

Trust Accounting Rules !

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Topics to Be Covered

1. Trust Account Rules
2. Key Concepts
3. Trust Account Basics
4. Funds Go In (Deposit)
5. Funds Go Out (Disbursement)
6. Recordkeeping

Topics to Be Covered contd.

7. Reconciliation
8. Trustees, Personal Representatives, and Other Fiduciary Roles
9. Safeguarding Funds from Embezzlement
10. IOLTA
11. FDIC Insurance
12. Random Audit Program
13. Frequently Asked Questions

Must.

Always.

Never.

Trust Account and IOLTA Rules

- NC Rules of Professional Conduct

- Rule 1.15, Preserving the Property of Others

- Rule 1.15-1, Definitions
 - Rule 1.15-2, General Rules
 - Rule 1.15-3, Records and Accountings

7 Key Concepts of Client Trust Accounting

Key Concepts

1. Separate Clients Are Separate Accounts

- You are **NEVER** allowed to use one client's money to pay either another client's or your own obligations
- Keep a client ledger of each client's funds
- 10 clients in a trust account means 10 ledgers

Key Concepts

2. You Can't Spend What You Don't Have

- Each client has only his or her funds available to cover their expenses.

Client A	\$1,000
Client B	\$2,000
Client C	\$3,000
Client D	\$500
<hr/>	
Total	\$5,000

A check to Client D for \$1,500 will be paid for by Clients A,B and C. This is misappropriation of funds.

Key Concepts

3. There's no Such Thing as a Negative Balance

In client trust accounting, there are only 3 possibilities:

- You have a **Positive** balance
- You have a **Zero** balance
- You have a problem. (**Negative** balance)

Key Concepts

4. Timing is Everything

- Bouncing Checks vs. Advancing Funds = Equally deplorable
- Know your bank
 - When funds are available
 - Deposit deadline
- Don't help one client at the expense of another

Key Concepts

5. You Can't Play the Game Unless you Know the Score

- "Running Balance" of the client
- "Running Balance" of the client trust account

Key Concepts

6. The Final Score is **ALWAYS** Zero

- What comes in = What goes out
 - No more, no less
- Take care of small, inactive balances as soon as possible

Key Concepts

7. **Always** Maintain an Audit Trail

- Be Descriptive
- **NEVER** make out a client trust account check to cash

Trust Account Basics

- What is a trust account?
- Who **must** have a trust account?
- How many trust accounts does a lawyer need?
- Does each lawyer in a firm need a separate trust account?
- Is a lawyer ever required to establish a trust account for one client, or one transaction?

Basics: Opening a Trust Account

- What bank should I use?
- How should I label my Trust Account?
- What type of checks **must** I use?
- Who may be a signatory?

Basics: Trust Account Management

- May I delegate management to one lawyer in the firm?
- May I delegate management to a staff member who is not a lawyer?
- May I “link” my trust account with my business account?

Basics: Abandoned or Unclaimed Funds

- What should I do with unidentified funds in my trust account?
- How do I escheat funds?

Basics: Closing a Trust Account

- How do I close an account that has remaining funds?
- What if my law firm is under dissolution?

Funds Go In (Deposit)

What Goes Into a Trust Account?

- Every receipt of money from a client or for a client which will be used or delivered on the client's behalf should be placed in the trust account or a fiduciary account.

Funds Go In

- What about non-cash items?
- What about small sums of money?

What Does Not Go in the Trust Account?

- No funds belonging to the lawyer may be deposited in the trust account except such funds as are necessary to open or maintain the account, or pay service charges, or are funds belonging in part to a client and in part presently or potentially to the lawyer.

Funds Go In

- Should retainers be deposited in the trust account?
- What about funds belonging to an organization?

Funds Go In: Depositing Funds

1. Depositing a mix of Trust and Non-Trust Funds

Example:

Attorney fee	\$150.00
Recording fee	\$30.00
Sheriff fee	\$4.00
Total	\$184.00

What happens when: 1) Client writes check for \$184.00, 2) Client pays with 2 checks, 3) Client pays in cash?

Funds Go In: Deposits

- Credit Card Payments From Clients

Funds Go Out

Funds Go Out: Appropriate Disbursements

- May I use funds to pay legal fees or the claims of creditors?
- What if I have an interest in settlement or judgment funds received?
- May I disburse funds as an escrow agent in a manner not contemplated by the agreement?

Appropriate Disbursements

- Conditional Delivery to a real estate agent
- Disbursing against provisionally credited funds
 - Good Funds Settlement Act

Funds Go Out: Problems

- What if a Trust Account Check Bounces?
- Overdraws

Recordkeeping

Recordkeeping

- What Records are Required?
 - Record of receipts
 - All wire instructions
 - All bank statements
 - General ledger
 - Client ledger
 - Records of monthly and quarterly reconciliations
 - Any other records required by law

Recordkeeping

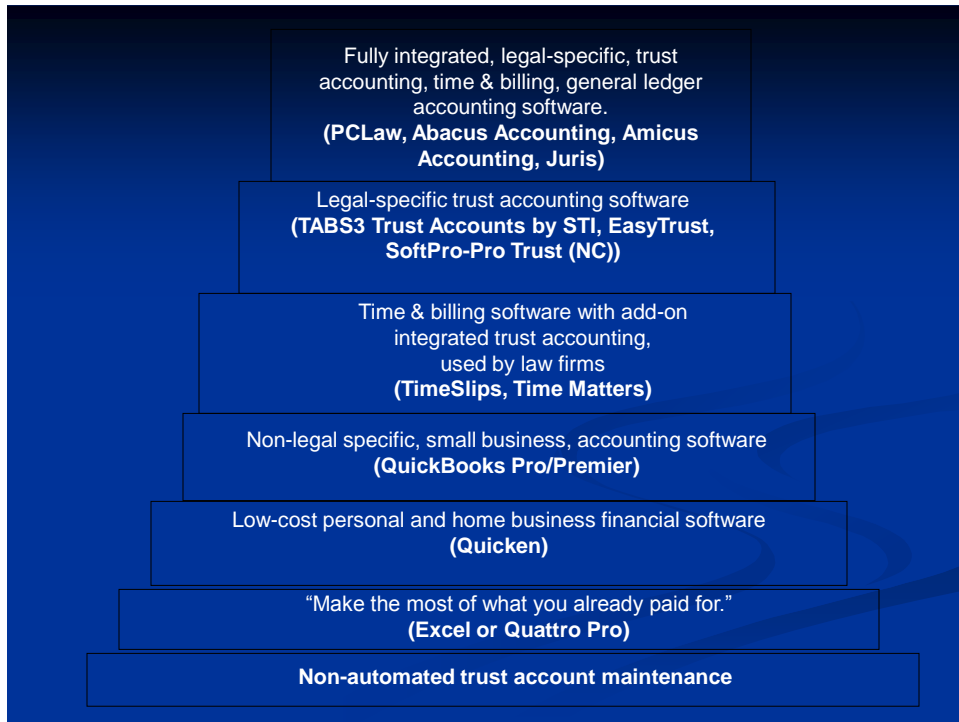
- How long should I keep records?
- May I keep records electronically?
- How often **must** I provide an accounting to my client?

Recordkeeping

- Manual Records vs. Electronic
 - Document deposits to and disbursements from
 - Maintain a current balance
 - Provide a means for reconciling monthly and quarterly
 - Retain records
 - Provide annual accountings

Record Keeping Software





Software Mistakes

- Over reliance on software
- Using the software wrong
- Creating the wrong reports

Reconciliation

- What is reconciliation?
- Monthly Reconciliation
- Quarterly Reconciliation

Quarterly Reconciliation Example

1. Reconciling General Ledger with Client Ledger

- Step 1: Write in clients names and client ledger balances in appropriate spots.
- Step 2: Add up client ledger balances, write in total in appropriate spot.
- Step 3: Compare “Total of Client Ledger Balances” with “General ledger balance”
- If no mistake found, move on.....

2. Reconcile the General Ledger with the Bank Statement

- Step 4: Fill in “Ending Balance per bank statement” with running balance as of last day covered by bank statement
- Step 5: Enter deposits made to the account, yet not captured on the Bank Statement
- Step 6: Enter total outstanding checks
- Step 7: Make sure that bank charges and interest credits are reflected in your records

Likely Mistakes

- 1. Find a deposit or withdrawal on the bank statement that isn't in your ledger or checkbook register
- 2. An entry in the bank statement is different from the corresponding entry in the ledger

Calculate Adjusted Balance

- Step 8:
 - Ending Bank Statement Balance
 - PLUS All outstanding Deposits
 - MINUS All outstanding checks
 - PLUS Interest (if not directly to IOLTA)
 - MINUS Bank Fees and Charges
 - = Adjusted Balance

Final Comparison

- The total of all client ledgers, general ledger, and adjusted bank balance should all match.
 - If yes, you are done. Save all records.
 - If no, go back and find error, or call bookkeeper.

Trustees, Personal Representatives, and Other Fiduciary Roles

Fiduciary Accounts

- What sort of an account should a lawyer who is serving as a personal representative maintain?
- How often should I provide accountings for fiduciary funds received?
- Distinction between Trust Accounts and Fiduciary Accounts

Fiduciary Accounts

- Words to the Wise
- Recordkeeping requirements for Fiduciary Accounts
 - Accounts at a Bank
 - Accounts at other financial institutions

Safeguarding Funds From Embezzlement

Practice Tips

- Do not act in haste
- Use Pre-numbered checks
- Cash is difficult
- Be wary of sole control of trust account activities
- Resolve discrepancies quickly
- Do not sign blank checks
- Keep documentation and review everything periodically
- Question lifestyle changes of individuals with access to trust account
- Examine signatures on trust account checks for forgery

Practice Tips

- Check periodically with post office about mail pick up
- Reconcile trust account promptly after receiving bank statement
- Question a negative attitude or poor work performance of an employee maintaining the trust account
- DEVELOP AN OFFICE POLICY

IOLTA

- What is IOLTA?
- How does it work?
- Which accounts must be IOLTA accounts?
- Does using an IOLTA account harm my client financially?
- What about out of state law firms?

FDIC Insurance

- What is my responsibility when choosing a depository bank?
- Does FDIC insurance protect my trust account?
- How must I explain this to my client?

Random Audit Program

- Authority
- Selection Process
- Scope of Audit
- Exemption from Audit
- Confidentiality
- Discipline
- Trust Accounting Compliance Program (TAC Program)

Frequently Asked Questions

- We are expecting to receive a US Treasury check from the EDNC regarding a settlement. Can the check be considered a "cashier's check" and funds immediately disbursed after deposit? Or should we follow the procedures of a standard check deposit and wait the 3-5 business days for the check to clear before disbursement?

Frequently Asked Questions

- Can we do a wire or book transfer to move funds from the trust account to the firm's operating account to pay legal fees?

Frequently Asked Questions

- What I would like to institute is an office policy that files older than 6 months accrue a \$25 file maintenance fee per month and be able to draw down clients funds in the trust account as fees earned this way. We would include this language in our engagement contract before implementing it. Is that okay?

Frequently Asked Questions

- Real Estate Closings – Does the HUD act as a final ledger to the client, or do we also need to give a trust fund ledger after the closing?

Frequently Asked Questions

- I would like to know if there is any reason why, as far as the State Bar is concerned, we could not apply the trust funds through the billing system and at the end of the day, week, or month write one check from the Trust Account payable to our firm to cover those trust applications?
- If 10 traffic tickets are resolved in court on any given day and each client is charged a CSC of \$166.00. Are we required to cut 10 separate checks from trust account or can a check for \$1660.00 be issued with a list attached as to who the fees should be credited to?

Conclusion

- Remember the M.A.N...

... in order to please **The Man,**



NORTH CAROLINA
STATE BAR

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...and hope to avoid **THE MAN!**

