

# **Trust Accounts in Iowa**

October 2015

Paul H. Wieck II, Director  
Office of Professional Regulation

## **Authority**

Iowa Rule of Professional Conduct 32:1.15 addresses the duty to safeguard property of clients and third persons. Chapter 45 of the Iowa Court Rules provides substantial detail regarding trust account operations. Notably, chapter 45 addresses proper handling of client advances for fees or expenses, and requires notice to clients when advances are applied to earned fees or expenses. Chapter 45 also lists the specific trust account records that must be maintained for at least six years after termination of any representation.

The outline and presentation slides prepared by the Office of Professional Regulation regarding trust account operations are available at the Client Security Commission web page:

[http://www.iowacourts.gov/For Attorneys/Professional Regulation/Client Security/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/Client_Security/)

## **Establishing an Account**

Need for a Trust Account:

Not every attorney needs a trust account. The key issue is whether you accept funds of the kind that must be placed in a trust account. (See the discussion regarding required trust account deposits under “Operating the Account,” below.) Government attorneys or corporate counsel generally will not need to maintain a trust account. Most private practitioners will need to maintain a trust account. Iowa R. of Prof'l Conduct 32:1.15; Iowa Ct. R. 45.1.

What Kind of Trust Account is Required:

For most client funds, the appropriate account is the pooled, or IOLTA account, in which funds belonging to multiple clients or third parties are pooled in a single account. Interest earned on a pooled trust account (net of allowable service charges for that type of account) is paid by the depository institution to the Lawyer Trust Account Commission (LTAC). LTAC distributes grants annually as approved by the Iowa

Supreme Court for legal services for low-income persons and law-related education. Iowa Ct. R. 45.4(1).

Court rules also authorize use of a separate interest-bearing account for an individual client or third party. When a separate interest-bearing account is used for an individual client or third party, the interest earned on the account (net of account costs) is payable to the client or third party for whom the account was established. Iowa Ct. R. 45.4(2)(a).

Court rules also authorize establishing a pooled trust account with subaccounting, wherein the interest owed to each individual client is computed and paid, net of pro rata account costs, to the individual client. These accounts seldom are used due to the administrative overhead associated with interest computation and the generally insignificant amount of interest actually payable to any particular client after deduction of costs. Iowa Ct. R. 45.4(2)(b).

In determining whether to deposit client or third-party funds into an IOLTA account or a separate account for the individual client, the attorney must assess whether the funds to be invested could produce a positive net return for the client. The attorney should consider the following factors:

The amount of the funds to be deposited;

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

The rates of interest or yield at the financial institution in which the funds are to be deposited;

The cost of establishing and administering the account, including service charges, and the cost of preparing any tax reports required for interest accruing to a client's benefit;

The depository institution's ability to calculate and pay interest to individual clients;

Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

Iowa Ct. R. 45.4(3).

**Tip:** This is not a one-time analysis. Every client balance in a pooled trust account should be considered in light of these factors on a recurring basis. An excellent time to consider this issue is

incident to the monthly reconciliation of client balances with the trust account checkbook and bank statement.

#### What Institutions May Serve as Trust Account Depositories:

A bank, savings bank, trust company, savings and loan association, credit union, or federally regulated investment company may serve as a depository institution, provided the institution is authorized to do business in Iowa and is FDIC/NCUSIF insured.

**Tip:** Trust monies may be deposited at credit unions only to the extent that each individual client's funds are eligible for insurance. Iowa Ct. R. 45.3. This provision is a holdover from 2014 and years prior, when a trust account deposit for a client at a credit union was only insured if the client was personally eligible to be a patron of the credit union. The Credit Union Share Insurance Fund Parity Act, signed by President Obama on December 18, 2014, now provides that funds in a law firm trust account are covered by share insurance so long as the attorney administering the account is a member of the credit union where the account is held.

Other factors the attorney should consider when selecting a depository institution:

- Amount of deposit insurance available and likely client balances
- Institutional stability
- Convenience
- Bank interest rate and fees
- Return of cancelled checks or facsimiles thereof

#### Location of the Account:

Although the ABA model rule allows maintenance of a trust account in the state where the attorney's office is situated, or elsewhere with the consent of the client or third person involved, this language is omitted from the Iowa rule. In contrast, Iowa Court Rules 45.1 and 45.3 require placement of trust accounts in Iowa financial institutions for all matters arising out of the practice of law in Iowa.

**Tip:** Attorneys practicing in Iowa from offices outside the state generally meet this requirement by opening their Iowa trust account at an Iowa branch of a multistate bank, and then performing their day to day banking operations at a branch location of that multistate bank located near their office.

## Deposit Insurance:

So long as a trust account at a bank is properly titled (“trust account”) and the attorney maintains current records regarding the interest of each client (subaccount ledger cards), deposit insurance limits will be applied per client. If a trust account is located at a credit union, the foregoing requirements must be met, plus the attorney administering the account must be a member of the credit union, to qualify for deposit insurance.

The standard insurance amount is \$250,000 per depositor. You likely will encounter the situation of client deposits exceeding the FDIC insurance limits. The key considerations are first, that you owe your clients a high duty of care as a fiduciary, but you are not an insurer or guarantor. Second, it is acceptable to discuss the deposit insurance issue with your clients and let them help formulate a strategy.

**Tip:** With the foregoing considerations in mind, here are some recommendations:

1. Choose a strong bank to do business with. It is a good idea to monitor the bank watch lists to ensure your bank is not on the list, for example.

2. For deposits that will be on deposit for an extended period of time, you will want to split the funds over two or more banks to get coverage for the amount in its entirety. It is likely that the client would be entitled to the interest in this situation, under the provisions of Iowa Court Rule 45.4(3)(accounts generating positive net earnings).

3. If a deposit is not going to be on deposit long enough to make splitting it up over several banks practical, get the money in and out as soon as possible. Speed is your ally, in this situation. Verified electronic or wire deposits and transmittals are best for this purpose.

4. If you routinely have deposits in excess of the insurance limit, you might consult with your banker regarding commercial deposit insurance. This is an expense that could be passed along to the clients, so long as you disclose it to your clients and address it in your fee or engagement agreement.

5. Some clients will have their own deposits at the same bank where your trust account is located. It is imperative that you

discuss deposit insurance with them to ascertain if their personal deposits will affect coverage for what you have in the trust account.

#### Nature of the Account to be Established:

The account agreement must allow withdrawals and transfers without delay whenever the deposited funds are required, subject only to any notice period the institution is required to impose by law or regulation. In practice, this means a checking account or the functional equivalent thereof. Iowa Ct. R. 45.3.

A trust account must include in the title of the account the words "Trust Account." Iowa Ct. R. 45.1. This account identification is required to ensure coverage for each client's monies under federal deposit insurance rules.

#### Bank Duties With Respect to IOLTA Accounts:

The attorney is responsible for directing the institution to perform the interest payment and reporting tasks required of IOLTA depositories no less often than quarterly. These tasks include remitting interest or dividends earned on the account, net of allowable service charges, to LTAC, along with a copy of the account statement. Iowa Ct. R. 45.4(4). If the allowable monthly service charge exceeds the IOLTA interest payable and the institution does not waive the excess, the law firm is responsible for paying the excess service charge. Charges associated with law firm activities with the account such as wire transfer fees or check printing charges may not be netted against IOLTA interest, and are a law firm responsibility also. Iowa Ct. R. 45.5. LTAC asks that depository institutions also prepare and send a summary report form with the statement. Copies of the report form and an instruction document for new IOLTA depository institutions are included in the forms portion of this outline.

Iowa Court Rule 45.4(4) allows a depository institution to collect an "allowable monthly service charge" from the interest earned on a pooled trust account. For purposes of chapter 45 of the Iowa Court Rules, "allowable monthly service charge" is defined as a monthly fee "customarily assessed by the institution against a depositor solely for the privilege of maintaining the type of account involved." Approximately two-thirds of the banks and credit unions serving as depositories for trust accounts in Iowa do not assess a service charge on these accounts. Of those institutions that do assess a service charge, most simply assess a small flat monthly fee, which is considered permissible under the rule.

Recently, a few institutions have begun assessing an “activity-based” service charge, computed on the basis of account activity such as credit and debit transactions. These activity-based charges sometimes are assessed in addition to a flat minimum monthly service charge. Iowa Court Rule 45.5 provides that charges assessed for transactions involving the account are a attorney or law firm responsibility, and may not be paid from interest or dividends otherwise payable to LTAC. Based on this rule, the LTAC policy is that these activity-based charges may not be collected from interest due LTAC under the IOLTA (Interest on Lawyer Trust Account) program. If an institution chooses to assess these activity-based charges, and the attorney or law firm continues to house the trust account at that institution, the attorney or law firm is responsible for paying the activity-based charges.

The federal tax identification number for LTAC is 42-1245104. This number must be used in connection with any IOLTA trust account established pursuant to Iowa Court Rule 45.4(1).

#### Overdraft Notification Program:

With respect to any account established under Iowa Court Rule 45.4(1), the attorney is required to direct the depository institution to report to the Client Security Commission any time an overdraft condition exists with respect to a trust account. This rule is modeled after a similar provision adopted in Minnesota in 1990. Most states have adopted a similar provision requiring that banks immediately notify the attorney and the state disciplinary office whenever an overdraft occurs in a trust account. The experience in those states that have adopted such a rule is that early intervention following reporting of an overdraft helps prevent additional losses to clients that would occur absent a timely inquiry by the disciplinary authority. Iowa Ct. R. 45.4(c).

#### More than One Trust Account:

An attorney or law firm may maintain more than one trust account. However, because a single IOLTA trust account can hold funds for multiple clients, most attorneys only need to maintain one IOLTA trust account. Multiple accounts create additional record-keeping overhead and increase the chance that mistakes will be made depositing and disbursing funds. Multiple trust accounts most often are used where circumstances dictate opening a trust account for an individual client under the provisions of Iowa Court Rule 45.4(2)(a) in addition to the IOLTA trust account normally maintained by the attorney or firm.

## Signature Authority on Trust Accounts:

Only an attorney admitted to practice in Iowa or a person under the direct supervision of an attorney may be an authorized signatory on a trust account. Iowa Ct. R. 45.2(3)(b). The Client Security Commission recommends that attorneys carefully evaluate whether non-attorney staff members should be authorized to sign checks or authorize transfers. The responsibility and accountability for client funds is non-delegable, and the attorney will be personally responsible for any staff defalcation.

**Tip:** If signature or transfer authority is delegated to non-attorney staff, the Client Security Commission recommends procuring employee dishonesty insurance coverage.

## Provision for Stand-by Signature Authority:

Iowa Court Rule 45.11 allows a sole attorney signatory to designate another Iowa attorney as a stand-by signatory on his or her trust account, with that authority to become effective upon the occurrence of an event or events described in the instrument, which might include death, disappearance, abandonment of law practice, temporary or permanent incapacity, suspension, or disbarment. The new rule facilitates planning by sole practitioners for administration of their law practice in the event of their death or disability.

**Tip:** Planning for death or disability is required on the part of most sole practitioners, based on comment 5 to Iowa Rule of Professional Conduct 32:1.3. An outline on planning, with sample forms, is available at the Client Security Commission web page:

<http://www.iowacourts.gov/For Attorneys/Professional Regulation/Client Security/>

## **Operating an Account**

### Principles of Trust Account Operations:

Do not Commingle Your Own Funds in the Trust Account, except for the limited exception provided by Iowa Rule of Professional Conduct 32:1.15(b) and Iowa Court Rule 45.1(1)

Each Client's Funds in a Pooled Account Must Be Treated as a Separate Subaccount

A Client Can Only Spend His or Her Subaccount Monies

A Client Subaccount Never Should Show a Negative Balance

Only Make Disbursements from Known Good Funds

You Must Account to the Penny at All Times

The End Result for Any Client Subaccount Must be Zero

An Audit Trail is Essential

What Funds Must Be Deposited in the Trust Account:

All funds of clients, regardless of size, paid to an attorney or law firm, including advances for costs and expenses and excluding only “general retainers” (a defined term), must be deposited in an interest-bearing trust account located in Iowa. Iowa R. Prof'l Conduct 32:1.15(a); Iowa Ct. R. 45.7(3), 45.9(1) and 45.10(2). The decision on where to place funds is based on ownership at the time the funds are received—not how quickly ownership will change from client to the attorney. Common examples:

Any advance fee or retainer except a “general retainer.” Iowa Ct. R. 45.7(7)(3)(advance fees and expenses), 45.9(1)(special retainers), and 45.10(2)(flat fees); *Board of Professional Ethics and Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998)

Advances from the client for costs and expenses

Settlement proceeds that include a portion that is the attorney's fee

Real estate loan proceeds prior to closing and disbursement

Funds from the sale of property belonging to the client

Funds and Property of Third Parties:

The rules make clear that the obligation to safeguard and account extends to the property of third persons that comes into the attorney's possession in the course of practice, in addition to client property. Iowa R. of Prof'l Conduct 32:1.15(a); Iowa Ct. R. 45.1.

Requirement to Inform Client or Third Party Regarding Effect of Deposit in IOLTA Trust Account:

If the funds of a client or third person are deposited in a pooled account established under the provisions of Iowa Court Rule 45.4(1), the



attorney must inform the client or third person that interest accruing on the account, net of allowable monthly service charges, will be paid LTAC under the IOLTA program described in chapter 45 of the Iowa Court Rules. Iowa Ct. R. 45.4(1). The rule does not require that this be done in writing.

**Tip:** Your law firm operating procedures should include this notice as a matter of course any time you accept monies from anyone—client or third party—that will be placed in your IOLTA account. Possible places you might put a written notice include your law firm brochure; your written fee agreements; and the receipt or acknowledgement you give a client when you accept monies for deposit in the trust account. At a minimum, you probably will want to make it standard operating procedure to advise the clients verbally regarding the IOLTA program whenever you accept these kinds of funds.

#### What Funds May NOT Be Deposited in the Trust Account:

No funds belonging to the attorney or the law firm may be deposited in the trust account. Common examples of funds that should not be placed in the trust account include:

Fees already billed for and earned

Funds an attorney holds that are not related to the practice of law (e.g., the monies belonging to the county bar association for which the attorney is treasurer)

Exception: Funds reasonably sufficient to avoid or pay service charges may be deposited in the trust account. Iowa Ct. R. 45.1(1). Where a minimum balance requirement exists for the account, it is permissible to deposit funds sufficient to maintain the minimum balance. A separate subaccount ledger should be maintained for such deposits.

Exception: Funds belonging in part to a client and in part to the attorney or law firm (presently or potentially) must be deposited in the trust account. This rule applies even if the funds will be disbursed to the parties entitled thereto on the same day they are received. However, the attorney or law firm's portion must be withdrawn promptly when due, unless entitlement to that portion is disputed by the client. Disputed portions must remain in trust until the dispute is resolved. Iowa Ct. R. 45.1(2).

#### What Payments or Disbursements May be Made from the Trust Account:

No payments for personal or office expenses of the attorney should be

made from a trust account. If some portion of the money in a trust account belongs to the attorney because it is his or her earned fee, the attorney should write a check on the trust account payable to the attorney, deposit it in the attorney's business account and pay his or her expenses from the business account.

Fees may and should be withdrawn as soon as they are earned and undisputed. An accounting to the client for the fees deemed earned should be provided the client no later than contemporaneously with the withdrawal for such fees or expenses. Iowa Ct. R. 45.7(4).

Costs or expenses incident to services performed may be paid based on agreement with the client. An accounting to the client for costs and expenses paid from the client's subaccount should be provided the client no later than contemporaneously with the withdrawal for such expenses. Iowa Ct. R. 45.7(4).

Disbursements requisite to closing of a real estate transaction or settlement of an injury claim may be made from the client subaccount. An accounting to the client for all the disbursements should be provided to and approved by the client incident to the disbursements.

If two or more parties dispute entitlement to funds held by a attorney in trust, the attorney should retain those funds in trust until such time as the dispute is resolved. Iowa R. of Prof'l Conduct 32:1.15(e). The disputed funds should be placed in an account that will bear interest for the benefit of the parties if the considerations of Iowa Court Rule 45.4(3) indicate the funds could generate positive net earnings for the party or parties ultimately found entitled to the funds.

#### When Disbursements May be Made Based on a Deposit:

Every deposit to a trust account must be allowed to clear through the banking process before disbursement is made based on that deposit. If this procedure is not observed, the likely eventual result will be wrongful disbursement of other clients' funds when a check or draft deposited to the trust account is dishonored.

Cash deposits and verified electronic transfers are reliable enough to support same day disbursement. Bank certified checks are reliable enough to support same day disbursement provided authenticity of the check is known to the attorney or verified with the issuing bank. If authenticity is not known to the attorney, verification should be sought from the issuing bank. (See the discussion under the heading "Schemes Intended to Divert Trust Account Balances," below, regarding the risk of counterfeit certified checks.)

Cashier's checks and personal checks should be allowed to clear completely through the issuing institution. Your own bank institution can provide guidance regarding normal clearance times and can verify clearance of individual instruments at the issuing bank.

If a same-day closing or settlement is desired, the best solution generally will be to require that the deposit to your trust account be made by wire transfer or bank certified check.

#### Form of Disbursements:

Disbursements from a trust account must be made by check or by authorized bank transfer. Iowa Ct. R. 45.2(3)(b)(3). Any check drawn on the trust account must be payable to a named payee, and never to cash. Cash withdrawals from a trust account are not permitted. An authorized bank transfer contemplates the common forms of electronic banking transactions, including an authorized wire transfer, electronic fund transfer, or debit transaction.

#### Handling Retainers and Advances for Fees and Expenses:

In *Board of Professional Ethics and Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998) the Iowa Supreme Court ruled that all advance fee payments must be placed in the client trust account until earned. The court also characterized so-called flat fees and special retainers as advance fees, and stated that they also must be placed and held in trust until earned. The court distinguished a true general retainer, in which the consideration is paid in exchange for a commitment of future availability to provide services, as earned at the time it is paid.

The *Apland* requirements regarding handling of advance fees, general retainers, special retainers, and flat fees now are specifically set out in Iowa Court Rules 45.7 through 45.10. The requirement for trust account deposit specifically applies to advances for expenses as well as any kind of advance fee. Iowa Ct. R. 45.7(2).

When an attorney withdraws funds from the trust account to pay earned fees or expenses, the client must be provided written notice of the time, amount, and purpose of the withdrawal, along with a complete accounting. This notice and accounting must be transmitted no later than the date the withdrawal is made. Iowa Ct. R. 45.7(4).

**Tip:** It appears these rules dictate that fees and expenses be handled one of two ways. The first, and most cumbersome way, is to place the funds in your trust account, open a client subaccount

ledger card, pay the fee or expense by check or debit drawn on the trust account, and then send the client a notice and accounting not later than the day you make the deduction for fees or expenses. The second, and less cumbersome way, is to place the funds in your trust account, open a client subaccount ledger card, pay the fee or expense from the law firm business account or by law firm credit card on behalf of the client, and then include the fees and expenses owed by the client in your periodic billing cycle, with your statement showing the amounts owed for fees and advanced expenses, and the amount you intend to deduct from the client's trust account balance.

#### What You Must Not Do:

You must not deposit advances for unearned fees or advances for expenses in your business account.

You must not pay anything from a client's monies in your trust account until you provide notice and accounting for the deduction or payment.

#### Flat Fees

A flat fee "embraces all services that a attorney is to perform, whether the work is relatively simple or complex." Iowa Ct. R. 45.10(1). If a flat fee is paid prior to performance of the services, it must be deposited in the trust account. Iowa Ct. R. 45.10(2). Contracts providing for nonrefundable flat fees are unethical and void. *Board of Prof. Ethics and Conduct v. Frerichs*, 671 N.W.2d 470, 475 (Iowa 2003).

Absent an agreement with the client to the contrary, an attorney is entitled to the flat fee when the contemplated services have been completed. However, the attorney and client may agree regarding when and how much of the flat fee will be earned and may be withdrawn as the work progresses to completion. The agreement must reasonably protect the client's right to a refund of the unearned portion of the flat fee in the event the client engages new counsel or the attorney fails to complete the work. Iowa Ct. R. 45.10(3). Any withdrawal of a portion of the flat fee from the trust account requires notice and accounting to the client under rule 45.7.

#### Conflicting Claims to Funds in Trust:

If an attorney has possession of funds or other property to which there are conflicting claims, the property should be separately maintained until the dispute is resolved. Iowa R. of Prof'l Conduct 32:1.15(e). This

may include third party claims against client funds in the trust account. If the third party claims are not frivolous, the attorney must refuse to surrender the property to the client until the claims are resolved. Iowa R. of Prof'l Conduct 32:1.15, comment [5].

#### What Books and Records Must be Maintained:

Every attorney engaged in private practice of law must maintain books and records sufficient to demonstrate compliance with Iowa Rule of Professional Conduct 32:1.15(a). Books and records relating to funds or property of clients are to be maintained for at least six years after termination of the representation to which they relate. Iowa Ct. R. 45.2(3). A certification regarding this responsibility is included in the annual report filed with the Client Security Commission each year. Iowa Ct. R. 45.6. Upon dissolution of a firm or practice or sale of a firm or practice, arrangements must be made for maintenance of the books and records for the required six year period. Iowa Ct. R. 45.2(3)(d), (e).

#### Implementation of the Record Keeping Duty:

Effective February 20, 2012, Iowa Court Rule 45.2 was amended to describe in detail the financial records an attorney must maintain for a client trust account. Records required by the rule may be maintained by electronic, photographic, computer, or other media, so long as they otherwise comply with the rules and printed copies can be produced. Iowa Ct. R 45.2(3)(c).

For each account maintained, records should identify the name of the depository, account number, account name, and date the account was opened. The records should also show the type of each such account, whether pooled with net interest paid to the Lawyers Trust Account Commission (IOLTA account), pooled with allocation of interest, or individual, including the client name. In addition to this basic record for each account, the following records must be maintained:

Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

Ledger records for all trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

Copies of retainer and compensation agreements with clients as required by Iowa R. of Prof'l Conduct 32:1.5;

Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

Copies of bills for legal fees and expenses rendered to clients;

Copies of records showing disbursements on behalf of clients;

The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;

Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient, and the trust account name or number from which money is withdrawn;

Copies of monthly trial balances and monthly reconciliations of the client trust accounts maintained by the attorney, and

Copies of those portions of client files that are reasonably related to client trust account transactions.

A record showing all property, specifically identified, other than cash, held in trust from time to time for clients or others. Routine files, documents and items such as real estate abstracts that are not expected to be held indefinitely need not be so recorded but should be documented in the files of the attorney as to receipt and delivery. A suggested form for recording property held in trust is included in the forms portion of this outline.

#### Monthly Reconciliations Required:

Monthly reconciliations of the main trust account ledger, client subaccount ledgers, and adjusted bank statement, the so-called "three-way reconciliation," are required by rule 45.2(3)(a)(9). The Client Security Commission's experience is that failure to perform trial balances and reconciliations of client subaccounts on a monthly basis is a key contributor to loss of accountability for client monies.

**Tip:** A monthly statement from your bank is a vital part of the reconciliation process. If your bank normally provides statements on a quarterly basis instead of monthly, you will need to make

arrangements to receive monthly statements or access monthly statement information electronically.

#### Use of Computer Accounting Systems:

Attorneys or law firms may use computer systems to maintain trust account records. A number of functional software programs are available for this purpose. For an example of guidelines for use of a general accounting software program, and information regarding just a few of the many trust-account specific software modules available, see the following web pages:

[http://lprb.mncourts.gov/LawyerResources/TADocuments/Maintaining Trust Accounts Using Quicken \(2006\).pdf](http://lprb.mncourts.gov/LawyerResources/TADocuments/MaintainingTrustAccountsUsingQuicken(2006).pdf)

<http://law.lexisnexis.com/back-office-pclaw>

<http://www.easysoft-usa.com>

<http://www.abacuslaw.com/products/abacuslaw/trust-accounting>

<http://www.tabs3.com>

<http://www.lawyertrustaccount.com>

<http://www.esilaw.com>

An attorney who maintains trust account records by computer should print and retain, on a monthly basis, the checkbook register, the balances of the subaccount ledgers, and the reconciliation report. Electronic records should be regularly backed up by an appropriate storage device. The frequency of the back-up procedure should be directly related to the volume of activity in the trust account.

#### Accounting to the Client:

The attorney must render appropriate accounts to the client regarding all funds, securities and other properties of a client coming into the possession of the attorney. Iowa Ct. R. 45.2(2). Prompt payment or delivery must be made to the client of all such items the client is entitled to when the client so requests. Iowa Ct. R. 45.2(2).

Simply stated: When clients ask you how much money you're holding for them or what you've done with the money while you've had it, you must tell them. You must advise the client every time something is added to the

client's subaccount, and every time something is taken from the client subaccount.

#### Client Payments by Credit Card:

Three key issues must be addressed if you want to accept credit card payments of retainers or billed fees. First, you must address the surcharge imposed by the credit card company. Ordinarily, your credit card merchant agreement will prohibit assessing the surcharge to the client, so the law firm will have to pay the surcharge. The authority provided by Iowa Court Rule 45.1(1) may be used to establish a law firm subaccount with a small, periodically refreshed balance, within the trust account, to pay the service charges associated with retainers paid by credit card. A better alternative, if the credit card issuer is willing, is to assess the service charges against the law firm's general business account.

Second, you must be careful not to make disbursements based on a credit card deposit in your trust account until there is no possibility the charges can be reversed. Normally there is an initial delay until the bank actually credits a credit card payment to the trust account, and there is a further period during which the client may object and reverse the charge on the card. You should ascertain from the credit card issuer how quickly it actually credits such deposits, and when these deposits become ineligible for charge back by the credit card holder. Once again, you may be able to arrange with your credit card issuer for charge-backs to be made against your firm operating account rather than your trust account.

Third, if you will be accepting credit card payments of both retainers and earned fees, and you only want to set up one account to accept the credit card payments, you should set up your trust account to accept the credit card payments, rather than your operating account. Put all credit card payments in your trust account, and keep the retainers there until earned and the contingencies have passed. Keep the earned fee payments there until the contingencies have passed, and then transfer them over to your business account for disbursement.

At least one credit card issuer now offers attorneys a product that assesses all service charges and charge-backs against the law firm business account, but allows the attorney to direct each credit card payment to the trust account or the business account, as appropriate, depending on the nature of the receipt. This type of product appears to best address the issues associated with acceptance of payments by credit card.



## How to Handle Electronic Payment of Fees:

With the advent of electronic filing of pleadings in cases, electronic payment of filing fees now is possible, and in fact is required in some courts. Electronic transfers from (and to) trust accounts are permitted by Iowa Court Rule 45.2(3)(b)(3), but proper handling of electronic fee payments on behalf of clients requires observance of several rules pertaining to trust accounts:

Client advances for expenses, including filing fees, must be deposited in a trust account, and withdrawn only as the expenses are incurred. Iowa R. Prof. Conduct 32:1.15(c), Iowa Ct. R. 45.7(3).

The engagement agreement with the client must provide authority to pay the filing fee from the funds advanced and placed in the trust account. Iowa R. Prof. Conduct 32:1.5(b).

When an expense is paid from the trust account, the attorney must provide notice and an accounting to the client no later than the day the withdrawal is made. Iowa Ct. R. 45.7(4).

The attorney must keep a record of every electronic transfer from the trust account, showing the date, amount, trust account name or account number, the name of the recipient, and the name of the person authorizing the transfer. Iowa Ct. R. 45.2(3)(a)(8).

**Tip:** One key consideration is whether the attorney wants to provide a notice and accounting under Iowa Court Rule 45.7(4) each time an expense is paid, or on a periodic, consolidated basis, such as during a monthly billing process. A second key consideration is whether the attorney wants to pay filing fees directly from the trust account, or would rather advance fees on behalf of the client (subject to reimbursement) as allowed by Iowa Rule of Professional Conduct 32:1.8(e)(1). A third key consideration is what form of electronic payment the attorney is willing and able to use, and what form of payment the court will accept. The possibilities generally include a credit card, a debit card, a prefunded “pay down” card, or E\*check. With these considerations in mind, the rules appear to dictate one of the following two general approaches:

**Direct Debit of Trust Account:** The first approach is to place the advance for fees in your trust account, open a client subaccount ledger card, and make appropriate entries on the main trust account ledger and the client subaccount ledger. The filing fee then may be paid by debit card transaction or E\*check drawn on the trust account. The attorney will need to procure or create a record

of the debit deduction from the trust account, and will need to send the client a notice and accounting regarding the payment no later than the date of the debit transaction. The deduction also would need to be recorded on the main trust account ledger and the client's subaccount ledger.

**Advance of Fee with Reimbursement from Trust Account:** The second approach is to place the advance for fees in your trust account, open a client subaccount ledger card, and make appropriate entries on the main trust account ledger and the client subaccount ledger. The filing fee may be paid using a law firm credit card, prefunded "pay down" card, or a debit card transaction or E\*check drawn on the law firm business or operating account. The advance of the filing fee then may be included in your periodic billing cycle, with your statement showing the amounts owed for fees and advanced expenses, and the amount you intend to deduct from the client's trust account balance. Once the periodic statement and accounting has been provided the client, the law firm may withdraw the amount of the advanced filing fee from the trust account. The withdrawal might be performed by ACH transfer from the trust account to the business or operating account, or by trust account check payable to the business or operating account. The withdrawal also could be performed by trust account check direct to the credit card company, if the credit card is used only for advanced expenses. The deduction also would need to be recorded on the main trust account ledger and the client's subaccount ledger.

**What Should be Done with Funds Owed a Client Who No Longer Can be Located? ("Stale Funds Procedure"):**

A attorney or law firm must exercise due diligence to locate and communicate with the client or clients to whom stale or excess funds might rightfully belong. What constitutes reasonable due diligence will vary depending on the amount of the funds involved. Reasonable efforts might include, for example, corresponding with possible owners by mail, searching for possible owner addresses through the Social Security Administration if you have a Social Security Number for them, or employing one of the firms that conducts searches for heirs.

If it is impossible to make proper disposition of the monies to the client using the steps outlined above, then the monies should be considered potentially subject to the provisions of Iowa Code section 556.7. If the time period specified in section 556.7 has not passed, the monies may be deposited in a separate, interest-bearing account under the provisions of Iowa Court Rule 45.4(2)(a). If the time period specified in section 556.7 has passed, or when the time period specified in section

556.7 does pass, the attorney or firm then may follow the procedures specified in Iowa Code sections 556.11 and 556.13, regarding notice and tender of the monies to the Treasurer of the State of Iowa.

### **Closing an Account**

#### Moving Your Trust Account to a New Depository Institution:

An attorney is not required to notify anyone before transferring a trust account to a new depository institution. However, care should be taken to ensure that all outstanding checks on the existing trust account are accounted for, and that interest owed the Lawyer Trust Account Commission will be properly disbursed by the institution. Moving a trust account likely will result in a change in information previously reported to the Client Security Commission, and will warrant an interim report to the commission within thirty days after the change.

#### Closing the Trust Account:

Once again, an attorney is not required to notify anyone before closing a trust and leaving practice. However, here also care should be taken to ensure that all outstanding checks on the trust account are accounted for, and that interest owed LTAC will be properly disbursed by the institution. All monies owed clients must be returned to the clients entitled thereto so that no remaining client monies exist in the trust account. If a particular client cannot be found, it may be necessary to complete the “stale funds” procedure before closing the account. Closing a trust account likely will result in a change in information previously reported to the Client Security Commission, and will warrant an interim report to the commission within thirty days after the change. Records for the account must be retained for a minimum of six years, even if the law firm is sold or dissolved. Iowa Ct. R. 45.2(3(d), (e).

### **Audit Program, Client Security Commission**

The director of the Office of Professional Regulation is responsible for conducting audits and investigations of attorneys’ accounts and office procedures to determine compliance with Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules. Iowa Ct. R. 39.2(3)(c). Attorneys are required to cooperate fully with these audits and investigations as a continuing condition of their license to practice. Iowa Ct. R. 39.10, 39.12.

The director is assisted in the performance of audits and investigations by part-time trust account auditors. The general goal of the

Client Security Commission is to conduct an unannounced periodic audit of each trust account in Iowa no less than every three to four years. Special audits or investigations are conducted on an as-needed basis. Possible causes for special audits include claims against the Client Security Trust Fund, unexplained overdrafts of trust accounts, and some types of ethics complaints.

### **Best Practices for Trust Account Security and Online Banking**

In recent years, would-be thieves have identified trust accounts as potentially lucrative targets. The schemes used to target trust accounts have become more sophisticated as electronic banking and international transactions have become more common. Common schemes include the following:

**Counterfeit Checks:** The number of counterfeit or fraudulent checks presented to Iowa attorneys has increased. The common theme in these schemes is inducing you to deposit the counterfeit check in your trust account and make an immediate disbursement of a portion of the deposit back to the thief, before the counterfeit check is returned by your bank. Clearance times, particularly for checks drawn on foreign banks, are quite long. Some confidence artists provide an initial check drawn on a foreign (often Canadian) bank, and then follow up with another, more substantial check drawn on the same bank when the first check *appears* to have been honored due to the long clearance times on checks drawn on foreign banks. Soon after the second check has been deposited, the client's circumstances change and they demand that the bulk of the second check be wired back to them expeditiously. Attorneys should be cautious regarding checks drawn on out-of-state or foreign banks, including certified checks and cashier's checks drawn on such institutions.

**Counterfeit Checks Drawn on An Out-of-State Law Firm Trust Account:** An alternate scheme is to tender a check that appears to be drawn on the trust account of a attorney in another state, but actually is counterfeit, and request your assistance with a business transaction that involves disbursement the same day the counterfeit check is deposited.

**Keystroke Recording Implanted via Social Media:** Social media sites are used by some thieves as a tool to implant keystroke logging or recording programs in the background on the computer used to access the social media site. The keystroke logging program communicates in real-time over the Internet with the thieves. When the user of the computer infected with the keystroke logger accesses an electronic banking web site using that computer, the thieves are alerted. The thieves note the bank web site

address and login data and quickly transferring funds electronically from the law firm bank account to an off-shore account.

Fraudulent Automated Clearing House (ACH) Debits: The electronic version of a fraudulent check is the fraudulent ACH debit on your bank account. Fraudulent ACH debits are becoming more common as thieves learn how to set up ACH transactions. The only information the thieves need is the bank routing number and account number associated with your account, which they can easily take from one of your paper checks.

#### Countermeasures to Reduce the Fraud Threat to Your Trust Account

You should consider and implement both law firm policy and procedure countermeasures and banking system countermeasures to reduce the fraud threat. Best practices in the law firm policy and procedure arena include:

A countermeasure for fraudulent paper checks is to wait until the check actually clears through the banking system before making any disbursements based on the check. If same-day disbursement is necessary, the best approach is to require deposit of funds in your trust account electronically, and verify the presence of the funds before making any disbursement.

A countermeasure for the key stroke or virus threat to law firm computers used for electronic banking is a law firm policy against accessing any social media site from any computer on the law firm network, but especially from any computer used for electronic banking. You also should consider segregating the computer used for electronic banking from the remainder of the computers on your office network and dedicating use of that computer only to electronic banking.

An additional countermeasure for the key stroke or virus threat to law firm computers is installation of banking-specific security software in addition to normal antivirus software. For example, some banks are now offering a free program called Trusteer Endpoint Protection, which is specifically designed to protect the computer from financial malware.

#### Banking System Countermeasures to Reduce the Threat of Online Targeting of Your Trust Account

You should discuss with your bank the anti-fraud features the bank has available. Those features may include some or all of the following, *all of which are recommended as best practices*:

You may be able to set your account up to require user authentication based on an RSA token (a small device provided by your bank that generates a unique authentication code at fixed intervals) before the user is allowed to initiate online transfers.

You may be able to set your account up to require participation of two staff members to initiate outgoing electronic transfers - one person to initiate the transfer, and a second person to approve the transfer. The two-person requirement helps curb both online theft and employee fraud.

Your bank may offer a service called “ACH Positive Pay.” When this service is employed, electronic payment items only post to your account automatically only if they meet criteria established by you. A payment item that does not meet your criteria is blocked and you are notified of the payment item by email or text message. You can then review the item and determine if it should be paid. This service reduces the risk of unauthorized ACH debits drawn on your account.

Your bank also may offer a service called “Positive Pay.” With this service, you give your bank an electronic file each day listing the checks you have issued. The bank electronically compares each check with your listing as the checks are presented. If a check does not match up with your listing, the system flags the check and reports it to you for verification before the check is paid. This service reduces the risk of check altering and check forgery.

## **Common Issues**

**Improper Handling of Retainers:** The Court has specified how retainers of various kinds must be handled in Iowa. Virtually all the commonly used variants of the retainer initially must be placed in the trust account.

**Failure to Provide Notice and Accounting:** When a withdrawal is made from a client’s trust account balance to pay an expense or to pay fees, notice of the withdrawal and an accounting regarding the client’s trust account balance must be provided the client no later than the day of the withdrawal.

**Failure to Take Fees when Warranted:** Attorneys are responsible for removing fees from retainers placed in the trust account on a timely basis when they are earned. An accounting should be provided the client no later than the time when the earned fee is withdrawn from the retainer. Failure to remove earned fees on a timely basis constitutes commingling,

and over time can be the cause of unexplained excess funds in a trust account.

**Outstanding Checks:** Frequently clients or other payees will fail to promptly negotiate checks drawn on the trust account. The attorney or law firm should have an established procedure for periodically following up on these outstanding checks, to clear them from the end of month reconciliations and aid in placing client subaccounts in zero status when warranted.

**“Unintentional” Overdrafts:** Overdrafts carry considerable risk of inadvertently using funds in one client’s subaccount to subsidize operations with respect to another client’s subaccount. Common causes of overdraft situations include failure to make trust account deposits in a timely manner; failure to ensure that a deposited check clears the bank upon which it is drawn before issuing trust account checks based on it; asking clients to “wait until tomorrow” to cash a settlement check.

Contact Information:

Mail: Office of Professional Regulation, Iowa Judicial Branch Building,  
1111 E. Court Avenue, Des Moines, Iowa 50319

Telephone: (515) 725-8029 Voice, (515) 725-8032 Facsimile  
E-Mail: client.security@iowacourts.gov

Web Site:

[http://www.iowacourts.gov/For\\_Attorneys/Professional\\_Regulation/Client\\_Security/](http://www.iowacourts.gov/For_Attorneys/Professional_Regulation/Client_Security/)

## References

Grateful acknowledgement is made of the following resources, from which principles, concepts, tips and narrative have been readily adapted in the foregoing outline. Particular credit is noted for Opinion Number 9 of the Minnesota Lawyers Professional Responsibility Board, now appearing at Appendix 1 of the Minnesota Rules of Professional Conduct, which substantially provides the analysis regarding record keeping duties.

Appendix 1, Minnesota Rules of Professional Conduct (Maintenance of Books and Records);

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

The ABA Guide to Lawyer Trust Accounts, Jay G. Foonberg (ABA Section of Law Practice Management, 1996)

Trust Accounts – Everything You Ever Wanted to Know but Were Afraid To Ask (Minnesota State Bar Association Continuing Legal Education, April 2002)

Client Trust Accounting for Delaware Attorneys (Lawyers’ Fund for Client Protection of the State Bar of Delaware, November 23, 1998),

<http://courts.delaware.gov/lfcf/docs/cta.htm>

Illinois Client Trust Account Handbook (Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, July 2011),

[http://www.iardc.org/toc\\_main.html](http://www.iardc.org/toc_main.html)

Expiration of Temporary Unlimited Coverage for Non-Interest Bearing Transaction Accounts (but specifically including IOLTA accounts),

<http://www.fdic.gov/deposit/deposits/insured/temporary.html>



**Forms**

**NOTICE TO FINANCIAL INSTITUTION  
TO ESTABLISH NEW INTEREST-BEARING ACCOUNT**

**My law firm, as required by rules of the Iowa Supreme Court, is participating in the Interest on Lawyer Trust Accounts program. Under this program, please open an account subject to negotiable orders of withdrawals paying the highest rate of interest available for which the account qualifies.**

**Interest on this account should be remitted to the Lawyer Trust Account Commission, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319. The tax identification number for the Commission is 42-1245104 and must be used in connection with this account.**

**Interest on the account, computed in accordance with your standard accounting practice (net of any service charge or fee you charge for the bare privilege of maintaining this kind of account) must be remitted by check mailed to the Commission preferably monthly but not less than quarterly. You are not permitted to deduct from interest any activity-based charges, or charges for transactions involving this account such as stop payment fees, wire transfer fees or check printing fees. These fees are the responsibility of the law firm to pay. With each remittance to the Commission, please transmit a completed remittance report along with a copy of the trust account statement for the reporting period. Remittance report forms are available from the Commission.**

**Should an overdraft condition ever exist with respect to this account, you are required to provide the Client Security Commission a copy of any notice issued the law firm regarding the overdraft condition. The mailing address of this commission is Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319.**

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**PRESENT ACCOUNT NAME**

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**PRESENT ACCOUNT NO.**

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**ALL ACCOUNT SIGNATORIES**

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**DATE**

LAWYER TRUST ACCOUNT COMMISSION  
INTEREST REMITTANCE REPORT FOR  
POOLED INTEREST-BEARING TRUST ACCOUNTS

TO BE COMPLETED BY FINANCIAL INSTITUTION AND SUBMITTED WITH EACH  
REMITTANCE

FINANCIAL INSTITUTION:

Name: \_\_\_\_\_

Office or Branch: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Contact Person: \_\_\_\_\_

(Name and Title)

Alternate Contact Person: \_\_\_\_\_

(Name and Title)

Report Period: \_\_\_\_\_ through \_\_\_\_\_  
(MM/DD/YY) (MM/DD/YY)

**ATTORNEY/LAW FIRM POOLED INTEREST-BEARING TRUST ACCOUNT:**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Account Number: \_\_\_\_\_

Rate of Interest Applied: \_\_\_\_\_%

Interest Earned for Period \$ \_\_\_\_\_

Less: Service Charges and Fees (if any) (\_\_\_\_\_)

Net Amount Remitted \$ \_\_\_\_\_

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NOTES :

Attach this report to a copy of the depositor statement.

If remitting a lump sum payment for multiple attorneys/firms, please submit a separate Interest Remittance Report for each pooled interest-bearing trust account.

Even if no interest was earned in a quarter, this report is to be submitted for such account.

Interest should be remitted by check payable to the Lawyer Trust Account Commission, and mailed to:

LAWYER TRUST ACCOUNT COMMISSION  
Iowa Judicial Branch Building  
1111 E. Court Avenue  
DES MOINES, IOWA 50319

Voice (515) 725-8029  
Fax (515) 725-8032

