

TOPICS OF INTEREST TO LAWYERS

Trust Accounts and Recordkeeping

- ◆ Computer-Generated Checks
- ◆ Computer-Generated Trust Account Records
- ◆ Location of Client Trust Accounts
- ◆ Prohibited Transactions
- ◆ Proper Identification of Trust Accounts
- ◆ Required Records
- ◆ Record Retention Requirements
- ◆ Timing of Disbursements

COMPUTER-GENERATED CHECKS

SCR 20:1.15(f)(1)e.1. states that checks must be “pre-printed and pre-numbered.” OLR has interpreted this rule to allow firms to use checks that are printed with computer software programs, so long as those checks are pre-formatted to comply with the requirements for trust account checks. Those requirements are as follows:

1. The name and address of the lawyer or law firm, and the name of the account must appear in the upper left corner of the check;
2. With respect to IOLTA accounts, the account name must include the words “Client Account,” “Trust Account” or words of similar import. The acronym “IOLTA,” without the addition of “Trust Account” or “Client Account,” is not adequate.
3. With respect to Credit Card trust accounts, which are solely for the purpose of accepting advances for legal fees and costs, the account must be entitled: “Credit Card Trust Account.” (See, SCR 20:1.15(e)(4)h.1.)

See, sample - [Proper Check Format](#)

SCR 20:1.15(f)(1)e. Disbursement records.

1. **Checks.** Checks shall be pre-printed and pre-numbered. The name and address of the lawyer or law firm, and the name of the account shall be printed in the upper left corner of the check. Trust account checks shall include the words “Client Account,” or “Trust Account,” or words of similar import in the account name. Each check disbursed from the trust account shall identify the client matter and the reason for the disbursement on the memo line.

COMPUTER-GENERATED TRUST ACCOUNT RECORDS

Lawyers may use computerized accounting software to maintain the Transaction Register, the Individual Client Ledgers, and the Ledger for Account Fees and Charges. The software may also be used to assist in the Monthly Reconciliation process.

However, regardless of whether the records are maintained manually or with the assistance of computer software, they must include the components outlined in [SCR 20:1.15\(f\)\(1\) and \(2\)](#). Lawyers need to exercise caution in purchasing software to assure that the program will comply with the record-keeping requirements of the trust account rule. In the past, a fairly common shortcoming has been the inability of certain software programs to print the transaction register and client ledgers with a running balance that is calculated after each individual transaction.

While some programs have allowed a lawyer to review the information on the computer screen, the information has not been printable.

Printable records are essential because computer records are always at risk of being lost due to hardware and software problems, not to mention computer viruses. Pursuant to **SCR 20:1.15(f)(4)a.**, below, a lawyer who maintains trust account records by computer must maintain the various reports in a form that can be reproduced to printed hard copy, and electronic records must be regularly backed up by an appropriate storage device.

Computer software records relating to an IOLTA account must be printed every 30 days, and the printed copy must be retained for at least six (6) years, pursuant to **SCR 20:1.15(f)(4)b.**

SCR 20:1.15(f)(4) Electronic record retention.

- a. **Back-up of records.** A lawyer who maintains trust account records by computer shall maintain the transaction register, client ledgers, and reconciliation reports in a form that can be reproduced to printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.
- b. **IOLTA account records.** In addition to the requirements of sub. (f) (4)a., the transaction register, the subsidiary ledger, and the reconciliation report shall be printed every 30 days for the IOLTA account. The printed copy shall be retained for at least 6 years, as required under sub. (e) (6).

LOCATION OF TRUST ACCOUNTS

SCR 20:1:1.15(e)(1)a. requires that trust accounts be located at a financial institution that has at least one branch in Wisconsin and that will agree to report overdrafts on such accounts to the Office of Lawyer Regulation, pursuant to SCR 20:1.15(h). [See rule below.] Consequently, while a trust account can be located at a financial institution outside the state of Wisconsin, the institution must have a branch in Wisconsin.

SCR 20:1.15(h) Dishonored instrument notification; (Overdraft notices).

All draft trust accounts and draft fiduciary accounts are subject to the following provisions on dishonored instrument notification:

- (1) **Overdraft reporting agreement.** A lawyer shall maintain draft trust accounts only in a financial institution that has agreed to provide an overdraft report to the office of lawyer regulation under par. (3).

Note: *Minnesota trust accounts, like Wisconsin trust accounts, are subject to overdraft reporting. A lawyer who is licensed in both Wisconsin and Minnesota and whose firm is in Minnesota, could use the Minnesota trust account for Wisconsin legal matters only under the following circumstances: 1) the account is at an institution that has a branch in Wisconsin; and 2) the Minnesota financial institution is able to report overdrafts on the account to both the Office of Lawyer Regulation in Wisconsin and the Office of Lawyer Professional Responsibility in Minnesota.*

SCR 20:1:1.15(e)(1)b., which relates to IOLTA trust accounts, imposes an additional requirement with respect to location, i.e., that such accounts be maintained at IOLTA participating financial institutions that meet the requirements of SCR 20:1.15(cm). A list of IOLTA participating financial institutions is available online at the Wisconsin Trust Account Foundation's (WisTAF) website: <http://www.wistaf.org>.

PROHIBITED TRANSACTIONS

SCR 20:1.15(e)(4) prohibits certain types of transactions from being conducted in connection with a trust account. The prohibitions exist because the transactions in question do not produce documentation as to their purpose and do not identify the client or matter to which they relate. The prohibited transactions are as follows:

Cash Disbursements: No disbursement of cash is permitted from a trust account or from a deposit to a trust account. Similarly, no trust account check can be payable to “Cash.”

Telephone, Internet and other Electronic Transactions: Deposits and disbursements cannot be made from a trust account by a telephone transfer of funds or by an internet transaction. In addition, credit cards and debit cards cannot be used to transfer funds to or from a trust account. Furthermore, a lawyer cannot authorize a third party to electronically withdraw funds from a trust account.

Exceptions: Wire Transfers. SCR 20:1.15(e)(4)b.1. permits wire transfers to and from a trust account. [See rule, below]

Telephone Transfers. SCR 20:1.15(e)(4)b.2. permits telephone transfers between non-pooled draft accounts and non-pooled non-draft trust accounts that a lawyer maintains for a particular client. [See rule below.]

This exception permits transfers to and from an individual client’s investment account that has no check writing capabilities (i.e., a non-pooled, non-draft account) to that same individual client’s checking trust account (i.e., a non-pooled draft account).

SCR 20:1.15(e)(4) Prohibited transactions

b. **Telephone transfers.** No deposits or disbursements shall be made to or from a pooled trust account by a telephone transfer of funds. This section does not prohibit any of the following:

1. wire transfers.
2. telephone transfers between non-pooled draft and non-pooled non-draft trust accounts that a lawyer maintains for a particular client.

Collection Trust Accounts. SCR 20:1.15(e)(4)g. provides a limited exception to the prohibition against a number of electronic transactions. The exception applies only to trust accounts used in collection work. In order to qualify for this exception, a law firm must petition the Office of Lawyer Regulation for a separate, written agreement, allowing the law firm to conduct those types of transactions, and must establish that the prohibited transactions constitute an “integral part of the lawyer’s practice.” Law firms authorized to use the prohibited electronic transactions must comply with certain requirements, including: audits, record production, malpractice insurance, and crime bonding.

Fee and Cost Advances by Credit Card, Debit Card or other Electronic Deposit. SCR 20:1.15(e)(4)h. allows law firms to accept advances for legal fees and costs via otherwise prohibited electronic transactions, including credit and debit cards. In order to implement this exception, a firm must establish a “Credit Card Trust Account.” Electronic deposits are made to the Credit Card Trust

Account and disbursed from that account by check to the firm's IOLTA account as soon as the funds are available. The check disbursing the fee and/or cost advance must identify the client or matter on the memo line, pursuant to SCR 20:1.15(f)(1)e.1. This exception has a number of additional requirements that are designed to protect funds held in trust from credit card surcharges and chargebacks.

PROPER IDENTIFICATION OF TRUST ACCOUNTS

SCR 20:1.15(b)(2) requires a trust account to be identified as a "Client's Account," a "Trust Account," or with "words of similar import." The rule further specifies that using an acronym, such as "IOLTA," without further elaboration, does not properly identify a trust account. For more information, see: [Proper Identification of Trust Accounts](#).

Note: This titling requirement does **not** apply to fiduciary accounts.

SCR 20:1.15(b) Segregation of trust property.

(2) Identification of account. Each trust account shall be clearly designated as a "Client Account," a "Trust Account," or words of similar import. The account shall be identified as such on all account records, including signature cards, monthly statements, checks, and deposit slips. An acronym, such as "IOLTA," "IOTA," or "LTAB," without further elaboration, does not clearly designate the account as a client account or trust account.

REQUIRED RECORDS

A. Draft (checking) trust accounts

[SCR 20:1.15\(f\)\(1\)](#) describes, in detail, the records that must be maintained for a trust account that is a draft, i.e. checking, account. **Blank forms** for a number of the required records are available below at the [Form Links](#) . The required records include:

1. A [Transaction Register](#)  with a running balance;
2. [Individual Client Ledgers](#)  with a running balance for each client or matter;
3. A [Ledger for Account Fees and Charges](#) with a running balance;
4. Deposit Records, including [Deposit Slips](#);
5. Disbursement Records, including [Canceled or Imaged Checks](#)*;
6. Monthly Statements from the financial institution; and
7. A [Monthly Reconciliation Report](#) .

***Canceled Checks or Imaged Checks** must be obtained from the financial institution on a monthly basis. Imaged checks must include both the front and the reverse of the check, and meet certain requirements regarding size and content.

B. Non-draft trust accounts

SCR 20:1.15(f)(2) describes the records that must be maintained for a trust account that has no check writing capabilities. Those records include:

1. Passbooks;
2. Records of electronic fund transactions, i.e., wire transfers;
3. Duplicates of any instrument issued by a financial institution;
4. Duplicate deposit slips; and
5. Duplicate withdrawal slips.

C. Fiduciary accounts

Fiduciary funds can be held in draft (i.e., checking) or non-draft accounts that are administered by the attorney in a fiduciary capacity. For example, an attorney holding funds as “Trustee” for a trust must hold those funds in a fiduciary account. Lawyers must retain “records of receipts and disbursements as necessary to document the transactions” in fiduciary accounts.

SCR 20:1.15(j)(5) describes the records that must be maintained for fiduciary accounts. Those records include:

1. All monthly or other periodic statements provided by the financial institution to the lawyer; and
2. All transaction records, including:
 - a) Canceled or imaged checks;
 - b) Passbooks;
 - c) Records of electronic fund transactions;
 - d) Duplicates of any instrument issued by the financial institution;
 - e) Duplicate deposit slips identifying the source of any deposit; and
 - f) Duplicate withdrawal slips identifying the purpose of any withdrawal.

RECORD RETENTION REQUIREMENTS

Under **SCR 20:1.15(e)(6)**, complete trust account records must be maintained and preserved for at least six (6) years after the termination of the representation.

Rule: SCR 20:1.15(e) Operational requirements for trust accounts.

(6) Record retention. A lawyer shall maintain complete records of trust account funds and other trust property and shall preserve those records for at least 6 years after the date of termination of the representation.

See *also*, **SCR 20:1.15(f)(4)** and **Computer-generated trust account records**, pp. 1-2 above.

TIMING OF DISBURSEMENTS

Pursuant to **SCR 20:1.15(e)(5)a.**, funds cannot be disbursed unless the deposit from which the funds will be disbursed has cleared. Lawyers should be familiar with their financial institution's fund availability policies and should not make a disbursement prior to the institution's availability date.

Rule: SCR 20:1.15(e)(5) Availability of funds for disbursement.

a. Standard for trust account transactions. A lawyer shall not disburse funds from any trust account unless the deposit from which those funds will be disbursed has cleared, and the funds are available for disbursement.

Lawyers need to be aware of the time that their financial institution "closes" business for the day as this may occur well before the doors to the institution actually close. Many banks begin deferring the recording of transactions to the following business day at some point each afternoon. To further complicate matters, in some banks, each teller line has a different "closing" time. As a result, all transactions that occur after the bank's or teller line's "closing" time are posted as if they occurred on the following day.

Consequently, it is advisable to determine the time at which the firm's bank closes its business for the day so that this information can be provided to law office staff and taken into account when scheduling matters that have trust account implications. Such matters include real estate transactions, personal injury settlements, and the timing of routine deposits to the trust account. It is also advisable to confirm, at the time a deposit is made, that it will be recorded that day rather than the following day. It is also advisable to examine the receipt that is given to the depositor when a deposit is made. Some financial institutions are now providing deposit availability information on their receipts.

There are two exceptions to the fund availability rule:

- 1. Real Estate Transactions** – Due to the manner in which real estate transactions are conducted in Wisconsin, it is not possible to hold closing proceeds in trust until the funds have cleared. In recognition of this fact, certain types of funds that are received during the course of a real estate transaction will be deemed available for disbursement, for purposes of the trust account rule, even though the funds may not have actually cleared. The types of funds covered by this exception are specified in [SCR 20:1.15\(e\)\(5\)b.](#)



Pursuant to **SCR 20:1.15(e)(5)bm.**, the lawyer or firm making the disbursements at a real estate closing is responsible, among other things, for reimbursing the trust account if any of the checks deposited in connection with a closing do not clear. That rule states:

Without limiting the rights of the lawyer against any person, **it shall be the responsibility of the disbursing lawyer to reimburse the trust account for any funds described in sub. (e)(5)b. that are not collected and for any fees, charges, and interest assessed by the financial institution on account of the funds being disbursed before the related deposit has cleared** and the funds are available for disbursement. The lawyer shall maintain a subsidiary ledger for funds of the lawyer that are deposited in the trust account to reimburse the account for uncollected funds and to accommodate any fees, charges, and interest. (*Emphasis added.*)

(Continued)

2. Collection Trust Accounts – Funds collected on behalf of a client and deposited into a separate trust account for that client may be disbursed pursuant to the client's demands, even though the funds may not have cleared pursuant to **SCR 20:1.15(e)(5)c**.

(e) Operational requirements for trust accounts.

(5) Availability of funds for disbursement.

c. Exception: Collection trust accounts. When handling collection work for a client and maintaining a separate trust account to hold funds collected on behalf of that client, a lawyer's disbursement to the client of collection proceeds that have not yet cleared, does not violate sub. (e)(5)a. so long as those collection proceeds have been deposited prior to the disbursement.

In addition, as previously indicated, funds held in a collection trust account may be disbursed electronically under limited circumstances, pursuant to the requirements of SCR 20:1.15(e)(4)g. [See **Collection Trust Accounts**, p. 3 above.]