
TRUST ACCOUNTING FOR ALABAMA ATTORNEYS



Prepared by the
Practice Management Assistance Program
A member service of the Alabama State Bar

Preface

This work is a general overview designed to answer commonly asked questions. It is not exhaustive and it does not attempt to cover every situation or every question related to attorneys' trust accounts in Alabama. Originally prepared in 1997, it is based on *Trust Accounting for Attorneys in Georgia* which was written by Terri Olson during her term as Director of the Law Practice Management Program of the State Bar of Georgia. We are grateful for her help and for the State Bar of Georgia's permission to create our own handbook based on the design of theirs.

Rule 1.15 of the Alabama Rules of Professional Conduct, pertaining to safekeeping client property, and selected ethics opinions are included to provide further guidance. If, after reading this material, you still have questions about the propriety of certain actions, please contact the Office of the General Counsel at (334) 269-1515 for a free, confidential, informal opinion.

If you have questions regarding the mechanics of trust account setup or bookkeeping, please contact the Practice Management Assistance Program at (334) 517-2120.

If you have any questions regarding the Alabama Law Foundation, please contact Dawn Hathcock at (334) 781-6344.

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ABOUT TRUST ACCOUNTS

What is a trust account and what types of funds are placed in one?

A trust account is a separate bank account set up to hold **any** money you receive on behalf of a client or a third party in a legal matter. Examples of funds to be placed in a trust account include earnest money deposits or down payments for loan closings, settlement proceeds or damage awards that have not yet been divided between yourself and your client and distributed in personal injury or other tort cases, advance payments for fees that you have not yet earned (sometimes mistakenly called “retainers”), and deposits to cover expenses in a case. Attorneys in Alabama sometimes use the terms “attorney’s trust account” and “attorney’s escrow account” interchangeably, but “trust” account is preferred because “escrow” has a specific meaning related to real estate practice and its use may cause the account to be confused with the accounts that can legally be set up by real estate agents and other professionals.

Why do I have to have a trust account if I seldom hold client funds?

Rule 1.15(a) of the Alabama Rules of Professional Conduct requires that a lawyer **must** hold property of clients or third persons that is in a lawyer’s possession in connection with a legal matter **completely separate from the lawyer’s own property**. All lawyers, except those not engaged in active practice pursuant to §34-3-17 and §34-3-18, *Code of Alabama, 1975*, as amended, **must** maintain a separate account to hold the funds of clients pursuant to Rule 1.15(j). Under Rule 1.15(j), the only lawyers admitted to practice in Alabama who do not have to maintain a trust account are those who do not have an office within the state; do not ever hold funds of clients or third parties; are not engaged in the active practice of law; are judges, attorneys-general, public defenders, U.S. attorneys, district attorneys, on duty with the armed services or are employed by a local, state or federal government entity and are not otherwise engaged in the practice of law; or are corporate or in-house counsel or are law professors and are not otherwise engaged in the active practice of law.

Does the account have to be an IOLTA account?

Yes. All Alabama lawyers are required to hold client or third party funds **that are either nominal or are to be held for only a short period of time** in one or more IOLTA accounts. The requirement to have an IOLTA account has been mandatory in Alabama since 2008. Your IOLTA account should be used **only** for amounts that are nominal or sums that are expected to be held for a short period of time. Funds that are not nominal or are expected to be held for long periods of time will be discussed below.

What is an IOLTA account, and where do I get one?

“IOLTA” means Interest on Lawyers’ Trust Accounts. An IOLTA account is a pooled interest- or dividend-bearing account set up specifically to hold all trust funds you receive that are **nominal in amount** or that are expected to be held for **only a short time**. The interest that accrues on this account is remitted automatically by your financial institution to the Alabama Law Foundation (ALF) to be awarded by them in the form of grants. You may select which foundation receives the interest from your account.

The account must be maintained in an “eligible institution.” This is defined by Rule 1.15 as a bank or savings and loan association whose deposits are insured by an agency of the federal government, or any open-end investment company which is registered with the Securities and Exchange Commission. The institution you select must be authorized by federal or state law to do business in Alabama.

The IOLTA program has been in effect in Alabama since 1987, when voluntary use of such accounts first became available, and most financial institutions are familiar with it and will be happy to assist you in establishing such an account. Financial institutions which meet the requirements to offer IOLTA accounts are certified yearly. If your bank does not offer IOLTA accounts, call Tracy Daniel at the Alabama Law Foundation (334-387-1600) or visit www.alabamalawfoundation.org for the name of a bank in your area which does.

How will anyone know if I don’t comply?

Rule 1.15 (j) requires that “Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt...” for the reasons stated in the rule. At the beginning of September you will receive an email reminding you that occupational licenses may be purchased and special membership dues may be paid immediately and are delinquent after October 31st. The email will also instruct you to log in to the Alabama Law Foundation’s website (www.alabamalawfoundation.org) and either certify that you have an IOLTA trust account number or that you are exempt from maintaining a trust account. You will have until October 31st to complete this process. Lawyers who do not do so will receive a communication from either the Alabama Law Foundation or the Office of General Counsel giving them additional time within which to complete the certification process, after which any non-compliant lawyers will be discipline. **Failure to certify can result in suspension of your license to practice law and additional penalties.**

What are the requirements for an IOLTA account?

Under Rule 1.15(k) of the Alabama Rules of Professional Conduct, IOLTA accounts must meet the following requirements:

Financial institutions must pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance or other eligibility requirements. Interest or dividends for IOLTA accounts must be calculated in the same way as for non-IOLTA accounts. The rule has some methods for determining how the various accounts an institution offers should be compared to IOLTA accounts and whether the highest rate of interest is being paid to IOLTA accounts, but you don't have to worry about these calculations. Under the rule, financial institutions which offer IOLTA accounts must file a report, showing the interest or dividend rate paid on both IOLTA and other accounts offered, with the Alabama Law Foundation and Alabama Civil Justice Foundation. The foundations will then certify to the Alabama Supreme Court the participating financial institutions' compliance with the rule on an annual basis.

Only "allowable reasonable fees" may be deducted from the interest earned by IOLTA accounts. Reasonable fees are defined by Rule 1.15 as: (1) per check charges; (2) per deposit charges; (3) a fee in lieu of minimum balance; (4) Federal deposit insurance fees; (5) sweep fees; and (6) a reasonable IOLTA account administrative fee. No other fees may be deducted from the interest. All other fees which the depository institution charges are the responsibility of the lawyer or law firm maintaining the account.

The depository institution must agree that it will remit interest, less reasonable fees charged against the interest accrued by the account, at least quarterly to ALF or ACJF. It must also transmit with each remittance a statement reflecting the period of time covered by the remittance, the name in which the account is maintained, the account number, the interest rate, the gross amount of interest or dividend earned during the period, the amount and description of any service charges or fees assessed, the average account balance for the remittance period, and the net amount of interest remitted, with a copy to the lawyer.

What do ALF do with the interest earned?

All interest transmitted to and received by ALF must be distributed by it for one or more of the following purposes: (1) to provide legal aid to the poor; (2) to provide law student loans; (3) to provide for the administration of justice; (4) to provide law-related educational programs to the public; (5) to help maintain public law libraries; (6) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time. ALF was created by the Alabama State Bar and is administered by the Alabama Law Foundation.

Who defines “nominal” and “short term?”

You do, based on the criteria set forth in Rule 1.15(k). In situations where you will be holding a substantial sum of money for a period of several months or more, depending on prevailing interest rates, it might be in the client's best interest for you to open a separate interest-bearing account for that client alone.

The standard is whether the interest which could be earned for the client will exceed the costs incurred to secure that income. To determine this, you must consider: (1) the amount of interest or dividends likely to be earned; (2) the estimated cost of establishing and administering a non-IOLTA account for the individual client, including the cost of your services and the cost of preparing any tax reports required; (3) the ability of the financial institutions, lawyers or law firms involved to calculate and pay interest to individual clients or third parties; and (4) any other circumstances which would affect the ability of the client or third person's funds to earn income in excess of the costs required to earn it. You must review your IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

What if I decide the client would benefit from a separate trust account?

In that case, you would generally set up an interest bearing account for the benefit of that client alone, using the client's tax identification number and remitting the interest to the client. When opening an individual trust account for a client, if you do place money in anything other than a deposit account, be sure that the money is **safe** (don't place trust funds in high risk investments, no matter what your client suggests or agrees to) and **accessible** (don't place trust funds in an account or other investment in which they are non-liquid or penalties for early withdrawal are charged).

What if I make a mistake regarding whether to open a separate account?

Don't worry. Rule 1.15(k) states that this determination "... shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment."

What if I just don't want to maintain an IOLTA account?

Unfortunately, you have no choice. With the amendment to rule 1.15 which became effective on January 1, 2008, Alabama is the 35th state in which IOLTA accounts are mandatory.

Can I ever place my own funds in my trust account?

Yes, but the rule lists only two instances in which this is permissible. One involves funds to pay bank service charges or “to obtain a waiver thereof.” There used to be a tacit understanding that a lawyer could place a minimum amount in the account to keep it from going to a zero balance if all client funds were withdrawn and to pay or avoid service charges, even though the rule did not explicitly say so. With the 2008 amendment to Rule 1.15, this is now official.

The other exception involves unearned attorney’s fees. A lawyer must place in the trust account funds which represent unearned fees. This includes advances against hourly fees and flat fees which have not yet been earned in full, and amounts in which both the lawyer and a client or third party claim an interest before division. Examples would be funds payable to the client in settlement of a case or satisfaction of a judgment, from which the attorney will also receive payment for his or her services. Such sums must be kept separate from the lawyer’s own funds until there is an accounting and a severance of the lawyer and the client’s interests. If a dispute arises concerning the respective interests, the amount in dispute must be kept separate until the dispute is resolved.

What about property that isn’t money?

Under Rule 1.15(a) of the Alabama Rules of Professional Conduct, you must safeguard **all property** in your possession belonging to your clients or to third parties, not just money. Non-monetary property of a client must be identified as belonging to the client and appropriately protected. The Rule does not specify methods of safekeeping property other than money, but the method used must be reasonable in light of the type of property held and its value to the client or third party. The intrinsic value of an item may be small, but its value in the context of the case may be substantial. If you do not have a safe or locking fire-proof file cabinet in your office, you may wish to rent a safe deposit box for such items. If you set up a safe deposit box to hold client property, make sure that it is properly labeled so that the bank will realize that the contents are not your personal property or that of your firm. As with money, you should not store items belonging to clients or third parties with items of your own. If you are a sole practitioner, make sure that, in the event something should happen to you, another lawyer acting on your behalf can obtain access to the box without undue delay.

What are my record-keeping requirements?

You are required to keep good, accurate records of **all property** you receive on behalf of clients or third parties. This means your trust accounts must **always** be in balance, and you must have a good method of keeping up with other property which you receive from, and return to, clients or third parties. You should obtain a receipt from a client or third party every time you return physical property of any type.

You are required to keep trust account and other property records for a minimum of six (6) years after termination of the representation, and you must produce them if requested to do so by the Office of General Counsel. Failure to do so constitutes grounds for an investigation of yourself and your trust accounting practices, independent of any other grounds for the same that may exist. See MAINTAINING TRUST ACCOUNT RECORDS below for information on the specific records which must be created and retained.

SETTING UP A TRUST ACCOUNT

How do I set up a trust account?

You will need to go to an institution that offers IOLTA accounts. Most commercial banks and many credit unions in Alabama now offer these accounts. A list of all Alabama financial institutions which offer IOLTA accounts can be found on the Alabama Law Foundation's web site at <http://www.alabamalawfoundation.org/iolta/eligible-banks/>.

It's usually a good idea to go to a main office and not to a small branch to set up your account, although you can still do your everyday banking at the branch. In the larger banking centers you are more likely to find an account representative who is familiar with attorney's trust accounts. Make sure you understand the bank's policy for dealing with service charges which do not fall within the "allowable reasonable fees" defined by Rule 1.15 of the Alabama Rules of Professional Conduct. Call several banks and ask about service charges on their IOLTA accounts before you select one and go in to open the account.

If you are setting up an IOLTA account, you will need to provide the bank with the correct tax identification number. You can obtain the correct tax identification number for the Alabama Law Foundation (ALF) from ALF, or request the bank to do so. Most banks that offer IOLTA accounts have the necessary account agreement forms which contain all the required provisions and information. If your bank does not have one of these forms, you can get it by calling ALF or by visiting their website at www.alabamalawfoundation.org. Contact information for ALF is listed in the Preface to this handbook, on page ii.

If you are setting up a non-IOLTA account for a particular client, you will need to use the client's tax identification number. Do not use your firm's tax identification number. This will result in the interest being reported as having been paid to and earned by you or your firm, and you will be taxed accordingly.

Under Rule 1.15(a) you must include the words "Attorney Trust Account," "Attorney Escrow Account" or "Attorney Fiduciary Account" somewhere in the title of the account **and** on all checks and deposit slips for the account. We prefer "Trust Account" and suggest something along the lines of:

**Black, White & Green, P.C.
Attorneys at Law
IOLTA Trust Account**

If the account is an individual client trust account, use something like:

**Black, White & Green, P.C.
Attorney Trust Account for John Q. Client**

You should check your first statement to make sure that the IOLTA account has been set up properly and that the correct tax identification number is on the account, especially if you have several accounts with the same bank. (Be sure to make a note of the tax identification number because you may need to give it to the bank's customer service representative or enter it in an automated system before seeking information about the account over the phone or online.)

The words "Business Account," "Professional Account," "General Account," "Payroll Account," "Regular Account" or other appropriately descriptive words must also be used in the titles for all such accounts you or your firm open, and all the documents associated with them.

Should I have all my bank accounts (operating and trust) at the same bank?

There are several factors to consider. If you are a real estate attorney and do a lot of closings on behalf of a bank or bank-associated mortgage company, it may want you to place your account there for convenience. (This can result in your having more than one IOLTA account – which is OK.) You may also have a banking relationship of long standing with a particular bank and wish to keep your account there. There are, however, some practical reasons to have your accounts distributed among several banks.

The most important reason is the possibility of error. With multiple accounts at one bank, you or your staff may mix up deposit slips or mistake the checkbook for one account with that of the other. Likewise, the bank may occasionally confuse the accounts. Many banks have a policy of automatically transferring funds from any account with your name on it to cover shortages in another. If you accidentally overdraw your operating account, the bank may attempt to "help" you by transferring funds from your trust account to cover the overdraft. No matter how careful you or your financial institution are, mistakes can happen.

Does FDIC insurance cover all funds in my trust account?

Not anymore.

This is an issue that most lawyers never even thought about until the financial crash of 2008, when banks began to fail and be taken over by the FDIC. Because attorney trust accounts were subject to the then \$100,000 FDIC insurance limit, if an attorney held funds in excess of \$100,000 on behalf of a single client or third-party in an insured institution which failed, it was possible that the excess amount might be an uninsured loss. While the question was never addressed, it is at least arguable that an

attorney could be liable for uninsured losses from a trust account in the event of a bank failure since he or she is absolutely responsible to protect trust funds.

Under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, FDIC insurance provided unlimited coverage on “noninterest-bearing transaction accounts **through December 31, 2012**. The Insurance Provision of the act included IOLTA accounts within the definition of noninterest-bearing transaction accounts, provided that they met certain requirements – which Alabama IOLTA accounts did. However, the legislation passed in January of 2013 to avoid the “fiscal cliff” did not extend this coverage past December 31, 2012. Consequently, individual clients or third parties are now only insured up to the \$250,000 per depositor FDIC insurance limit. (In order to claim this pass-through coverage you must have accurate records regarding how much you hold in trust on behalf of each client or third-party.)

Thus, if you hold more than \$250,000 on behalf of an individual client in a trust account **in a bank that fails**, the excess will not be covered and you may, arguably, be responsible for any loss. And since any funds the client has deposited in that bank will also be counted against his or her insurance limit, it’s always a good idea to confer with the client before making large trust deposits. Given the financial recovery, this is a more and more unlikely situation, but one you should at least be aware of.

Who should sign on my trust account?

Under Rule 1.15(f)(1), only a lawyer admitted to practice in Alabama or a person under the lawyer’s direct supervision may sign trust checks or be authorized to make other transfers from the account. Because of the responsibility you bear to safeguard your client and third party funds (and the severe discipline you will face if those funds are improperly removed from the account), it is usually best to have only your own signature if you are a solo practitioner. ***All firm members are ethically responsible for all funds held in trust, regardless of which client or third party the funds came from and which lawyer is responsible for the legal matter, so it’s wise to institute checks and balances within a firm.***

Regardless of who signs the checks, always take the precaution of having all trust account statements delivered to your desk ***unopened*** each month. Examine each check for alterations before balancing the account. An employee or even a fellow lawyer who has the authority to sign checks should ***never*** be entrusted with the responsibility of also balancing the account. With current office technology, such as color printers and copy machines, the opportunities for unnoticed alteration of checks and bank statements is tremendous. Don’t create opportunities for temptation, and don’t take any chances!

RECEIVING AND DISBURSING FROM THE ACCOUNT

What are my obligations when I receive funds or other property for a client or third party?

When a lawyer receives funds or other property in which a client or third party has an interest, he or she must ***promptly notify*** the interested party. Except as the Alabama Rules of Professional Conduct or other rule or law allows, or as an agreement between the lawyer and the interested party provides, the lawyer must ***promptly deliver*** to the client or third party any funds or property the other is entitled to. Prompt delivery will be determined in light of the totality of the lawyer's circumstances at the time of receipt of the property, such as a trial, but it's best to put systems in place that ensure notification and delivery no matter what else is going on. If the other party requests it, the lawyer must also ***promptly render a full accounting*** of the money or property. NOTE: Rule 1.5 on contingent fees requires a written accounting, regardless.

What if I receive funds on behalf of a client and I lose the money or my office is burglarized before I can deposit it?

You are responsible from the moment you receive funds until you remit them to the person to whom they are due. If you lose them, you will have to repay the loss. You should establish procedures to ensure that cash and checks are safeguarded while in your office, and that funds are deposited promptly. Rule 1.15(f)(2) requires that receipts be deposited intact. This means that even if you are entitled to a portion of a cash deposit, the funds must first be placed in the trust account and then paid out by check from the account. Records of deposit should be sufficiently detailed to identify each item on each deposit.

How do I handle advance payments or retainers?

You can, and should, move the money out of your trust account ***as soon as*** you have earned it. Your client should be aware, from the signed fee agreement between the two of you, that advance payments will be withdrawn and transferred as work is performed. If this information is included in your fee agreement you don't need to notify the client and wait for permission each time you wish to make a withdrawal. You should, however, send the client a statement on a regular basis. The statement should indicate how much work has been done, how much money has been transferred out of the trust account and how much remains. As additional funds are needed, the client will be prepared. Also, you will not have to worry about the client complaining at the end of the matter that he or she didn't realize the case was going to take so much work or cost so much.

Can I make a trust disbursement as soon as I deposit funds in my account?

You should investigate your bank's rules on availability of funds. Generally, funds will not be immediately available for withdrawal. You must wait for the funds to

clear the bank. The length of time it takes for a deposit to clear depends on many things, such as what kind of deposit it is (personal check, cashier's check, cash) and, if a check, which bank it was drawn on (local, out of town, out of state, out of country).

Attorneys sometimes feel that it doesn't matter whether a particular deposit has been collected by their bank, as long as there are sufficient funds in the trust account to cover the check being written. You must realize, however, that when you write a check against uncollected funds of one client you are, essentially, "borrowing" from the collected funds of other clients in order to pay that check. You are at risk if the uncollected item is returned for insufficient funds or payment is stopped.

Rule 1.15(d) of the Alabama Rules of Professional Conduct states that a lawyer shall not make disbursements of a client's funds from an account containing the funds of other clients ***unless the funds are collected***. The exception is that you may disburse uncollected funds ***at your own risk if you have a reasonable and prudent belief*** that a deposit will be collected promptly. If collection does not occur ***you must replace the funds yourself*** within five (5) days of notice of non-collection. This means that you will bear the risk of any returned checks if you do not wait to be sure they have cleared before you disburse. When dealing with all but the smallest sums, it's better to be safe than sorry.

This rule poses particular problems for real estate closing attorneys. The sums involved in land transactions are often substantial and, in many cases, you don't know how much the purchaser needs to bring until a short time before the closing. It is always wise to require certified funds for closings. The only buyers who will object to this are the ones who know their checks may bounce. If you don't know exactly how much to tell the buyers to bring, instruct them to bring a cashier's check for a round amount near, but slightly less than, the sum you think they will need. That way you will only have to take a personal check for a small sum for the difference or you can write them a refund check if you have overestimated the amount they will need.

What if I issue a check from my trust account but it's never cashed?

This is an annoying situation that most attorneys have to deal with at one time or another. It usually involves less than ten dollars, and may sometimes represent only a dollar or two. Unfortunately, the funds do not belong to you or your firm, so these amounts, even though nominal, may not be automatically transferred to your operating account. Generally, if you have made a diligent effort to locate the payee and cannot do so, the funds may be returned to the client, if paid out to a third party on the client's behalf. If the party not cashing the check is your client and you cannot locate him or her, you must continue to hold the funds or dispose of them in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, et seq., *Code of Alabama, 1975*, as amended. See Formal Opinion RO-88-92.

MAINTAINING TRUST ACCOUNT RECORDS

What kind of records do I need to maintain for my trust account, and for how long must I keep them?

Common sense and good business practice requires that an attorney always know his or her overall trust account balance and the balance held on behalf of each client or third party. This requires the keeping of two sets of records:

General Trust Account Ledger - A ledger that shows all transactions for your trust account, regardless of the client on whose behalf they were made, and that gives a running balance for the account; and

Individual Client Trust Account Ledgers - A separate ledger that shows all transactions on behalf of each client and the individual client's running balance.

You need both because without the general ledger you don't know the total in your account and without the client ledger you don't know how much you hold for any particular client. Each time you make an entry to the general trust account ledger, you must also make a corresponding entry to the appropriate individual client trust account ledger. You should also maintain a client trust account ledger for any funds of your own, such as service charges or funds deposited to maintain a required minimum balance, which you place in the account. See ABOUT TRUST ACCOUNTS for information on when you may permissibly deposit your own funds into your trust account.

Each time you make an entry in these ledgers, it should contain the source of the funds or the entity to which funds were disbursed, the date of the transaction, the amount of the transaction, the client or matter name or number for which the funds were received or disbursed, a description of the purpose of the transaction and, if a disbursement, your check number. If you have a computerized trust accounting system you will only need to make each entry once. There are also manual "one write" systems which are designed to require only one entry.

When you make a deposit, you should fully complete the deposit slip. If you receive cash you should fill out a separate cash receipt, give a copy to the client, and retain a copy for yourself. All cash deposits should be carefully labeled as to client or matter and deposited immediately. Remember, any time you receive over ten thousand dollars in cash, whether as a fee or in trust, you must file a report with the IRS. The reporting form (8300) is found at the end of this manual and is also available on the IRS website at www.irs.gov.

Rule 1.15(e) of the Alabama Rules of Professional Conduct requires that lawyers maintain complete records of all trust funds *and other property* kept on behalf of clients or third parties **for a minimum of six years after termination of the representation.**

The rule, which was amended effective January 1, 2013, now also specifically requires the following financial records to be created and retained for the six year minimum period:

- Receipt and disbursement journals
- Ledger records for each separate client or third party
- Retainer and compensation agreements required by Rule 1.5
- Copies of accountings to clients
- Copies of bills for legal fees and expenses rendered
- Copies of records showing disbursements for clients
- Physical or electronic check book registers, bank statements, deposit records and pre-numbered canceled checks or substitutes for them
- Records of all electronic transfers from client trust accounts
- Copies of monthly trial balances and quarterly reconciliations
- Copies of portions of client files reasonably related to client trust account transactions.

See Formal Opinion 2011-02 for more information on general records retention requirements of attorneys. **If you file retention period for a particular file is longer than 6 years, it's a good idea to maintain the trust records as long as you retain the file.**

Can I use a computer to do my trust accounting?

Yes, and we hope you will. For most attorneys this will make trust accounting easier, reduce the possibility of errors and ensure that you meet the record keeping requirements of Rule 1.15(e). If you have only a few trust transactions per month, automation may not seem to be worth the time, trouble and expense. Nonetheless, it's better to set up an automated trust accounting system and master using it when you are not busy than to wait until the volume of trust transactions makes it desirable. By then your account will be in a mess and you won't have time to sort it out or to investigate, implement and learn to use a computerized system when you need it the most.

In choosing a program, you should determine whether it will let you track all the information you need, and in the way you need it. For example, a program that will not let you enter information describing the transaction or include your case number may not be adequate. Many general purpose accounting programs are not set up to handle trust accounts. For that reason we recommend the use of programs specifically designed for attorney trust accounting. Many time and billing programs also include a trust accounting component.

The Alabama State Bar offers a member benefit discount for several products designed for legal trust accounting, as well as manuals with instructions on using various checkbook and general accounting programs for trust accounting. See the Member Benefits information on the bar's website (www.alabar.org) for more information.

How should I handle trust account maintenance and review?

Once you have your account properly set up, don't sabotage your efforts by letting account maintenance slide. Each month, as soon as the bank statement arrives, you should reconcile the account. Rule 1.15(e)(9) seems to require only quarterly reconciliation, but doing it monthly is much easier and safer for you.

If you have a bookkeeper or other employee who reconciles the statement, you should still receive the **unopened** statement and review it thoroughly, looking carefully at each check or facsimile to eliminate the possibility, or even the temptation, of employee theft. Never allow an employee with check-writing authority to also balance the account. List all outstanding checks, and determine why each remains un-cashed. You are personally responsible for your trust funds, so this should be a high priority – equal in importance to docket control. One error that you don't catch immediately can lead to other errors that will eventually result in client dissatisfaction and, possibly, a grievance filed with the disciplinary authorities. Mishandling any of your legal responsibilities can lead to some form of discipline, but mishandling your trust account will almost certainly lead to suspension or disbarment.

What if I bounce a trust check?

If a check written on your trust account is returned to the payee due to insufficient funds, or if a check honored by your bank creates an overdraft which is not paid in full within three (3) business days, your bank is required by Rule 1.15(e) to send a report to the Alabama State Bar notifying the Office of the General Counsel of the same. As a practical matter, because of automation the bank will notify the Office of General Counsel regardless of whether the item is made good within three business days.

Receipt by the bar of such a notice is grounds for an investigation of you and your trust accounting practices. Although it will usually take several bounced checks or overdrafts over a short period of time to trigger an inquiry, this requirement, which was added in 1997, should give Alabama lawyers added incentive, and justification, for refusing to disburse funds from their trust accounts until they are sure the client's funds are collected.

Under the terms of Rule 1.15(i) of the Alabama Rules of Professional Conduct, it is your responsibility to enter into an agreement with your bank pursuant to which the bank will make the necessary reports of checks presented against insufficient funds. For those whose trust accounts were open prior to this requirement, or who failed to submit the necessary request when opening an account, a form to amend your deposit contract to meet this obligation is found at the end of this manual, and your bank should have a supply of these forms, too. ***If you already have one or more trust accounts open and have not yet done so, you should sign one of these forms for each account and ask your bank to file it with your existing account contract.***



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

ORDER

WHEREAS, the Supreme Court of Alabama is responsible for promulgating rules governing the practice of law in the State of Alabama and encouraging assistance to underserved populations needing access to the courts of Alabama for adjudication of their disputes;

WHEREAS, the Supreme Court of Alabama finds that greater oversight is needed to certify and confirm that interest and dividends earned from IOLTA accounts are allocated appropriately and spent properly;

WHEREAS, the Supreme Court of Alabama finds that it possesses the requisite administrative oversight of IOLTA funds;

WHEREAS, the Supreme Court of Alabama desires to amend the Rules of Professional Conduct to limit the distribution of funds to bona fide nonprofit organizations promoting greater access to the courts of Alabama for citizens otherwise unable to afford competent counsel;

WHEREAS, prior to the distribution of any and all IOLTA funds, the Supreme Court of Alabama shall approve the beneficiary and the amount of any such distribution; and

WHEREAS, prior to the effective date of this Order and the amendment of Rule 1.15, Alabama Rules of Professional Conduct, attached as an appendix hereto, IOLTA funds may be administered under the Rules existing as of December 1, 2024; provided however, that any and all distributions and disbursements shall be submitted to and approved by a majority of the members of the Alabama Supreme Court then sitting.

NOW, THEREFORE, IT IS ORDERED that Rule 1.15, Alabama Rules of Professional Conduct, be amended to read in accordance with the appendix to this order;



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IT IS FURTHER ORDERED that this amendment is effective February 15, 2025;

IT IS FURTHER ORDERED that the Alabama Civil Justice Foundation ("the ACJF") may continue to distribute funds generated from IOLTA accounts in accordance with the previously existing Rule 1.15(m), Alabama Rules of Professional Conduct, subject to the requirement that it shall provide the Clerk of the Supreme Court of Alabama the name of each beneficiary and the amount proposed to be distributed to each beneficiary for approval by a majority of the members of the Court then sitting. Notwithstanding the foregoing, any funds generated from IOLTA accounts and received by the ACJF from a financial institution after February 14, 2025, shall be paid over to the Alabama Law Foundation ("the ALF") to be administered by the ALF in accordance with this Order and amended Rule 1.15; and

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow Rule 1.15:

"Note from the reporter of decisions: The order amending Rule 1.15, Alabama Rules of Professional Conduct, effective February 15, 2025, is published in that volume of *Alabama Reporter* that contains Alabama cases from __ So. 3d."

Parker, C.J., and Shaw, Wise, Bryan, Sellers, Mendheim, Stewart, Mitchell, and Cook, JJ., concur.

Witness my hand and seal this 20th day of December, 2024.

Megan B. Rhodeseck

**Clerk of Court,
Supreme Court of Alabama**

**FILED
December 20, 2024**

**Clerk of Court
Supreme Court of Alabama**



IN THE SUPREME COURT OF ALABAMA

December 20, 2024

APPENDIX

Rule 1.15. Safekeeping Property

Definitions. As used in this rule, the terms below shall have the following meanings:

"IOLTA account" means a pooled interest- or dividend-bearing trust account benefiting the Alabama Law Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in subsection (k).

"Interest- or dividend-bearing trust account" means a federally insured checking account or a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement 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 hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay except as permitted by law.



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"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) a reasonable IOLTA account administrative fee.

"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Any funds while in the lawyer's trust account that the lawyer is entitled to receive as a fee, reimbursement, or costs shall not be used by the lawyer for any personal or business expenses until such funds are removed from the trust account.

Interest or dividends, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(k), and the lawyer shall have no right or claim to the interest, dividends, or other earnings. 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 six (6) years after termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business



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accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, 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 that property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of non-collection, replace the funds in the separate account.



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(e) A lawyer who practices in Alabama shall maintain current financial records as provided in these Rules and as required by Rule 1.15 of these Rules and shall retain the following records for a period of six (6) years after termination of the representation:

1. 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;
2. Ledger records for all client trust accounts showing, for each separate trust client or third person, 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 to whom such funds were disbursed;
3. Copies of retainer and compensation agreements with clients as required by Rule 1.5 of these Rules;
4. Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
5. Copies of bills for legal fees and expenses rendered;
6. Copies of records showing disbursements on behalf of clients;
7. The physical or electronic equivalents of all trust-account checkbook registers, bank statements, records of deposit, prenumbered canceled checks, and substitute checks provided by a financial institution;



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8. Records of all electronic transfers from client trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient, and confirmation from the financial institution of the trust-account number from which money was withdrawn and the date and the time the transfer was completed;

9. Copies of monthly trial balances and quarterly reconciliations of the client trust accounts maintained by the lawyers; and

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

(f) With respect to client trust accounts required by Rule 1.15 of these Rules:

1. Only a lawyer admitted to practice in this jurisdiction or a person under the direct supervision of the lawyer shall be an authorized signatory or shall authorize transfers from a client trust account;

2. Receipts shall be deposited intact, and records of deposit should be sufficiently detailed to identify each item; and

3. Withdrawals shall be made only by check payable to a named payee, and not to cash, or by authorized electronic transfer.

(g) Records required by Rule 1.15 may be maintained by electronic, photographic, or other media, provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.



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(h) Upon dissolution of a law firm or of any legal professional organization, the partners, shareholders, or members (as the case may be) shall make reasonable arrangements for the maintenance of client trust-account records specified in these Rules.

(i) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or (2) if the request is honored by the financial institution and the overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall hold harmless the financial institution



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for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(j) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§ 34-3-17 and -18, shall maintain a separate account to hold funds of a client or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state, or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(k) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.



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In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (k) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the



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equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account, such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.
2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.
3. A government (such as for municipal deposits) interest-bearing checking account.
4. A checking account paying preferred interest rates, such as money-market or indexed rates.
5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, that would otherwise qualify for investment options described in 1 through 4 above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be



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considered as comparable to IOLTA accounts in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundation will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted at least quarterly to the Alabama Law Foundation.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.



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Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the IOLTA account, but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should be transmitted to the Alabama Law Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, if any, the average account balance for the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(1) All interest or dividends transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(k) shall be distributed by it for one or more of the following purposes:

1. To provide civil legal aid to the poor through access-to-justice programs administered by organizations recognized as exempt from taxation under Section 501(c)(3) of the



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Internal Revenue Code of 1986, as amended, including, but not limited to, Volunteer Lawyers Programs in Alabama and the Alabama Civil Justice Foundation;

2. To provide for the administration of civil justice, including, but not limited to, in rural communities in Alabama;

3. To provide law-related educational programs to the public, including, but not limited to, training for guardians ad litem and Court Appointed Special Advocates; and

4. For such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(m) Rules governing the receipt, disbursement, and retainage of funds received pursuant to Rule 1.15(l):

1. Not more than ten percent (10%) of such funds received in any calendar year shall be used to pay the costs, expenses, and fees associated with the administration of such funds.

2. In any subsequent calendar year, at least fifty percent (50%) of such funds received in the previous calendar year shall be distributed, and any remaining funds may be retained and held as part of an endowment.

3. Prior to distributing any such funds, the Alabama Law Foundation shall provide the Clerk of the Supreme Court of Alabama the name of each beneficiary and the amount proposed to be distributed to such beneficiary for approval by a majority of the members of the Court then sitting.



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(n) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

(o) Beginning with the calendar quarter ending June 30, 2019, and continuing for each and every quarter thereafter, the Alabama Law Foundation shall report to the Supreme Court of Alabama the total funds received from IOLTA accounts, the total funds distributed by the foundation, and a certification that the information reported to the Supreme Court is correct. Such report shall be filed with the Clerk of the Supreme Court of Alabama within thirty (30) days after the end of each such calendar quarter. The quarterly report and the certification shall be in a form substantially similar to the form appended to this Rule 1.15.



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APPENDIX TO RULE 1.15

IOLTA Foundation Disclosure Form (Rule 1.15(o))

Name of Foundation: _____

Date: _____

Report for Quarter Ending: _____

During the designated calendar quarter, the foundation identified above received \$_____ pursuant to Rule 1.15(k) of the Alabama Rules of Professional Conduct.

Also during this calendar quarter, the foundation disbursed the following funds received from any source to the following organizations:

Name	Amount
1.	
2.	
3.	
4.	

TOTAL: \$_____

Of the total funds received by the foundation from all sources during this quarter, the following was spent for the following purposes:

Salaries and employment benefits \$_____
Rent \$_____



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Travel	\$ _____
Utilities	\$ _____
Other	\$ _____
TOTAL:	\$ _____

CERTIFICATION

I, _____, certify that the information contained on this IOLTA Foundation Disclosure Form is true and correct to the best of my knowledge, after due inquiry and investigation.

Date

Foundation representative (Name)

APPENDIX B

Alabama Rules of Professional Conduct

Rule 4.2 Communication With Person Represented by Counsel.

(a) In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so.

SELECTED ETHICS OPINIONS

ETHICS OPINION

RO 2008-03

Lawyers' Trust Account Obligations With Regard to Retainers and Set Fees

QUESTION:

Should a flat fee that is received prior to the conclusion of representation be deposited into an attorney's IOLTA account or is it earned at the time of receipt?

ANSWER:

In Alabama, a flat fee that is received prior to the conclusion of the representation or prior to the performance of services must be deposited in the attorney's IOLTA account until the fee is actually earned.

DISCUSSION:

In RO 1992-17, the Disciplinary Commission previously stated that:

[T]he client has the absolute right to terminate the services of his or her lawyer, with or without cause, and to retain another lawyer of their choice. This right would be substantially limited if the client was required to pay the full amount of the agreed on fee without the services being performed. In Gaines, Gaines and Gaines v. Hare, Wynn, 554 So.2d 445 (Ala. Civ. App. 1989), the Alabama Court of Civil Appeals stated:

"The rule in Alabama is that an attorney discharged without cause or otherwise prevented from full performance, is entitled to be reasonably compensated only for services rendered before such discharge. Mall v. Gunter, 157 Ala. 375, 47 So.2d 144 (1908)."

Likewise, in RO 1993-21, the Disciplinary Commission held that an attorney “may not characterize a fee as non-refundable or use other language in a fee agreement that suggests that any fee paid before services are rendered is not subject to refund or adjustment.”

As in RO 1993-21, the Commission noted that “non-refundable fee language is objectionable because it may chill a client from exercising his or her right to discharge his or her lawyer and, thus, force the client to proceed with a lawyer that the client no longer has confidence in.” As such, the overriding principle of RO 1992-17 and RO 1993-21 is that a non-refundable fee would impinge on the right of the client to change lawyers at any time. Allowing an attorney to keep a fee, regardless of whether any service has been performed for the client, would certainly restrict the ability of a client to terminate the attorney and seek new counsel. In reaching this conclusion, the Commission also made clear that the rule applied to all arrangements where fees are paid in advance of legal services being rendered. As such, all retainers and fees are refundable to the extent that they have not yet been earned. To conclude that a flat fee is earned at the time of receipt, where the contemplated services have yet to be performed or completed, would be in direct contradiction of this long standing principle.

The only exception to the rule that all fees are refundable would be a true availability-only retainer. An availability-only retainer is a payment that is made by a client solely to secure an attorney’s future availability and would necessarily restrict the ability of the attorney to represent other clients. A true availability-only retainer is earned at the time of receipt, must be in writing, and must be approved by the client in advance of the payment. To be clear, an attorney may not characterize a flat fee or other type fee that is being paid for future services as an availability-only retainer fee. Any attempt by an attorney to circumvent the rule that all retainers and fees are refundable by mischaracterizing a fee as an availability-only retainer would be an ethics violation.

Because a flat fee paid in advance of services is subject to being refunded, Rule 1.15(a), Ala. R. Prof. C., requires that the flat fee be deposited into an

attorney's IOLTA account. Rule 1.15, Ala. R. Prof. C., provides in pertinent part, as follows:

RULE 1.15 SAFEKEEPING PROPERTY

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No personal funds of a lawyer shall ever be deposited in such a trust account, except **(1) unearned attorney fees that are being held until earned**, and **(2) funds sufficient to cover maintenance fees, such as service charges, on the account.** Interest, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. 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 six (6) years after termination of the representation.

(emphasis added) Because flat fees are not earned at the time of receipt, they are unearned attorney fees that must be held in the attorney's IOLTA account until earned in accordance with Rule 1.15.

However, the entire flat fee is not required to be held in trust until the conclusion of the representation. Rather, an attorney may withdraw portions of the fee from the trust account as the fee is earned. Exactly when and what amount of the fee is earned during the representation is a question of reasonableness. It is generally recognized that the first yardstick used in assessing the reasonableness of an attorney fee is the

time consumed. Peebles v. Miley, 439 So.2d 137 (Ala. 1983). For example, an attorney may withdraw portions of the flat fee that have been earned based on the time the attorney has spent on the matter and his normal hourly rate. In doing so, the attorney should notify the client when portions of the fee are withdrawn from the trust account by sending a statement or invoice to the client stating the date and the amount of the withdrawal.

An attorney may also enter into a written agreement with the client setting forth milestones in the representation that entitle the attorney to receive a specified portion of the fee. The fee agreement may explicitly state that an attorney is entitled to specific portions of the fee after certain stages in the representation have been completed. For example, assume an attorney is representing a client in a criminal matter for a flat fee of \$5,000.00. The fee agreement may provide that the attorney is entitled to \$2,500.00 of the fee after arraignment or after the preliminary hearing has been held. Any such agreement between the attorney and the client should be set out, preferably in writing, at the outset of the representation.

JWM/s

12-5-08

ETHICS OPINION
1990-08

Unclaimed client trust funds--lawyer's obligation to ascertain true owner, escheatment of unclaimed funds which appear to be lawyer's fees to lawyer

SUMMARY OF THE QUESTION:

I practiced law from 1971 through 1985 and maintained a trust account at a local bank. I assumed a judicial office in 1985 and had a balance remaining in my trust account of \$1,200.00. I continued to receive statements on that account. The account is now dormant. I have some 1,500 files accumulated which are now boxed and stored in my home. My old office has been leased to another attorney who had access to these files and handled inquiries from former clients. That arrangement ceased in October of 1987 and during the period from 1985 to 1987 no inquiries were received relating to any trust funds by that lawyer or by me. The amount accumulated in my account is somewhat confusing because I normally operated a zero balance accounting method disbursing funds from the account upon receipt. I have had several secretaries to work for me over the years and each kept books differently but I cannot reconstruct the various events of many years of practice. I cannot find where the balance came from other than the fact that these are probably attorney's fees and expenses paid into the account but not disbursed to me. I feel that I have made a good faith effort to locate the claimants to these funds including advertising in a local newspaper for three consecutive weeks. No claims or inquiries have been received and I would now like to close out this account and transfer these funds into my personal account. Please advise as to whether I may do so.

ADDITIONAL INFORMATION: Attached to the request is a letter from the attorney that leased the former law office stating that there had been no inquiries as to funds held in the escrow account and also attached is a copy of the trust bank account showing a balance of \$1,224.10 as of December 30, 1989, and a copy of a legal notice published in the local newspaper for three consecutive weeks in November of 1988.

ANSWER:

In addressing a similar situation the Disciplinary Commission opined that where funds cannot be attributed to a particular client, and where a reasonable and good faith effort has been made to determine the ownership of the funds, and where the funds have been held as long as necessary to assure that no unidentified client could make a successful claim against the account, an attorney might distribute those funds to the attorney's estate. (The Alabama Lawyer, January 1989, p. 49). The Commission quoted with favor ethics opinions from several different states holding that after reasonable and good faith attempts to ascertain ownership of the funds and after holding the funds long enough to make sure that no unidentified client could make a claim against the

funds within any applicable statute of limitations, the funds could be distributed to the attorney's personal account or, in the case considered by the Commission, to his estate.

Accordingly, having made a good faith effort and having exercised reasonable care to notify the former clients of the existence of the funds and having established a mechanism for the retrieval of the funds and having allowed sufficient time to expire, the Commission is of the opinion that you may now place these funds in your personal account.

AWJ/vf

3/12/90

ETHICS OPINION
1988-92

Unclaimed client trust funds - escheat to state

QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and undertook to wind up the practice and to distribute the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account but the balances did not reconcile with the bank account. After several years A was able to determine the clients who owned the various accounts and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should A make in order to close the account?

ANSWER:

There are two categories of funds in the account. The first category involved those funds that cannot be attributed to a particular client. After a reasonable and good faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, A may distribute the funds to the solo practitioner's estate. The second category of funds in the account are those that can be attributed to a client but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

DISCUSSION:

Attorney A should first make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to insure that no unidentified client could make a claim against the funds within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account could properly be funds deposited to pay service charges [DR 9-102(A)(1)] or to avoid any possibility of a shortage in the account or fees earned but not withdrawn [DR 9-102(A)(2)].

The Michigan Bar Committee on Professional and Judicial Ethics held that funds that could not be associated with any particular client or file, or were presumed to belong to attorneys formerly with the firm or to be interest earned on an account, after notifying former clients of the existence of the funds and providing them an opportunity to substantiate any claim, could be retained by the attorneys involved [Opinion CI-947 (1983) and CI-752 (1982)].

Similarly, in Virginia, it was held that such unidentifiable funds must be placed in an interest bearing account a sufficient length of time to determine that no successful claim by an unidentified client could be made. If no owners or claims are found, the lawyer may then transfer the funds to his own account [Virginia Opinion 548 (3/1/84)].

In another Virginia Opinion, it was held that unidentifiable funds in a trust account could be distributed to a deceased lawyer's estate or distributed according to law to meet the deceased lawyer's non-trust obligations, provided a good faith effort to determine ownership is made and the funds are retained a sufficient length of time to assure that a successful claim could not be made.

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner." The Commission held that:

"Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available we suggest that the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, Code of Alabama, 1975."

In this case the Commission assumed that the funds were client funds and were "not earned attorney's fees which [the attorney] deposited in a trust account pursuant to the provisions of DR 9-102(A) and failed to withdraw therefrom." The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are client funds by reasonable, diligent, and good faith efforts, including public notice in a newspaper of general circulation and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account are those that can be attributed to a client but the whereabouts of the client are unknown. In this situation

Attorney A does not have the option of distributing the funds to the deceased attorney's estate because the money clearly does not belong to the deceased attorney. In situations such as this numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under state law at which time the funds must be turned over to the state [Mississippi State Bar Ethics Committee Opinion 104 (6/6/85); State Bar of New Mexico Advisory Opinions Committee, Opinion 1983-3. (7/25/83); North Carolina State Bar Association Ethics Committee Opinion 372 (7/25/85); Michigan Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion CI-1144 (4/9/86); Committee on Professional Responsibility of the Vermont Bar Association, Opinion 87-9 (8/87)].

The Office of General Counsel and the Disciplinary Commission have, in a number of opinions, held that where funds in a trust account may be attributed to a client but the location of the client is not known, that some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited funds. The opinions also hold that although other proceedings may be available the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, Code of Alabama, 1975, [RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146, and RO-84-106]. In situations where the client is known but cannot be found the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

Consequently, in the case at hand, we hold that lawyer A must make every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, Code of Alabama, 1975.

RWN/vf

10/21/88

NOTICE TO FINANCIAL INSTITUTION TO ESTABLISH AN IOLTA ACCOUNT

ATTORNEY INFORMATION

INSTRUCTIONS TO ATTORNEYS: (1) COMPLETE THIS FORM, (2) TAKE THIS FORM TO A FINANCIAL INSTITUTION ELIGIBLE TO OFFER IOLTA ACCOUNTS, (3) SEND A COPY OF THE COMPLETED FORM TO THE ALABAMA LAW FOUNDATION ALONG WITH A LIST OF ALL LAWYERS IN LAW FIRM.

FIRM NAME: _____

ATTORNEY NAME: _____

MAILING ADDRESS: _____

CITY: _____ STATE: _____ ZIP: _____ TELEPHONE: _____

FINANCIAL INSTITUTION NAME: _____

ACCOUNT NUMBER: _____

The undersigned hereby enrolls in the Alabama Law Foundation's Interest on Lawyers Trust Account (IOLTA) program established by the Supreme Court of Alabama. Under this program, please open (if new), or change the status of my/our law firm's existing trust account to an interest-bearing account of a type authorized by Rule 1.15 of the Alabama Rules of Professional Conduct.

The IOLTA account must remain in my/our law firm's name. However, the IOLTA account must bear the Alabama Law Foundation's Taxpayer Identification Number, which will be paid interest or dividends from the account. No IRS Form 1099 is required to be filed for IOLTA accounts. IOLTA accounts are NOT subject to back-up withholding.

AUTHORIZED SIGNATORIES: _____ DATE: _____

FINANCIAL INSTITUTION INFORMATION

Interest in accordance with your standard account disclosure must be remitted monthly or quarterly to:

ALABAMA LAW FOUNDATION, INC
POST OFFICE BOX 4129
MONTGOMERY, AL 36103-4129
TAXPAYER I.D. NO. 63-0951482

For more information about the IOLTA program and the charitable programs it supports, or for assistance in setting up this account, remitting interest or dividends to the Alabama Law Foundation, or handling remittance errors, please visit the Foundation's website at www.alabamalawfoundation.org or call (334) 387-1600 and ask for the IOLTA Operations Department. Remittances made via ACH and Electronic Transfer are encouraged.

**SUPPLEMENT TO DEPOSIT AGREEMENT(S)
RE: REPORTING OF INSTANCES OF INSUFFICIENT FUNDS OF LAWYERS**

DATE: _____

Name and Address of Financial Institution
(herein the "Bank"):

Name and Address of Attorney or Law Firm Depositor
(herein the "Depositor"):

Depositor's Trust Account(s) at Bank to Which this Supplement Applies (individually an "Account" and collectively the "Accounts"):

Name of Account	Account No.	Name of Account	Account No.
Name of Account	Account No.	Name of Account	Account No.

As authorized by Supreme Court of Alabama order dated May 13, 1997, and for the purpose of Depositor complying with the Alabama Rules of Professional Conduct for lawyers, Depositor and Bank agree that all deposit agreements between Bank and Depositor (however named) relating to the Accounts (herein the "Deposit Agreements") are amended to include the following additional provisions:

1. Depositor has informed Bank that Rule 1.15 of the Alabama Rules of Professional Conduct for lawyers ("**Rule 1.15**") requires that Depositor shall request that the financial institution where Depositor maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar (an "**ISF Report**") in every instance where a properly payable item or order to pay is presented against Depositor's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, any overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the Depositor (a "**Reportable ISF Event**"). The ISF Report of the financial institution shall contain the same information, or a copy of that information, forwarded to the Depositor who presented the item or order.
2. At Depositor's request, and as an accommodation to Depositor, Bank agrees to file an ISF Report with the Office of General Counsel of the Alabama State Bar upon the occurrence of any Reportable ISF Event relating to any of the Accounts. Bank shall send any ISF Report to: **Office of General Counsel of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101**. Depositor agrees to pay Bank fees, as established from time to time by Bank, for processing and filing of any ISF Report without further notice or demand.
3. Depositor consents to the reporting and production requirements mandated by Rule 1.15 and agrees to hold Bank harmless for its compliance with these reporting and production requirements. **Depositor represents to Bank that Rule 1.15 provides that the duty for complying with Rule 1.15 belongs to the Depositor and not to Bank. Bank has agreed to file any ISF Report as an accommodation to Depositor; however, Bank shall have no liability to Depositor of any nature whatsoever in the event that Bank shall fail to file an ISF Report as set forth herein. Depositor agrees that, in any instance where the filing of an ISF Report may be appropriate, it shall be Depositor's responsibility and duty to verify that Bank has filed the ISF Report.** Neither this Supplemental Agreement nor the reporting or production of records by Bank made pursuant to Rule 1.15 shall be deemed to create in Bank a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of Depositor's overdrawing any of the Accounts. There are no third party beneficiaries to this Agreement.
4. Except as modified herein, all other terms and conditions of the Deposit Agreements shall remain in full force and effect.

DEPOSITOR:

BANK:

Name of Lawyer / Law Firm

Name of Financial Institution

By: _____

By: _____

Its:

Its:

Rev. 07/02/97

SAMPLE TRUST ACCOUNT LEDGERS

Please Note: These ledger pages are not intended to represent the only ethically correct way to keep trust accounting records. The purpose of this example is to show the different types of information which should be kept, and one way of setting up the ledgers.

Sample Page **IOLTA Trust Account General Ledger**
Black, White & Green, P.C.

All check numbers in sequence.

Full description of all transactions included.

Date	Check No.	Client	File No.	Payee	Description	Payment	Deposit	Balance
								13,251.14
01/05/03	820	Village Appliances	02-0250	AAA Court Reporters	Deposition Transcript	125.00		13,126.14
01/05/03	821	Jed Bartlett	02-1599	Capitol Medical Center	Copy Medical Records	30.00		13,096.14
01/05/03	822	Nora Jones	02-1598	Clerk of Court	Filing Fee	95.00		13,001.14
01/06/03	Dep. 03-01 Receipt #1234	Jayne Thomas	01-0023		Settlement Check		38,000.00	51,001.14
01/06/03	823	Moviestore	02-1423	Excelsior Legal	Corporate Kit	235.00		50,766.14
01/09/03	824	Jayne Thomas	01-0023	Dr. Eileen Rogers	Rehab. Final	1,340.89		49,425.25
01/09/03	825	Jayne Thomas	01-0023	BW&G	Fees	11,400.00		38,025.25
01/09/03	826	Jayne Thomas	01-0023	Jayne Thomas	Net Settlement	25,259.11		12,766.14
01/09/03	827	VOID						12,766.14
01/11/03	Dep. 03-02 Receipt #1235	Ross Geller	03-0001		Advance Fees & Costs		1,000.00	13,766.14
01/12/03	828	Nora Jones	02-1598	Thomas Magnum	Investigative Report	475.00		13,291.14

Note that check is given time to clear before disbursement.

All receipts tied to receipt book number.

**Sample Page: Client Trust Ledger Card
Black, White & Green, P.C.**

Name: Nora Jones Matter: Divorce File No. 02-1598
 Address: 123 Main Street Attorney: RLG
Anywhere, AL 36000

Date	Check No.	Payee	Description	Payment	Deposit	Balance
			Balance Forward			0.00
12/31/02	Dep. 02-57 Receipt #1233		Fee & Cost Deposit		1,500.00	1,500.00
01/05/03	822	Clerk of Court	Filing Fee	95.00		1,405.00
01/12/03	828	Thomas Magnum	Investigative Report	475.00		930.00
01/15/03	834	BW&G, P.C.	Fees	600.00		330.00
02/28/03	Dep. 03-12		Additional Fee & Cost Deposit		500.00	830.00
03/17/03	859	BW&G, P.C.	Copy costs	47.95		782.05
03/31/03	873	BW&G, P.C.	Fees	700.00		82.05
03/31/03	874	Nora Jones	Refund	82.05		0.00

Note: Ending balance for closed matters must always come to zero.
 The sum of the ending balances for all open matters must always equal the ending balance in the Trust Account General Ledger.

Report of Cash Payments Over \$10,000 Received in a Trade or Business

▶ See instructions for definition of cash.
▶ Use this form for transactions occurring after August 29, 2014. Do not use prior versions after this date.

For Privacy Act and Paperwork Reduction Act Notice, see the last page.

1 Check appropriate box(es) if: a Amends prior report; b Suspicious transaction.

Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions

3 Last name 4 First name 5 M.I. 6 Taxpayer identification number

7 Address (number, street, and apt. or suite no.) 8 Date of birth (see instructions) M M D D Y Y Y Y

9 City 10 State 11 ZIP code 12 Country (if not U.S.) 13 Occupation, profession, or business

14 Identifying document (ID) a Describe ID c Number b Issued by

Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions

16 Individual's last name or organization's name 17 First name 18 M.I. 19 Taxpayer identification number

20 Doing business as (DBA) name (see instructions) Employer identification number

21 Address (number, street, and apt. or suite no.) 22 Occupation, profession, or business

23 City 24 State 25 ZIP code 26 Country (if not U.S.)

27 Alien identification (ID) a Describe ID c Number b Issued by

Part III Description of Transaction and Method of Payment

28 Date cash received M M D D Y Y Y Y 29 Total cash received \$.00 30 If cash was received in more than one payment, check here 31 Total price if different from item 29 \$.00

32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):
a U.S. currency \$.00 (Amount in \$100 bills or higher \$.00)
b Foreign currency \$.00 (Country)
c Cashier's check(s) \$.00 Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶
d Money order(s) \$.00
e Bank draft(s) \$.00
f Traveler's check(s) \$.00

33 Type of transaction a Personal property purchased f Debt obligations paid
b Real property purchased g Exchange of cash
c Personal services provided h Escrow or trust funds
d Business services provided i Bail received by court clerks
e Intangible property purchased j Other (specify in item 34) ▶
34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶

Part IV Business That Received Cash

35 Name of business that received cash 36 Employer identification number

37 Address (number, street, and apt. or suite no.) Social security number

38 City 39 State 40 ZIP code 41 Nature of your business

42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Signature Authorized official Title

43 Date of signature M M D D Y Y Y Y 44 Type or print name of contact person 45 Contact telephone number

Multiple Parties

(Complete applicable parts below if box 2 or 15 on page 1 is checked.)

Part I Continued—Complete if box 2 on page 1 is checked

Form section for Part I, entry 1. Includes fields for last name, first name, M.I., taxpayer ID, address, date of birth, city, state, ZIP code, country, occupation, and identifying document details.

Form section for Part I, entry 2. Includes fields for last name, first name, M.I., taxpayer ID, address, date of birth, city, state, ZIP code, country, occupation, and identifying document details.

Part II Continued—Complete if box 15 on page 1 is checked

Form section for Part II, entry 1. Includes fields for individual/organization name, first name, M.I., taxpayer ID, DBA name, employer ID, address, occupation, city, state, ZIP code, country, and alien ID details.

Form section for Part II, entry 2. Includes fields for individual/organization name, first name, M.I., taxpayer ID, DBA name, employer ID, address, occupation, city, state, ZIP code, country, and alien ID details.

Comments – Please use the lines provided below to comment on or clarify any information you entered on any line in Parts I, II, III, and IV

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8300 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/form8300.

Important Reminders

- Section 6050I (26 United States Code (U.S.C.) 6050I) and 31 U.S.C. 5331 require that certain information be reported to the IRS and the Financial Crimes Enforcement Network (FinCEN). This information must be reported on IRS/FinCEN Form 8300.
- Item 33, box i, is to be checked only by clerks of the court; box d is to be checked by bail bondsmen. See *Item 33* under *Part III*, later.
- The meaning of the word "currency" for purposes of 31 U.S.C. 5331 is the same as for the word "cash" (See *Cash* under *Definitions*, later).

General Instructions

Who must file. Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300. Any transactions conducted between a payer (or its agent) and the recipient in a 24-hour period are related transactions. Transactions are considered related even if they occur over a period of more than 24 hours if the recipient knows, or has reason to know, that each transaction is one of a series of connected transactions.

Keep a copy of each Form 8300 for 5 years from the date you file it.

Clerks of federal or state courts must file Form 8300 if more than \$10,000 in cash is received as bail for an individual(s) charged with certain criminal offenses. For these purposes, a clerk includes the clerk's office or any other office, department, division, branch, or unit of the court that is authorized to receive bail. If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail. See *Item 33* under *Part III*, later.

If multiple payments are made in cash to satisfy bail and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated and the information return must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000 in cash. In such cases, the reporting requirement can be satisfied by sending a single written statement with the

aggregate Form 8300 amounts listed relating to that payer. Payments made to satisfy separate bail requirements are not required to be aggregated. See Treasury Regulations section 1.6050I-2.

Casinos must file Form 8300 for nongaming activities (restaurants, shops, etc.).

Voluntary use of Form 8300. Form 8300 may be filed voluntarily for any suspicious transaction (see *Definitions*, later) for use by FinCEN and the IRS, even if the total amount does not exceed \$10,000.

Exceptions. Cash is not required to be reported if it is received:

- By a financial institution required to file FinCEN Report 112, BSA Currency Transaction Report (BCTR);
- By a casino required to file (or exempt from filing) FinCEN Report 112, if the cash is received as part of its gaming business;
- By an agent who receives the cash from a principal, if the agent uses all of the cash within 15 days in a second transaction that is reportable on Form 8300 or on FinCEN Report 112, and discloses all the information necessary to complete Part II of Form 8300 or FinCEN Report 112 to the recipient of the cash in the second transaction;
- In a transaction occurring entirely outside the United States. See Publication 1544, Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business), regarding transactions occurring in Puerto Rico and territories and possessions of the United States; or
- In a transaction that is not in the course of a person's trade or business.

When to file. File Form 8300 by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday, or legal holiday, file the form on the next business day.

Where to file. File the form with the Internal Revenue Service, Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232.



You may be able to electronically file Form 8300 using FinCEN's Bank Secrecy Act (BSA) Electronic Filing (E-Filing) System as an alternative method to filing a paper Form 8300. To get more information, visit the BSA E-Filing System, at <http://bsae filing.fincen.treas.gov/main.html>.

Statement to be provided. You must give a written or electronic statement to each person named on a required Form 8300 on or before January 31 of the year following the calendar year in which the

cash is received. The statement must show the name, telephone number, and address of the information contact for the business, the aggregate amount of reportable cash received, and that the information was furnished to the IRS. Keep a copy of the statement for your records.

Multiple payments. If you receive more than one cash payment for a single transaction or for related transactions, you must report the multiple payments any time you receive a total amount that exceeds \$10,000 within any 12-month period. Submit the report within 15 days of the date you receive the payment that causes the total amount to exceed \$10,000. If more than one report is required within 15 days, you may file a combined report. File the combined report no later than the date the earliest report, if filed separately, would have to be filed.

Taxpayer identification number (TIN). You must furnish the correct TIN of the person or persons from whom you receive the cash and, if applicable, the person or persons on whose behalf the transaction is being conducted. You may be subject to penalties for an incorrect or missing TIN.

The TIN for an individual (including a sole proprietorship) is the individual's social security number (SSN). For certain resident aliens who are not eligible to get an SSN and nonresident aliens who are required to file tax returns, it is an IRS Individual Taxpayer Identification Number (ITIN). For other persons, including corporations, partnerships, and estates, it is the employer identification number (EIN).

If you have requested but are not able to get a TIN for one or more of the parties to a transaction within 15 days following the transaction, file the report and use the comments section on page 2 of the form to explain why the TIN is not included.

Exception. You are not required to provide the TIN of a person who is a nonresident alien individual or a foreign organization if that person or foreign organization:

- Does not have income effectively connected with the conduct of a U.S. trade or business;
- Does not have an office or place of business, or a fiscal or paying agent in the U.S.;
- Does not furnish a withholding certificate described in §1.1441-1(e)(2) or (3) or §1.1441-5(c)(2)(iv) or (3)(iii) to the extent required under §1.1441-1(e)(4)(vii); or
- Does not have to furnish a TIN on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.

Penalties. You may be subject to penalties if you fail to file a correct and complete Form 8300 on time and you cannot show that the failure was due to reasonable cause. You may also be subject to penalties if you fail to furnish timely a correct and complete statement to each person named in a required report. A minimum penalty of \$25,000 may be imposed if the failure is due to an intentional or willful disregard of the cash reporting requirements.

Penalties may also be imposed for causing, or attempting to cause, a trade or business to fail to file a required report; for causing, or attempting to cause, a trade or business to file a required report containing a material omission or misstatement of fact; or for structuring, or attempting to structure, transactions to avoid the reporting requirements. These violations may also be subject to criminal prosecution which, upon conviction, may result in imprisonment of up to 5 years or fines of up to \$250,000 for individuals and \$500,000 for corporations or both.

Definitions

Cash. The term "cash" means the following.

- U.S. and foreign coin and currency received in any transaction; or
- A cashier's check, money order, bank draft, or traveler's check having a face amount of \$10,000 or less that is received in a designated reporting transaction (defined below), or that is received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under either section 60501 or 31 U.S.C. 5331.

Note. Cash does not include a check drawn on the payer's own account, such as a personal check, regardless of the amount.

Designated reporting transaction. A retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of a consumer durable, a collectible, or a travel or entertainment activity.

Retail sale. Any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

Consumer durable. An item of tangible personal property of a type that, under ordinary usage, can reasonably be expected to remain useful for at least 1 year, and that has a sales price of more than \$10,000.

Collectible. Any work of art, rug, antique, metal, gem, stamp, coin, etc.

Travel or entertainment activity. An item of travel or entertainment that pertains to a single trip or event if the combined sales price of the item and all other items relating to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

Exceptions. A cashier's check, money order, bank draft, or traveler's check is not considered received in a designated reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans. See Publication 1544 for more information.

Person. An individual, corporation, partnership, trust, estate, association, or company.

Recipient. The person receiving the cash. Each branch or other unit of a person's trade or business is considered a separate recipient unless the branch receiving the cash (or a central office linking the branches), knows or has reason to know the identity of payers making cash payments to other branches.

Transaction. Includes the purchase of property or services, the payment of debt, the exchange of cash for a negotiable instrument, and the receipt of cash to be held in escrow or trust. A single transaction may not be broken into multiple transactions to avoid reporting.

Suspicious transaction. A suspicious transaction is a transaction in which it appears that a person is attempting to cause Form 8300 not to be filed, or to file a false or incomplete form.

Specific Instructions

You must complete all parts. However, you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only. For voluntary reporting of suspicious transactions, see *Item 7*, next.

Item 1. If you are amending a report, check box 1a. Complete the form in its entirety (Parts I-IV) and include the amended information. Do not attach a copy of the original report.

To voluntarily report a suspicious transaction (see *Suspicious transaction* above), check box 1b. You may also telephone your local IRS Criminal Investigation Division or call the FinCEN Financial Institution Hotline at 1-866-556-3974.

Part I

Item 2. If two or more individuals conducted the transaction you are reporting, check the box and complete Part I on page 1 for any one of the individuals. Provide the same

information for the other individual(s) by completing Part I on page 2 of the form. If more than three individuals are involved, provide the same information in the comments section on page 2 of the form.

Item 6. Enter the taxpayer identification number (TIN) of the individual named. See *Taxpayer identification number (TIN)*, earlier, for more information.

Item 8. Enter eight numerals for the date of birth of the individual named. For example, if the individual's birth date is July 6, 1960, enter "07" "06" "1960."

Item 13. Fully describe the nature of the occupation, profession, or business (for example, "plumber," "attorney," or "automobile dealer"). Do not use general or nondescriptive terms such as "businessman" or "self-employed."

Item 14. You must verify the name and address of the named individual(s). Verification must be made by examination of a document normally accepted as a means of identification when cashing checks (for example, a driver's license, passport, alien registration card, or other official document). In item 14a, enter the type of document examined. In item 14b, identify the issuer of the document. In item 14c, enter the document's number. For example, if the individual has a Utah driver's license, enter "driver's license" in item 14a, "Utah" in item 14b, and the number appearing on the license in item 14c.

Note. You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

Part II

Item 15. If the transaction is being conducted on behalf of more than one person (including husband and wife or parent and child), check the box and complete Part II for any one of the persons. Provide the same information for the other person(s) by completing Part II on page 2. If more than three persons are involved, provide the same information in the comments section on page 2 of the form.

Items 16 through 19. If the person on whose behalf the transaction is being conducted is an individual, complete items 16, 17, and 18. Enter his or her TIN in item 19. If the individual is a sole proprietor and has an employer identification number (EIN), you must enter both the SSN and EIN in item 19. If the person is an organization, put its name as shown on required tax filings in item 16 and its EIN in item 19.

Item 20. If a sole proprietor or organization named in items 16 through 18 is doing business under a name other than that entered in item 16 (for example, a "trade" or "doing business as (DBA)" name), enter it here.

Item 27. If the person is not required to furnish a TIN, complete this item. See *Taxpayer identification number (TIN)*, earlier. Enter a description of the type of official document issued to that person in item 27a (for example, a "passport"), the country that issued the document in item 27b, and the document's number in item 27c.

Note. You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

Part III

Item 28. Enter the date you received the cash. If you received the cash in more than one payment, enter the date you received the payment that caused the combined amount to exceed \$10,000. See *Multiple payments*, earlier, for more information.

Item 30. Check this box if the amount shown in item 29 was received in more than one payment (for example, as installment payments or payments on related transactions).

Item 31. Enter the total price of the property, services, amount of cash exchanged, etc. (for example, the total cost of a vehicle purchased, cost of catering service, exchange of currency) if different from the amount shown in item 29.

Item 32. Enter the dollar amount of each form of cash received. Show foreign currency amounts in U.S. dollar equivalent at a fair market rate of exchange available to the public. The sum of the amounts must equal item 29. For cashier's check, money order, bank draft, or traveler's check, provide the name of the issuer and the serial number of each instrument. Names of all issuers and all serial numbers involved must be provided. If necessary, provide this information in the comments section on page 2 of the form.

Item 33. Check the appropriate box(es) that describe the transaction. If the transaction is not specified in boxes a-i, check box j and briefly describe the transaction (for example, "car lease," "boat lease," "house lease," or "aircraft rental"). If the transaction relates to the receipt of bail by a court clerk, check box i, "Bail received by court clerks." This box is only for use by court clerks. If the transaction relates to cash received by a bail bondsman, check box d, "Business services provided."

Part IV

Item 36. If you are a sole proprietorship, you must enter your SSN. If your business also has an EIN, you must provide the EIN as well. All other business entities must enter an EIN.

Item 41. Fully describe the nature of your business, for example, "attorney" or "jewelry dealer." Do not use general or nondescriptive terms such as "business" or "store."

Item 42. This form must be signed by an individual who has been authorized to do so for the business that received the cash.

Comments

Use this section to comment on or clarify anything you may have entered on any line in Parts I, II, III, and IV. For example, if you checked box b (Suspicious transaction) in line 1 above Part I, you may want to explain why you think that the cash transaction you are reporting on Form 8300 may be suspicious.

Privacy Act and Paperwork Reduction Act Notice.

Except as otherwise noted, the information solicited on this form is required by the IRS and FinCEN in order to carry out the laws and regulations of the United States. Trades or businesses and clerks of federal and state criminal courts are required to provide the information to the IRS and FinCEN under section 6050I and 31 U.S.C. 5331, respectively. Section 6109 and 31 U.S.C. 5331 require that you provide your identification number. The principal purpose for collecting the information on this form is to maintain reports or records which have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counter-intelligence activities, by directing the federal government's attention to unusual or questionable transactions.

You are not required to provide information as to whether the reported transaction is deemed suspicious. Failure to provide all other requested information, or providing fraudulent information, may result in criminal prosecution and other penalties under 26 U.S.C. and 31 U.S.C.

Generally, tax returns and return information are confidential, as stated in section 6103. However, section 6103

allows or requires the IRS to disclose or give the information requested on this form to others as described in the Internal Revenue Code. For example, we may disclose your tax information to the Department of Justice, to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, and U.S. commonwealths and possessions, to carry out their tax laws. We may disclose this information to other persons as necessary to obtain information which we cannot get in any other way. We may disclose this information to federal, state, and local child support agencies; and to other federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans. We may also provide the records to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties. We may also disclose this information to other countries under a tax treaty, or to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. In addition, FinCEN may provide the information to those officials if they are conducting intelligence or counter-intelligence activities to protect against international terrorism.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any law under 26 U.S.C. or 31 U.S.C.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 21 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments from www.irs.gov/formspubs. Click on *More Information* and then click on *Give us feedback*. Or you can send your comments to Internal Revenue Service, Tax Forms and Publications Division, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8300 to this address. Instead, see *Where to file*, earlier.