formal opinion.
- **IOLTA Questions** – contact the West Virginia State Bar at 304-553-7220 or IOLTA@wvbar.org. Questions can be forwarded to the IOLTA Advisory Committee if they cannot be answered by the West Virginia State Bar.
- **ABA ETHICSearch** – a research service for information on the ABA Model Rules, Standards and ethics opinions. Call (800) 285-2221 (Option 7) or email the ABA at ethicsearch@americanbar.org with your ABA membership number or otherwise indicate that you are a paid non-member subscriber. Not an ABA Member? Learn more about how non-ABA members can utilize ETHICSearch by joining the ABA or subscribing to the service.

West Virginia Rules of Professional Conduct

Rule 1.15. Safekeeping property.

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account designated as a "client's trust account" in an institution whose accounts are federally insured and maintained in the state where the lawyer's office is situated, or in a separate account elsewhere with the consent of the client or third person. Such separate accounts must comply with State Bar Administrative Rule 10 with regard to overdraft reporting. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.
- (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on the account, but only in an amount necessary for that purpose.
- (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.
- (e) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which interests are not in dispute.
- (f) IOLTA (Interest on Lawyers Trust Accounts). A lawyer who receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds at an eligible financial institution in compliance with State Bar Administrative Rule 10.
- (g) A lawyer may not be charged with any breach of the Rules of Professional Conduct or other ethical violation with regard to the good faith determination of whether client funds are nominal in the amount or are expected to be held for a brief period.

History. Amended by order entered November 29, 1989, effective July 1, 1990; by order entered July 25, 1991, effective September 15, 1991; by order entered December 15, 1993, effective January 1, 1994; by order entered May 5, 1994, effective June 1994; by order entered January 6, 1995, effective January 9, 1995; by order entered December 13, 1995, effective January 1, 1996; by order entered July 10, 1996, effective September 1, 1996, by order entered July 17, 1996, effective September 1, 1996; by order entered and effective October 3, 1996; by order entered November 21, 1997 and effective January 1, 1998; by order entered September 7, 2006; by order entered March 12, 2009, effective April 15, 2009; by order entered June 22, 2010, effective July 1, 2010; by order entered September 29, 2014, effective January 1, 2015.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on the account. Accurate records must be kept regarding which part of the funds are the lawyers.

[3] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represents fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (c) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[5] A lawyer's fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

West Virginia State Bar Administrative Rules

Rule 10 — Client Trust Accounts; IOLTA Program

Rule 10.01 Obligation to Maintain Client Trust Account.

In accordance with Rule 1.15 of the Rules of Professional Conduct, a lawyer or law firm that receives client funds must keep those funds in a separate account. Client trust accounts must conform to the requirements in R.P.C. 1.15 and be maintained at an eligible financial institution as set forth in Rule 10.04.

Rule 10.02 Obligation To Maintain Separate IOLTA Trust Account, Reporting.

In accordance with Rule 1.15(f) of the Rules of Professional Conduct, a lawyer or law firm that receives client funds that are nominal in amount or are expected to be held for a brief period shall establish and maintain a pooled, interest or dividend-bearing account for the deposit of such funds, at an eligible financial institution. The separate IOLTA trust account must comply with this rule and participate in the Interest on Lawyers Trust Accounts (IOLTA) Program administered by the West Virginia State Bar. On a yearly basis, each lawyer must provide an IOLTA report to the West Virginia State Bar, disclosing: (1) whether the lawyer is exempt under Rule 10.07; (2) whether the lawyer is a member of a law firm that maintains an IOLTA trust account; and, if applicable (3) the name of the financial institution, the routing number and the account number of the IOLTA trust account. The West Virginia State Bar is authorized to assess an administrative penalty of two hundred dollars (\$200) to any lawyer who does not comply with the yearly reporting requirement.

Rule 10.03 Determining What Funds to Deposit in an IOLTA Trust Account.

The IOLTA trust account shall include only such client funds that are so nominal in amount or are expected to be held for such a brief period of time such that the funds cannot earn income for the client in excess of the costs of securing that income. The lawyer shall review the account at reasonable intervals to determine whether circumstances warrant further action with respect to the funds of any client. In determining whether a client's funds can earn income in excess of costs, the lawyer or law firm shall consider the following factors:

- (a) the amount of the funds to be deposited;
- (b) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (c) the rates of interest or yield at financial institutions where the funds are to be deposited;
- (d) the cost of establishing and administering non-IOLTA accounts for the client's benefit, including service charges, the costs of the lawyer's services, and the costs of preparing any tax reports required for income accruing to the client's benefit;
- (e) the capability of financial institutions, lawyers or law firms to calculate and pay income to individual clients;
- (f) Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

A lawyer may not be charged with any breach of the Rules of Professional Conduct or other ethical violation with regard to a good faith determination of whether client funds are nominal in amount, are expected to be held for a brief period, or in applying the factors (a) through (f) in this rule.

Rule 10.04 Eligible Financial Institutions.

Lawyers may only establish and maintain a Client Trust Account or an IOLTA Trust Account at an eligible financial institution. To qualify as eligible, the financial institution must:

- (a) be certified by the West Virginia State Bar to be in compliance with this Rule; and
- (b) be a federally-insured and state or federally-regulated financial institution authorized by federal or state law to do business in West Virginia, or an open-end investment company registered with the federal Securities and Exchange Commission and authorized by federal or state law to do business in West Virginia.; and
- (c) agree to provide overdraft notification as provided in Rule 10.08; and
- (d) with respect to IOLTA accounts, offers such accounts within the requirements of Rule 10.04.

Rule 10.05 IOLTA Account Requirements.

Participation by banks, savings and loan associations, and investment companies in the IOLTA program is voluntary. An eligible financial institution that elects to offer and maintain IOLTA accounts shall meet the following requirements:

(a) The eligible financial institution shall pay no less on its IOLTA accounts than the highest interest rate or dividend generally available from the institution to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility qualifications on its non-IOLTA accounts. Interest and dividends shall be calculated in accordance with the eligible institution's standard practices for non-IOLTA customers. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, an eligible institution may consider, in addition to the balance in the IOLTA account, factors customarily considered by the institution when setting interest rates or dividends for its non-IOLTA customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts and that these factors do not include the fact that the account is an IOLTA account. Nothing in this rule shall preclude an eligible institution from paying a higher interest rate or dividend than described above or electing to waive any fees and services charges on an IOLTA account.

(b) An eligible institution may choose to pay the highest interest or dividend rate in Rule 10.05(a), less allowable reasonable fees as set forth in Rule 10.05(d), if any, on an IOLTA account in lieu of establishing it as a higher rate product.

(c) The IOLTA Trust Account shall be an interest or dividend-bearing account. Interest- or dividend-bearing account means: (1) an interest-bearing checking account; (2) a checking account paying preferred interest rates, such as money market or indexed rates; (3) a government interest-bearing checking account such as accounts used for municipal deposits; (4) a business checking account with an automated investment sweep feature which is a daily (overnight) financial institution repurchase agreement or an open-end money market fund; or (5) any other suitable interest or dividend-bearing account offered by the institution to its non-IOLTA customers. A daily financial institution repurchase agreement must be fully collateralized by or invested in Securities and may be established only with an eligible institution that is well capitalized or adequately capitalized as those terms are defined by applicable federal statutes and regulations. An open-end money market fund must be invested in U.S. Government Securities and must hold itself out as a money-market fund as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. United States Government Securities are defined to include debt securities of Government Sponsored Enterprises, such as, but not limited to, debt securities of, or backed by,

the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

(d) Allowable reasonable fees are the only fees and service charges that may be deducted by an eligible institution from interest or dividends earned on an IOLTA account. Allowable reasonable fees are defined as per check charges, per deposit charges, a fee in lieu of minimum balances, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administrative fee. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at the rates and in accordance with the customary practices of the eligible institution for non-IOLTA customers. No fees or service charges shall be collected from the principal balance deposited in an IOLTA account. Any fees and service charges other than allowable reasonable fees shall be the sole responsibility of, and may only be charged to, the lawyer or law firm maintaining the IOLTA account, including bank overdraft fees and fees for check returns for insufficient funds. Fees and service charges in excess of the interest or dividends earned on one IOLTA account for any period shall not be taken from interest or dividends earned on any other IOLTA account or accounts or from the principal of any IOLTA account.

(e) As an alternative to the rates required under Rule 10.05(a), an eligible institution may choose to pay on IOLTA accounts an amount equal to 65% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first calendar day of the month. The amount is net of all allowable reasonable fees under Rule 10.05(d). This initial benchmark rate of 65% of the Federal Funds Target Rate may be adjusted once a year by the West Virginia State Bar, upon 90 days' written notice to financial institutions participating in the IOLTA program at which time financial institutions may elect to pay the new benchmark amount or may choose among the other options at Rule 10.05(a).

(f) The name of the IOLTA trust account shall be in the following format: “(Attorney or Firm Name), IOLTA Trust Account”.

Rule 10.06 Lawyer Instructions to IOLTA Account Institution.

The lawyer shall direct the eligible financial institution as follows with regard to an IOLTA account:

- (a) To remit interest or dividends, on at least a quarterly basis, net of allowable reasonable service charges or fees, if any, to the West Virginia State Bar; and
- (b) To transmit with each remittance to the West Virginia State Bar, a statement in any form and through any manner of transmission approved by the State Bar showing the name of the lawyer or law firm on whose account the remittance is sent and the amount of the remittance attributable to each, the account number for each account, the rate and type of interest or dividend, the amount and type of allowable reasonable service charges or fees; and the average account balance for the reporting period; and
- (c) To transmit to the depositing lawyer or law firm a report in accordance with the institution's normal procedures for reporting to depositors.

Rule 10.07 Exemptions from the IOLTA Program.

An attorney or the law firm with which the attorney is associated may be exempt from the requirement to maintain an IOLTA Trust Account in accordance with this Rule if:

- (a) the nature of the attorney's or law firm's practice is such that the attorney or law firm never receives client funds that would require an IOLTA Trust Account;

(b) the attorney is a full-time judge, government attorney, military attorney, or inactive attorney;
or

(c) the West Virginia State Bar's Board of Governors, having received a petition requesting an exemption, may exempt the attorney or law firm from participation in the program for a period of no more than two years when service charges on the attorney's or law firm's Trust Account equal or exceed any interest generated or when compliance with the Rule would create an undue hardship on the lawyer and would be extremely impractical.

Rule 10.08 Overdraft Notification.

(a) In the event any properly payable instrument is presented against a Client Trust Account or an IOLTA Trust Account containing insufficient funds, irrespective of whether or not the instrument is honored, the eligible financial institution must provide a report to the West Virginia State Bar. Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(b) The eligible financial institution shall file an overdraft notification agreement with the State Bar. The agreement shall apply to all branches of the financial institution and cannot be canceled except upon 30-day notice in writing to the West Virginia State Bar. The West Virginia State Bar shall annually publish a list of financial institutions that have agreed to comply with this Rule and may establish operational guidelines governing amendments to the list of eligible financial institutions.

(c) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors; and

(2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of overdraft created thereby.

(d) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this Rule. Fees charged for the reasonable cost of producing the reports and records required by this Rule are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as defined in Rule 10.05(d).

Rule 10.09 Disposition of IOLTA Funds Whose Owners Cannot Be Located or Cannot Be Identified.

(a) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure holds funds in an IOLTA account for a client or third party, and cannot locate that client or third party after four or more months of reasonable efforts to do so, it shall pay the funds to the West Virginia State Bar, while at the same time notifying the Executive Director, under oath, of the efforts made to locate the owner, whether client or third party.

(b) When an executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or a lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure cannot identify the owner or owners of funds in an IOLTA account, whether client or third party, after four or more months of reasonable efforts to do so, the lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall petition the Supreme Court of Appeals for leave to pay the funds to the West Virginia State Bar, together with a statement, under oath, of the efforts made to identify and locate the owner or owners.

(c) The executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or lawyer, law firm, or trustee appointed under the Rules of Lawyer Disciplinary Procedure shall have a continuing responsibility for returning the funds to the owner or owners. If the owner of such funds remitted to the West Virginia State Bar is identified and located within two years after the funds have been remitted to the West Virginia State Bar, then the lawyer, law firm, or trustee shall notify the West Virginia State Bar IOLTA Advisory Committee; and request, pursuant to procedures adopted by the West Virginia State Bar IOLTA Advisory Committee for that purpose, a refund of the amounts paid. The lawyer, law firm, or trustee shall be responsible for proper distribution of any funds that are refunded.

(d) The procedures in Rule 10.09(a) and (b) shall apply in cases where the amount of the funds is \$500 or more. In cases where the amount of the funds is \$500 or less, the executor, administrator, personal representative, administrator c.t.a, curator of the estate, administrator de bonis, or ancillary administrator, or the lawyer, law firm or trustee appointed under the Rules of Lawyer Disciplinary Procedure, shall remit the funds directly to the West Virginia State Bar.

Rule 10.10 Distribution of IOLTA Funds by the West Virginia State Bar.

All IOLTA funds remitted to the West Virginia State Bar shall be distributed by that entity as follows:

(a) an annual fee not to exceed thirty thousand dollars shall be retained by the West Virginia State Bar, for administration of the fund, with a detailed annual accounting of services performed in consideration for such fee to be filed for public inspection with the Supreme Court of Appeals;

(b) special grants not to exceed fifteen percent of the fund's annual receipts to WV CASA Network, coordinating agency for court-appointed special advocate programs, in the amount of 43.5 percent of special grant funds available; to the West Virginia Fund for Law in the Public Interest, Inc., in the amount of 19.3 percent of special grant funds available; to the Appalachian Center for Law and Public Service, in the amount of 7.72 percent of special grant funds available; to West Virginia Senior Legal Aid, Inc., in the amount of 24.125 percent of special grant funds available; and to ChildLaw Services of Mercer County 5.355 percent of special grant funds available; and

(c) Seventy-five percent (75%) of the remaining funds to Legal Aid of West Virginia and twenty-five percent (25%) of the remaining funds to Mountain State Justice or such other method of distribution as may hereinafter be adopted by order of the Supreme Court of Appeals. Any funds distributed by the West Virginia State Bar pursuant to this subdivision shall not be used by the recipient organization to support any lobbying activities.

Rule 10.11 IOLTA Advisory Committee.

(a) The State Bar Board of Governors shall appoint an IOLTA Advisory Committee ("Committee") to assist in the administration of the IOLTA Program.

(b) The Committee shall meet at least quarterly and shall advise the Board of Governors, the Executive Director, and the Supreme Court on issues related to the administration of the IOLTA Program, including, but not limited to: providing proposed distributions of IOLTA funds to the Board of Governors for approval; the amount of the annual administrative fee; the procedures related to the annual audit; receipts and requests for refunds under Rule 10.09; and other matters as requested by the Board, the Executive Director, or the Supreme Court.

(c) The Committee shall provide an annual summary of its activities to the Board of Governors.

IOLTA Enrollment Forms and Instructions can be found at the West Virginia State Bar Website at www.wvbar.org, under the Attorneys tab, then under the IOLTA tab.

Suggested Sources for Researching Ethics Issues

1. *Annotated Model Rules of Professional Conduct*, 8th Ed. (2015) – an ABA publication available from the ABA Center for Professional Responsibility (www.abanet.org). Consists of the ABA Model Rules, as amended in 2012 and 2013, and legal background notes analyzing case law, opinions, law review articles and legal treatises. Model Rules of Professional Conduct are available for Apple iOS devices like iPad, iPhone and iPod. Download the “rulebook” app from the App Store. You can then locate and purchase both apps under the category of ABA Model Rules.
2. *Restatement of the Law Governing Lawyers*, American Law Institute (ALI) (2000) – two-volume set can be obtained from ALI at www.ali.org.
3. *ABA/BNA, The Lawyer’s Manual on Professional Conduct* (1984) – looseleaf subscription service, consisting of a substantive discussion on the state of the law on professional responsibility, the full text of the ABA Model Codes, recent ABA ethics opinions, digests of ethics opinions issued by state and local bar associations, and recent developments in the field of professional responsibility including opinions, case law and reports of conferences and law reviews. Also available by subscription. (1-800-372-1033 or www.bna.com).
4. Hazard, G. & Hodes, W., *The Law of Lawyering*, 4th Ed. (2014) – looseleaf publication explaining the *ABA Model Rules of Professional Conduct*.
5. AmJur 2d, *Attorneys at Law* (Lawyers Cooperative Publishing).
6. Ethics Opinions issued by the ABA Standing Committee on Ethics and Professional Responsibility, both formal opinions (beginning with 1924) and informal opinions (beginning with 1961), available in bound volumes from the ABA Center on Professional Responsibility.
7. West Virginia Legal Ethics Opinions, 1976-present. Contains questions concerning professional ethics and suggested, advisory answers. Opinions can be obtained from the Office of Lawyer Disciplinary Counsel website at www.wyodc.org and using the link for Legal Ethics Opinions.

8. ABA ETHICSearch – a research service for information on the ABA Model Rules, Standards and ethics opinions. Call (800) 285-2221 (Option 7) or email the ABA at ethicsearch@americanbar.org with your ABA membership number or otherwise indicate that you are a paid non-member subscriber. Not an ABA Member? Learn more about how non-ABA members can utilize ETHICSearch by joining the ABA or subscribing to the service.
9. Informal Ethics Advice – provides general information to help resolve questions arising under the Rules of Professional Conduct. Call (304) 558-7999.
10. National Organization of Bar Counsel www.nobc.org – summaries of lawyer disciplinary cases throughout the country.

Software for Trust Accounting Resources

ABA Tech Center (www.americanbar.org) [ABA Time and Billing Software Chart](#): Not a comprehensive list, but a great resource.

https://www.americanbar.org/content/dam/aba/images/legal_technology_resources/Charts/PracticeCaseManagement_TimeBilling_IntegratedSoftwareChart.pdf

Generic Accounting Programs

e.g., Quicken, Quickbooks and Microsoft Money

Billing and Timekeeping Software

Please note that many timekeeping systems also have mobile apps for iPhone and Android, making it easy to keep up with your accounting when you're on the go. For solos with post office boxes for mail, for example, if you pick up the mail and head straight to the bank with any deposits received, you can record them in the mobile app before deposit.

A big advantage of using timekeeping software as your trust accounting software is that you are going to be sending monthly bills anyway, so it does not require you to have another system in place in order to comply with ethics rules. Also, because the software is specifically designed for lawyers, it is already programmed to track the way you need it to.

ProLaw Software (www.elite.com/prolaw)

LexisNexis (lexisnexis.com/business-of-law/products) PCLaw & Time Matters

Abacus (www.abacusnext.com)

Rocket Matter (www.rocketmatter.com)

Clio (www.clio.com)

Tabs3 (www.tabs3.com)

EasySoft (www.easysoft-usa.com)