

**MANAGING YOUR
CLIENT TRUST ACCOUNT**

**MANUAL
&
WORKBOOK**

*Office of Lawyer Regulation
2016 Edition*

MANUAL

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MANAGING YOUR CLIENT TRUST ACCOUNT

*A LAWYER MUST HOLD THE PROPERTY OF OTHERS
WITH THE CARE REQUIRED OF A PROFESSIONAL FIDUCIARY.*

(COMMENT – SCR 20:1.15)

I. OBLIGATION TO MAINTAIN A TRUST ACCOUNT

- ◆ A Trust Account must be maintained to hold the funds of clients and third parties that come into a lawyer’s possession in connection with a representation.¹
- ◆ Funds which must be placed in Trust Accounts include:
 - Personal Injury Settlements
 - Divorce Settlements
 - Real Estate Escrows and Closing Proceeds
 - Advanced Fees for legal services²
 - Cost Advances

II. KEY ELEMENTS OF A TRUST ACCOUNT

- ◆ **Separate:** The Trust Account must not be associated with the Lawyer’s personal or business accounts. [See, SCR 20:1.15(b)(1) and (3)].
- ◆ **Identifiable:** Bank Statements, Checks, and Deposit Slips must be clearly labeled as “**Trust Account**,” “**Client Account**” or a combination of those terms. The terms “**IOLTA Client Account**” and “**IOLTA Trust Account**” comply with the rule’s requirements; however, “**IOLTA Account**,” without further elaboration, is not sufficient identification. [See, SCR 20:1.15(b)(2)].
- ◆ **Accountable:** Records must be complete and accurate, and transactions should be entered contemporaneously with the deposit and disbursement of funds. Records must be maintained for at least 6 years after the termination of a representation and produced to OLR upon request. [See, SCR 20:1.15(g)(1) and (2)].

¹ Funds may also be invested or placed in trust in other types of accounts at the client’s direction. [See, SCR 20:1.15(c)(2) **Non-IOLTA Accounts**].

² Both hourly and flat fee advances must be held in trust unless the requirements of SCR 20:1.5(g), formerly SCR 20:1.15(b)(4m) **Alternative Protection for Advanced Fees**, are followed. (See, Section VII-C of this Manual, p. 16).

III. PURPOSE OF MAINTAINING ACCURATE RECORDS

- ◆ To prevent conversions³ caused by poor record keeping.
- ◆ To prevent overdrafts in the Trust Account as a whole, as well as overdrafts in individual clients' accounts.
- ◆ To protect against allegations of unauthorized use of funds.
- ◆ To prevent the loss of funds via:
 - Garnishment or Seizure
 - Levy by the IRS or Wisconsin Department of Revenue
 - Death or Incapacity

IV. RESPONSIBILITY FOR TRUST ACCOUNT

- ◆ A lawyer is ultimately responsible for his/her trust account, even if maintenance duties are delegated to an associate or a non-lawyer staff member.⁴ [See, SCR 20:5.1 and SCR 20:5.3].
- ◆ The lawyer must, therefore, ensure that there are adequate procedures in place, that those procedures are followed, and that complete records are maintained. [See, 20:5.1, SCR 20:5.3 and SCR 20:1.15(g)(1)].
- ◆ The lawyer must annually acknowledge on the State Bar dues statement that he or she is aware of the fiduciary obligations of SCR 20:1.15, including the duty to hold trust and fiduciary property separately from the lawyer's own property, to maintain complete records, to fully account for such property and to promptly deliver it to its owner. Furthermore, the lawyer must acknowledge that SCR 20:1.15 requires IOLTA accounts to be maintained at IOLTA participating institutions, overdraft agreements to be filed with OLR for each account subject to SCR 20:1.15(h) and (k)(10) and trust and fiduciary accounts to be annually reported to the State Bar unless subject to an exception under SCR 20:1.15(m). [See, SCR 20:1.15(i)].



RECOMMENDATION:

Only lawyers should have signatory and electronic payment authority for a Trust Account.

³ A conversion is an unauthorized removal of funds from a Trust Account, regardless of whether the removal was intentional or inadvertent, and further, regardless of whether the funds were disbursed to the lawyer, to another client or to a third person.

⁴ See, *Disciplinary Proceedings against Guenther*, 2005 WI 133, 285 Wis.2d 587, 700 N.W.2d 260 (2005) and *Disciplinary Proceedings against Brandt*, 2009 WI 43, 317 Wis. 2d 266, 766 N.W. 2d 194 (2009).

V. TRUST ACCOUNT BASICS

A. Funds that MUST or MUST NOT be held in a Trust Account

SCR 20:1.15(b)(1) provides that all funds or property belonging to a client or 3rd party that are entrusted to a lawyer in connection with a representation must be held in trust.

Such funds include: filing fees and other advanced costs relating to a representation; funds in which the lawyer, the client and/or a 3rd party claim an interest, such as settlement proceeds, collected or garnished funds, real estate escrows and closing proceeds, and probate or guardianship estate funds; and fee advances, unless the alternative provided in SCR 20:1.5(g) is employed.

See, Section VII-C, p. 16 Alternative Protection for Advanced Fees.

SCR 20:1.15(b)(3) provides that no personal or business funds of a lawyer may be held in a trust account other than a “reasonably sufficient” amount to cover monthly service charges on the account.



RECOMMENDATION:

OLR considers a balance of \$100 to be “reasonably sufficient” to cover monthly account service charges. Such funds should be identified as a “Maintenance Account” in the trust account subsidiary ledgers and other records. If a firm’s monthly service charges or its check printing charges typically exceed \$100, a somewhat larger Maintenance Account balance may be appropriate.

B. Availability of Funds for Disbursement

SCR 20:1.15(f)(4) specifies that funds must not be disbursed from a trust account until the related deposit has cleared and the funds are “available for disbursement.” Making a disbursement prior to, or on the day of a deposit will result in a temporary conversion of funds belonging to another client, an overdraft of the trust account, or both. Consequently, a lawyer should never make simultaneous deposits and disbursements from a trust account.

While many financial institutions provide availability of funds by the business day after the deposit, not all deposits may be available that

quickly. For example, if a large check or an out-of-state check is deposited, the funds may well take more than the usual day or two to clear. In addition, financial institutions may begin posting transactions to the next business day as early as 2:00 p.m. As a result, a check deposited at 3:00 p.m. on Monday may not be available until Wednesday; whereas, a check deposited at 10:00 a.m. on Monday may be available for disbursement on Tuesday. Friday evening transactions are routinely posted on the following business day, i.e., Monday.



RECOMMENDATION:

Lawyers should be aware of the fund availability policies of their financial institutions. If you are not familiar with those policies, please obtain a copy from the financial institution. In addition, please review the deposit receipt for notice of potential delays in the availability of funds for disbursement.

C. Record keeping

Pursuant to **SCR 20:1.15(g)(1)**, complete records of trust account funds must be maintained for a period of at least 6 years after the termination of a representation. OLR is required to publish guidelines for trust account record keeping. The Guidelines for Trust Account Records (“Trust Guidelines”) that are posted on OLR’s website recommend that lawyers maintain the following records:

1. Transaction Register

The Transaction Register provides chronological tracking of all deposits and disbursements, along with the balance in the account after each transaction. It is a crucial record for all trust accounts.

Trust Guideline 1.(a) describes the content of this record. *See*, Appendix A for an example of this record.

2. Individual Client Ledgers


Client Ledgers provide a chronological record of deposits and disbursements for each client, client matter, or third party for whom funds are received in trust, along with the balance following each transaction. Client Ledgers are crucial for any pooled trust accounts.

Trust Guideline 1.(b) describes the content of this record. *See*, Appendix B for examples of this record.

3. Ledger for Account Fees and Charges

The Ledger for Account Fees and Charges, also known as a “Maintenance Account Ledger,” provides a chronological record of the deposit and disbursement of any funds belonging to the lawyer or law firm that are held in a trust account to cover service charges, such as check printing, return check fees, overdraft charges or monthly service fees. If law firm funds are held in trust to cover such fees, this ledger is critical to reconciling the account.

Trust Guideline 1.(c) describes the content of this record. *See*, page 3 of Appendix B, for an example of this record.

	RECOMMENDATION:	When the balance of law firm funds in the trust account is reduced by the deduction of service charges, the balance should be restored with a check from the firm’s business account. This will provide the necessary paper trail for these transactions.
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4. Deposit Records

Deposit Slips: A trust account deposit slip⁵ should identify not only the date of each deposit and the amount of each deposit item, but also the client or matter connected with each deposit item.

Remote Deposits: Pursuant to SCR 20:1.15(f)(3)a., records of remote deposit (also known as RDC, or *Remote Deposit Capture*) must include identification of the client or matter for each remote deposited check. In addition, the lawyer should confirm that his/her financial institution maintains images of the front and reverse of each remotely deposited check for at least 6 years.

Trust Guideline 1.(d) describes the required content of deposit slips and electronic deposits. Electronic deposits should be documented by an image of the deposited item. *See*, page 6 of the Work Book for an example of a deposit slip and page 8 for instructions regarding a remote deposit.

⁵ A “deposit slip,” not to be confused with a “receipt” for the deposit, is the form that is completed by the depositor and given to a teller along with the items being deposited, i.e., a check, cash, etc. A deposit “receipt” is given to the depositor by the teller.

5. Disbursement Records

Disbursement records include checks, canceled, imaged checks, wire transfer records and electronic transfer records. **Trust Guideline 1.(e)** describes the required content of the five types of disbursement records.

Checks: Each check that is disbursed from a trust account should identify, on its memo line, the client or matter and the reason for the disbursement.

Canceled or Imaged Checks: These are records of negotiated checks and, if possible, should be provided by the financial institution with the monthly statement.

Wire Transfer Records: Wire transfers should be documented by a written withdrawal authorization or the date, amount and payee of the wire should appear in the monthly statement for the account.

Electronic Transfer Records: Electronic transfers must be recorded in the financial institution's electronic payment system and must include the date, amount, payee, client matter and reason for the disbursement. (See, **SCR 20:1.15(f)(3).b.5.**) These transfers should also be recorded in the law firm's records. Per **Trust Guideline 1.(e)5.**, the firm's records should include: the payee, amount, date, client or matter, purpose, lawyer authorizing the transfer and person performing the transfer. These transfers should also appear in the monthly statements.

6. Monthly Statements

Trust Guideline 1.(f) identifies the monthly account statement as one of the recommended records for a trust account.

7. Reconciliation Reports

A reconciliation report should be prepared for a trust account on a monthly basis.

Trust Guideline 1.(g) describes the required content of the monthly reconciliation, a sample of this record can be found on page 13 of the Work Book that follows this Manual. A blank Reconciliation Worksheet is available at Appendix C.

D. Prohibited Transactions

Various types of transactions are prohibited in connection with trust accounts because they do not generate a sufficient, inalterable, record of the purpose of the transaction and the client or matter to which it relates.

1. **Cash Withdrawals and Disbursements**

SCR 20:1.15(f)(2)a. prohibits the following types of cash transactions in connection with a trust account:

- ◆ Cash withdrawals from the account;
- ◆ Cash back from a deposit;
- ◆ Checks, payable to cash; and
- ◆ Automated teller and cash dispensing machine withdrawals.

2. **Telephone Transfers**

SCR 20:1.15(f)(2)b. prohibits deposits to and disbursement from a trust account by telephone transfer.

However, the rule also specifies that this prohibition is not meant to preclude wire transfers or telephone transfers between non-pooled accounts maintained for a particular client.

3. **Electronic Transfers by Third Parties**

SCR 20:1.15(f)(2)c. prohibits a lawyer from authorizing a third party to withdraw funds from a trust account. In addition, a lawyer cannot authorize a third party to electronically deposit funds to a trust account if that deposit can be reversed without the lawyer's authorization.

E. Bank Service Charges

SCR 20:1.15(b)(3) permits a lawyer or law firm to maintain a nominal amount of law firm funds in a trust account to cover monthly costs associated with the account.

A balance of up to \$100 is acceptable, and such funds should be identified as a "Maintenance Account" in the firm's trust account records. A subsidiary ledger must be kept for the Maintenance Account so that the balance of law office funds in the account is clearly identifiable. Please note that the \$100 amount is a general figure. If the firm's monthly service charges or the check printing charges exceed that amount, a somewhat larger balance in the Maintenance Account may be appropriate.

F. Unclaimed Funds

In order to avoid holding funds indefinitely and losing contact with the owner(s), a lawyer should promptly follow up on any trust account check that has not cleared within two to three months of disbursement.

If the owner of funds held in trust cannot be located, the funds may have to escheat to the State of Wisconsin, pursuant to Wis. Stats. §177.03.

Prior to remitting funds to the Wisconsin Department of Revenue (DOR), a lawyer should send a “due diligence” letter to the owner of any unclaimed funds in excess of \$50.⁶ [See, Wis. Stats. §177.17(5).



DUE DILIGENCE LETTER REQUIREMENT: While the statute does not require “due diligence” letters for amounts of less than \$50.00, OLR encourages lawyers to send such letters in all cases in order to document their efforts to locate the property owner and notify the owner of the impending transfer of trust funds to the DOR.

Abandoned property, which OLR and the Wisconsin Department of Revenue interpret to include unclaimed funds held in lawyer trust accounts, is identified by Wis. Stats. §177.02(1) as follows:

Except as otherwise provided in this chapter, all intangible property, including any income or increment derived from it, **less any lawful charges**, that is held, issued or owing in the ordinary course of a holder's business and **that has remained unclaimed by the owner for more than 5 years**⁷ after it became payable or distributable is presumed abandoned. (*Emphasis added*).



PROHIBITED DEDUCTIONS: OLR takes the position that a lawyer may not deduct charges for efforts to locate the owner(s) of funds held in trust. Such efforts are a lawyer’s fiduciary obligation.⁸

PERMITTED DEDUCTIONS: The DOR has an established policy that the only charges that may be deducted from unclaimed funds are the bank service charges and traveler’s check/money order fees, authorized under Wis. Stats. §177.06 (3) and §177.04 (3). The DOR has also acknowledged that other statutory liens (Warehouseman's, Self-Storage and Mechanic's Liens) allow for expenses to be deducted prior to reporting to the Unclaimed Property Unit.

⁶ A sample due diligence letter can be found in the **Unclaimed Property Holder Reporting Guide** that is available at the following link on the Wisconsin Department of Revenue’s website: <http://www.revenue.wi.gov/ucp/holder.html>.

⁷ The 5-year period may be shortened to 1 year if the attorney is joining another firm, retiring, or otherwise ceasing the practice of law. (*See*, Wis. Stats. §177.11)

⁸ *See, Disciplinary Proceedings against Tobin*, 2007 WI 50; 300 Wis. 2d 250; 730 N.W.2d 896 (2007).

For further information, contact the Unclaimed Property Program Administrator at the Wisconsin Department of Revenue [608-264-4594], or, go to:

<http://www.revenue.wi.gov/ucp/index.html>.

G. Holding Trust Property (*Tangible Personal Property and Bearer Securities*)

SCR 20:1.15(b)(4) requires that, unless the client directs otherwise, in writing, a lawyer must keep securities in bearer form in a safe deposit box. Such a safe deposit box must be designated as a “Client Account” or “Trust Account.” Non-cash property should be labeled as the property of the client/third party and placed in the safe deposit box. Where the property will not fit into a safe deposit box, the lawyer should label the property with the owner’s name, keep it separate from the property of the lawyer or other clients, and take whatever safeguards are necessary to preserve that property.

Trust Guideline 3. indicates that a lawyer should keep a ledger of tangible personal property or securities in bearer form that are received in trust. The ledger should identify the property, the date of its receipt, the owner, the client or matter, the location of the property and its ultimate disposition. The lawyer should also provide the prior custodian of the property with a receipt, and upon disposition of the property, obtain a signed receipt from the recipient.



RECOMMENDATION:

A copy of the signed receipt should be placed in the client file. Another copy should be kept with the property ledger that is maintained with the lawyer’s other trust account records. In the event that the lawyer is unavailable, due to death or illness, this record keeping will provide invaluable assistance in determining the location and ownership of any trust property in the lawyer’s possession.

H. OBLIGATIONS TO THIRD PARTIES

In addition to responsibilities relating to client funds, a lawyer also has certain obligations for funds in which third parties have an interest. Those obligations, which are identified in **SCR 20:1.15(e)**, include notification of the receipt of such funds; prompt disbursement of funds to which the party is entitled; provision of a written accounting; and the holding of disputed funds in trust.

However, the above-referenced obligations apply only if the lawyer has been notified of the third party's interest and that interest is identified in a lien, court order, judgment or contract.

ETHICAL OBLIGATIONS VS. CASE LAW ON ASSIGNMENTS

In *Disciplinary Proceedings against Barrock* (2007 WI 24, 727 N.W.2d 833), the Court found that, under former SCR 20:1.15(d),⁹ a lawyer who had received notice of a third party's lien against a client's personal injury settlement was obligated to protect that third party's interest in the trust property, even though the lawyer's client had instructed the lawyer to disregard the lien.

A lawyer's obligations under SCR 20:1.15(e) are distinct from the law on assignments. See, *Riegleman v. Krieg* (2004 WI App 85, 679 N.W.2d 857) and *Yorgan v. Durkin* (2006 WI 60, 715 N.W.2d 160), which discuss lawyers' obligations under the law on assignments. Both of these cases involve disputes regarding chiropractor's fees.

In *Riegleman*, the Court of Appeals provided the following guidance to lawyers:

We conclude with this instruction: If an attorney and client have signed an assignment in favor of a medical provider and a dispute arises over whether the amount owing is reasonable and necessary, and if the attorney does not want to hold funds indefinitely, he or she should bring an action for declaratory judgment pursuant to WIS. STAT. § 806.04 and seek guidance from the court as to who is entitled to the disputed funds. Specifically, the attorney should do the following:

1. Commence a declaratory judgment action under WIS. STAT. § 806.04 naming the patient as plaintiff and the medical care provider as defendant.
2. Deposit or file the disputed amount with the Clerk of Courts.

• • •

Finally, we offer these words of advice and caution to attorneys faced with similar circumstances: An attorney should not assume that he or she can ignore an assignment that he or she has agreed to honor simply because a client changes his or her mind about the assignment—to make such an assumption is contrary to rules of professional conduct, which require that disputed funds be held in trust “until the dispute is resolved.” SCR 20:1.15(d). When dealing with an attorney, another person (whether an attorney or a lay person) has the right to expect that the attorney will be honest and straightforward. See generally *Moore*, 4 P.3d at 666. If an attorney signs a document intending that the medical provider rely upon it to continue to render care and to postpone collection efforts, while intending not to be obligated to disburse settlement proceeds to the medical provider, a more serious question of misrepresentation and fraud could arise. *Id.*



⁹ Effective, July 1, 2016, SCR 20:1.15(d) is re-numbered SCR 20:1.15(e).

In a concurring opinion in *Yorgan*, Wisconsin Supreme Court Justice Jon Wilcox provided further guidance to lawyers:

Although I recognize that the Rules of Professional Conduct for Attorneys do not provide the basis for civil liability, see SCR 20, Preamble, I call attention to them because they provide certain ethical guidelines for how an attorney should approach a situation such as this when a preexisting agreement purporting to assign settlement proceeds is discovered by the attorney.

...

The Rules suggest that when an attorney knows a third party claims an interest in future settlement proceeds which the client has agreed to, the best course of action is to hold the money in trust until the matter can be resolved through a proper procedure.

In order to avoid situations such as the one Attorney Durkin found himself in this case, it seems appropriate that attorneys should not remain silent in the face of a written demand for the assurances of payment. The attorney should unambiguously notify the health care provider whether he or she intends to be bound to the agreement.

Based upon these decisions, the Office of Lawyer Regulation takes the position that:

- 1) SCR 20:1.15(e) requires a lawyer to protect third party interests in trust property when the lawyer has received notice of a third party interest that is identified by a lien, court order, judgment, or contract, and
- 2) A lawyer's assent to protect that third party's interest is not required.

See also, State Bar Formal Ethics Opinion E-09-01.

VI. FIDUCIARY ACCOUNT BASICS

A. Distinction between Trust Accounts and Fiduciary Accounts

SCR 20:1.15(b) provides that all funds or property belonging to a client or a third party that are entrusted to a lawyer “*in connection with a representation*” must be held in trust. (Emphasis supplied).

Such funds, including, but not limited to, advanced fees, filing fees, fines and other costs related to the representation, as well as funds that both the client and a third party claim an interest in, such as settlement proceeds, must be held in a trust account.

SCR 20:1.15(a)(4) specifies that a Fiduciary Account must be maintained to hold fiduciary property, i.e., the funds or property of clients and third parties that comes into a lawyer’s possession while acting in a fiduciary capacity. Such funds, including, but not limited to, funds held as an agent, attorney-in-fact, conservator, guardian, personal representative, special administrator or trustee, must be held in a fiduciary account. *See*, SCR 20:1.15(a)(5).

For example, a lawyer appointed by a probate court to act as a successor personal representative holds fiduciary property, regardless of whether or not a lawyer-client relationship previously existed in connection with that appointment.



RECOMMENDATION:

The rules relating to fiduciary property are found in SCR 20:1.15(k). If the fiduciary account rules do not address an issue, a lawyer should refer to the trust account sections of the rule for guidance.

B. Record keeping

Pursuant to SCR 20:1.15(k)(7), complete records of a fiduciary account must be maintained for the most recent six-year period of the fiduciary relationship. A summary accounting of the fiduciary account may be maintained for prior years. Following the termination of a fiduciary relationship, the records required by this section must be maintained for at least 6 years. The rule further requires the Office of Lawyer Regulation to publish record-keeping guidelines for fiduciary accounts (“Fiduciary Guidelines”).

(Continued)

The Fiduciary Guidelines published on OLR’s website recommend that a lawyer maintain the following records for fiduciary accounts:

1. **Monthly or Periodic Statements**

Fiduciary Guideline 1.(a) indicates that a lawyer should maintain each monthly or periodic statement for a fiduciary account.

2. **Deposit Records**

Fiduciary Guideline 1.(b) indicates that a lawyer should maintain a duplicate deposit slip, identifying the source of each deposit to a fiduciary account as well as transaction records relating to electronic deposits.

3. **Disbursement Records**

Fiduciary Guideline 1.(b) also indicates that a lawyer should maintain records regarding disbursements from a fiduciary account.

Disbursement records for a fiduciary account include canceled and imaged checks, passbooks, records of electronic transactions, duplicates of any instrument issued by the financial institution and duplicate withdrawal slips that identify the purpose of any withdrawal.



RECOMMENDATION:

OLR strongly recommends that fiduciary accounts, like trust accounts, be reconciled on a monthly basis.

C. Prohibited Transactions

Various types of transactions are prohibited in connection with fiduciary accounts because they do not generate an adequate record regarding the purpose of the transaction. However, since fiduciary accounts are held for a particular individual or matter, and are frequently non-draft accounts, fiduciary accounts have fewer prohibited transactions than trust accounts. The types of transactions that are prohibited are in Fiduciary Accounts as follows:

(Continued)

1. **Cash Withdrawals and Disbursements**

SCR 20:1.15(k)(5)a. prohibits the following types of cash transactions in connection with a fiduciary account:

- ◆ Cash withdrawals from the account;
- ◆ Cash back from a deposit;
- ◆ Checks, payable to cash; and
- ◆ Automated teller and cash dispensing machine withdrawals.

2. **Card Transactions**

SCR 20:1.15(k)(5)b. prohibit credit, debit, prepaid, and other types of payment card transactions to or from a fiduciary account.

D. Holding Fiduciary Property (*Tangible Personal Property and Bearer Securities*)

Fiduciary Guideline 2. indicates that a lawyer should keep a ledger of fiduciary property that is either tangible personal property or securities in bearer form.

The ledger should identify the property, the date of its receipt, the owner, and the location of the property. The lawyer should provide the prior custodian of the property with a receipt, and upon disposition of the property, obtain a signed receipt from the recipient.

VII. ATTORNEY FEES AND COST ADVANCES

A. Definitions: Advanced Fees, Flat Fees and Retainers

Advanced fees, flat fees and retainers are defined in SCR 20:1.0.

1. **SCR 20:1.0(ag)** defines an “**Advanced Fee**” as:

an amount paid to a lawyer in contemplation of future services, which will be earned at an agreed-upon basis, whether hourly, flat, or another basis. Any amount paid to a lawyer in contemplation of future services whether on an hourly, flat or other basis, is an advanced fee regardless of whether that fee is characterized as an "advanced fee," "minimum fee," "nonrefundable fee," or any other characterization. Advanced fees are subject to the requirements of SCR 20:1.5, including SCR 20:1.5(f) or (g) and SCR 20:1.5(h), SCR 20:1.15(f)(3)b.4., and SCR 20:1.16(d).

2. **SCR 20:1.0(dm)** defines a “**Flat Fee**” as:

a fixed amount paid to a lawyer for specific, agreed-upon services, or for a fixed, agreed-upon stage in a representation, regardless of the time required of the lawyer to perform the service or reach the agreed-upon stage in the representation. A flat fee, sometimes referred to as "unit billing," is not an advance against the lawyer's hourly rate and may not be billed against at an hourly rate. Flat fees become the property of the lawyer upon receipt and are subject to the requirements of SCR 20:1.5, including SCR 20:1.5(f) or (g) and SCR 20:1.5(h), SCR 20:1.15(f)(3)b.4., and SCR 20:1.16(d).

3. **SCR 20:1.0(mm)** defines a “**Retainer**” as:

an amount paid specifically and solely to secure the availability of a lawyer to perform services on behalf of a client, whether designated a “retainer,” “general retainer,” “engagement retainer,” “reservation fee,” “availability fee,” or any other characterization. This amount does not constitute payment for any specific legal services, whether past, present, or future and may not be billed against for fees or costs at any point. A retainer becomes the property of the lawyer upon receipt, but is subject to the requirements of SCR 20:1.5 and SCR 20:1.16(d).

B. Advanced Fees and Costs (See, Fee Rule - SCR 20:1.5)

Advanced Fees: Lawyers have two alternatives with respect to the handling of advanced fees.

Lawyers who elect to follow the requirements of **SCR 20:1. 5(f)** must hold advanced fees in trust until earned, regardless of whether the advances are for hourly fees or flat fees. The alternative to holding unearned fees in trust is outlined below in sub. C.

Cost Advances: All advanced payments of costs must be held in trust until the costs are incurred. If a lawyer receives an advanced payment that includes both fees and costs, the lawyer must deposit that payment into the trust account. If the lawyer elects the alternative described below, the advanced fee portion may be disbursed/transferred to the business account when the funds become available, but the costs must be held in trust until incurred.

C. Alternative Protection for Advanced Fees (See, Fee Rule - SCR 20:1.5)

Lawyers who elect the alternative to holding unearned fees in trust must follow the requirements of **SCR 20:1. 5(g)**. See, Appendix C, pp. 2-3) for a full description of the requirements. In brief, the requirements include the following components:

- Upon receiving an advanced fee, the lawyer must provide written notice to the client of the obligation to refund unearned fees, the availability of fee arbitration, and the availability of reimbursement by the Wisconsin Lawyers' Fund for Client Protection¹⁰, as well as other information relating to the rate of the fee and the anticipated expenses.
- Upon termination of the representation, the lawyer must account for any fees not previously accounted for and promptly refund any unearned fees. The lawyer must also notify the client that, if the client disputes the fee and wants to arbitrate that dispute, the client must provide the lawyer with written notice of such dispute within 30 days of the lawyer's mailing the accounting.

(Continued)

¹⁰ The Wisconsin Lawyers' Fund for Client Protection, formerly known as the "Client Security Fund," was established in 1981 to reimburse losses caused by the dishonest conduct of members of the State Bar of Wisconsin. (See, SCR 12.04 - 12.11) Failure to refund an unearned advanced fee is identified as dishonest conduct in SCR 12.045(5)(c).

- Upon receipt of timely notice that a client disputes the fee,¹¹ the lawyer must either resolve the dispute or submit it to binding arbitration within 30 days, provided the client agrees to arbitration.
- Upon receiving notice of an arbitration award in the client's favor, the lawyer must pay that award within 30 days.

It is professional misconduct for a lawyer to fail to hold advanced fees in trust unless the lawyer complies with each of the requirements of SCR 20:1.5(g).



FEE DISPUTES: A client may dispute a fee at any time. The 30-day “*deadline*” in SCR 20:1.5(g) relates solely to the fee arbitration requirement.

D. Disbursement of Advanced Fees (*See, Fee Rule - SCR 20:1.5*)

Advanced fees that are held in trust must be disbursed from the trust account when earned. However, pursuant to SCR 20:1.5(h)(1), prior to disbursing earned fees, the lawyer must provide the client with written notice of the intended disbursement at least five (5) business days prior to disbursement, unless an alternative notice was previously provided, pursuant to SCR 20:1.15(h)(2). (*See, Appendix C, p. 3*). The “written notice” to the client must include the following information:

- 1) an itemization of the services rendered;
- 2) the amount owed;
- 3) the anticipated date of withdrawal; and
- 4) the balance of the client's funds following the disbursement.

See, SCR 20:1.5(h) [Codification of the *Marine* case].

See also, *Matter of Disciplinary Proceedings against Marine*, 82 Wis. 2d 602, 264 N.W.2d 285 (1978).

¹¹ SCR 20:1.5(g)(2)c. defines “timely” notice of an objection to a fee as notice that is provided in writing “within 30 days of the mailing of the accounting.”

E. Alternative Notice to Client (*See, Fee Rule - SCR 20:1.5*)

SCR 20:1.5(h)(2) provides lawyers with an alternative to the requirements of sub. (h)(1). Pursuant to this rule, lawyers may withdraw fees on the date that a bill is “transmitted” to the client, provided that the lawyer gives prior written notice of this procedure to the client.

If a lawyer plans to employ this alternative, the lawyer should provide the required notice to the client at the time the lawyer is hired; however, if it was not given at that time, it must be provided prior to any such withdrawals.

F. Electronic Payment of Fees and Costs

Between July 2007 and June 2016, lawyers were permitted to accept electronic payments for legal fees and costs via a Credit Card Trust Account. However, as of July 1, 2016, lawyers are able to accept electronic deposits and make electronic disbursements, not only for legal fees and costs, but for virtually any type of transaction, including transfers from the trust account to the business account. [*See, SCR 20:1.15(f)(3)(a)-(c)*]. In order to accept credit, debit, prepaid and other types of card payments as well as electronic payments such as ACH, lawyers must comply with the requirements of **SCR 20:1.15(f)(3)b.** (*E-Banking Trust Account*) or **SCR 20:1.15(f)(3)c.** (*Alternative to E-Banking Trust Account*).

**For further information regarding electronic transactions,
See, Overview of SCR 20:1.15, Section F, sub. 3., pp. 28-30.**

G. Electronic Payment of Filing Fees (*Bankruptcy and Circuit Courts*)

History: Electronic filing has been authorized in U.S. Bankruptcy Court for a number of years. [*See, Rule 5005(a)(2) of the Federal Rules of Bankruptcy*]. It is currently

On July 1, 2008, the Wisconsin Supreme Court authorized electronic filing in Wisconsin circuit courts. [*See, Wis. Stats. §801.17 and SCR 70.42.*] It was available in small claims cases in a limited number of counties at that time and its use expanded over the next several years. On March 18, 2016, the Wisconsin Supreme Court approved the implementation of mandatory e-filing in circuit courts on a statewide basis, with a targeted completion date of December 31, 2019. For further information on *Circuit Court eFiling*, go to the “Quick links” tab on the Wisconsin Court System’s website at: <http://wicourts.gov>.



Trust and Fiduciary Account Considerations: Electronic case filing has potential ramifications with respect to trust accounts and fiduciary accounts because electronic filing necessarily involves the electronic payment of filing fees. As of July 1, 2016, certain types of electronic payments are permitted while others may be restricted.

SCR 20:1.15(f)(3)b. permits electronic disbursements from a trust account unless those disbursements are prohibited by SCR 20:1.15(f)(2)c. (*See*, Overview of SCR 20:1.15, **Electronic Transfers by 3rd Parties**, p. 28).

SCR 20:1.15(f)(2)c.¹² prohibits a lawyer from authorizing a third party to electronically withdraw funds from a trust account. It also prohibits authorizing third-party deposits if the 3rd party can withdraw funds without the lawyer's permission.

SCR 20:1.15(k)(5)b.¹³ prohibits a lawyer from authorizing transactions via credit, debit, prepaid or other types of payment cards in connection with a fiduciary account. Consequently, a lawyer must not initiate or authorize a third party to make electronic deductions from a trust account to pay filing fees.

Bankruptcy Court Filing Fees:

The U.S. Bankruptcy Court permits bankruptcy filing fees to be paid via credit card by the petitioner's lawyer.

Lawyers who represent clients in bankruptcy proceedings should exercise caution in advancing filing fees, i.e., paying a filing fee by credit card before the client's funds relating to that payment have been deposited in the lawyer's trust account, and should review relevant law regarding the discharge of pre-petition debts.

State Court Filing Fees:

The Wisconsin Supreme Court has authorized lawyers to pay filing fees electronically in circuit and appellate court cases. The eFiling program allows such payments to be made by credit card, debit card or e-check (an ACH transaction). Effective July 1, 2016, a lawyer may pay filing fees in circuit court cases from an E-Banking Trust Account, pursuant to SCR 20:1.15(f)(3)b. or from an alternative trust account, described in SCR 20:1.15(f)(3)c., provided that the lawyer complies with all of the requirements and conditions of those rules.

¹² **SCR 20:1.15(f)(2)c.** states: "**Electronic transfers by 3rd parties.** A lawyer shall not authorize a 3rd party to electronically withdraw funds from a trust account. A lawyer shall not authorize a 3rd party to deposit funds into the lawyer's trust account through a form of electronic deposit that allows the 3rd party making the deposit to withdraw the funds without the permission of the lawyer."

¹³ **SCR 20:1.15(k)(5)b.** states: "**Card transactions.** A lawyer shall not authorize transactions by way of credit, debit, prepaid or other types of payment cards to or from a fiduciary account."

SUGGESTED PROCEDURES FOR CREDIT CARD PAYMENTS

A lawyer may pay filing fees to a court with the lawyer's business or personal credit card or via an ACH transaction (i.e., an e-check or electronic check) from the trust account or business account. With respect to such payments, procedures need to be in place to assure that trust funds held in connection with those payments are handled properly and that the transactions involved are fully documented.

With respect to Credit Card payments, OLR suggests that such procedures include:

1. Segregation of "trust account expenses" from business and/or personal expenses by maintaining a separate, special purpose credit card to conduct transactions that will have to be paid from the trust account.
2. Careful review of the credit card statement upon receipt and identifying the client to which each filing fee relates. (*This should reveal any errors or omissions in the statement, e.g., a double billing.*)
3. Payment of the filing fee from the trust account to the credit card institution by check or electronic transfer. [See, SCR 20:1.15(f)(3)b. and c].
4. Identification of the reason for the payment on the memo line of the trust account check¹⁴ or in the electronic payment system of the financial institution. [See, SCR 20:1.15(f)(3)b.5.].¹⁵
5. Retention of the credit card statements with the lawyer's trust account records.

With respect to electronic transactions, i.e., electronic checks and other ACH transactions, refer to the requirements of SCR 20:1.15(f)(3)b. and c.

¹⁴ The payment of a single filing fee could be documented on the memo line as follows: "Smith – Ch. 7 Filing Fee". However, if a payment includes numerous filings, the lawyer should identify those filings in a manner that will be verifiable through other records, such as those maintained by the court. For example, the memo line might reflect that the payment relates to: "12 Fees (Ch. 7) & 6 Fees (Ch. 13) (1/7/16 - 1/28/16)."

¹⁵ **SCR 20:1.15(f)(3)b.5.** states: "A lawyer . . . may disburse funds by electronic transactions that are not prohibited by sub. (f)(2)c., provided that the lawyer does all of the following:

. . .

5. Identifies the client matter and the reason for disbursement on the memo line of each check used to disburse funds; records in the financial institution's electronic payment system the date, amount, payee, client matter, and reason for the disbursement for each electronic transaction; and makes no disbursements by credit card, debit card, prepaid or other types of payment cards, or any other electronic payment system that does not generate a record of the date, amount, payee, client matter, and reason for the disbursement in the financial institution's electronic payment system.

**VIII. OVERVIEW OF SCR 20:1.15 SAFEKEEPING PROPERTY;
TRUST ACCOUNTS AND FIDUCIARY ACCOUNTS.**

(Effective July 1, 2016)

SCR 20:1.15(a)	Definitions. ¹⁶	SCR 20:1.15(g)	Record-keeping requirements for all trust accounts.
SCR 20:1.15(b)	Segregation of trust property.	SCR 20:1.15(h)	Dishonored payment notification (Overdraft notices).
SCR 20:1.15(c)	Types of trust accounts.	SCR 20:1.15(i)	Trust account certificate and acknowledgements.
SCR 20:1.15(d)	Interest on Lawyer Trust Account (IOLTA) requirements.	SCR 20:1.15(j)	Multi-jurisdictional practice.
SCR 20:1.15(e)	Prompt notice and delivery of property.	SCR 20:1.15(k)	Fiduciary property.
SCR 20:1.15(f)	Security requirements and restricted transactions.	SCR 20:1.15(m)	Exceptions to this section.

A. SCR 20:1.15(a) DEFINITIONS

This subsection contains 13 definitions of the various terms that are used in the rule. These definitions are applicable only with respect to SCR 20:1.15 and do not supersede statutory definitions. Among the terms defined are the following: “draft account,”¹⁷ “electronic transaction,”¹⁸ “fiduciary account,” “immediate family member,” “Interest on Lawyer Trust Account or ‘IOLTA account,’” “IOLTA participating institution;” “properly payable instrument,” and “trust property.”

Note: The definitions of “Advanced fee,” “Flat fee” and “Retainer” are found in SCR 20:1.0 **Terminology**. (*See*, page 15.)

B. SCR 20:1.15(b) SEGREGATION OF TRUST PROPERTY

1. **Separate Account.** Funds and property of clients and third parties that a lawyer receives in connection with a representation must be held separately from the lawyer’s own funds and property. Furthermore, any funds must be held in an identifiable trust account.
2. **Identification and Location of Account.** A Trust Account must be specifically identified in all account records as a “Client Account”, a “Trust Account” or words of similar import. Acronyms, like “IOLTA,” are insufficient to properly identify the

¹⁶ This Index is not part of the rule. It is provided by OLR as a guide to the subsections of the rule.

¹⁷ A draft accounts, formerly referred to as a “demand account,” is “an account from which funds are withdrawn through a properly payable instrument or an electronic transaction.”

¹⁸ An electronic transaction is “a paperless transfer of funds to or from a trust or fiduciary account. Electronic transactions do not include transfers initiated by voice or automated teller or cash dispensing machines.

account. Trust accounts must be held in financial institutions authorized to do business in Wisconsin that has at least one branch in Wisconsin and agrees to report overdrafts to the Office of Lawyer Regulation. However, if a lawyer principally practices in another jurisdiction, a trust account can be maintained in that jurisdiction, provided that overdraft reporting is required in that jurisdiction.

3. **Lawyer Funds.** No funds belonging to the lawyer or law firm, other than a nominal amount to cover monthly service charges, may be held in the Trust Account. In addition, any lawyer who has a trust account must also have a separate checking account for business purposes.
4. **Trust Property other than Funds.** Securities in bearer form must be held in a safe deposit box at a Wisconsin financial institution, unless the client directs otherwise, in writing. the box must be identified as a “Client Account” or “Trust Account.” Other property of clients or third parties must be properly identified as such and appropriately safeguarded.
5. **Insurance and Safekeeping Requirements.** Trust Accounts must be located at a financial institution that is insured by the FDIC, the NCUSIF or the SIPC, and with very limited exceptions,¹⁹ trust property must be held in an account in which each owner’s funds are eligible for the insurance. IOLTA accounts are subject to the safekeeping requirements of SCR 20:1.15(d)(3). Lawyers who utilize the alternative to maintaining an E-Banking Trust Account must comply with the requirements of SCR 20:1.15(f)(3)c.

C. SCR 20:1.15(c) Types of Trust Accounts

1. **IOLTA Accounts.** Client and third party funds in nominal amounts, as well as funds that will be held for a short period of time, are to be deposited into a pooled, interest-bearing or dividend paying draft trust account (an IOLTA account) that is located at an IOLTA participating institution.
2. **Non-IOLTA Accounts.** Client and third party funds may also be held in trust in the following types of accounts:
 - a. A separate, income-generating account, the interest or dividends on which are paid to the client or third party;

¹⁹ The exceptions to this requirement include trust property held in any of the following: 1) a safe deposit box, pursuant to SCR 20:1.15(b)(2); 2) an IOLTA account that utilizes a repurchase agreement, pursuant to SCR 20:1.15(d)(3)b.; and 3) an IOLTA account that utilizes an open-end money market fund, pursuant to SCR 20:1.15(d)(3)c.

- b. A pooled, income-generating account, with the interest or dividends paid to the clients or third parties, based on sub-accounting by the law firm or the financial institution;
 - c. An income-generating investment vehicle authorized by a court or selected and designated by the client, in writing;
 - d. An income-generating investment vehicle, selected by the lawyer and approved by the bankruptcy trustee or by order of the bankruptcy court;
 - e. A non-income-generating account, if specifically requested in writing by the client or third party, provided that the funds are ineligible for deposit to an IOLTA.
3. **Selection of Account.** The following factors must be considered in determining the type of account in which to hold trust funds:
- a. Amount of interest, dividends or other income that could be generated;
 - b. Cost of setting up and managing a non-IOLTA account, including attorney fees for record-keeping and tax preparation;
 - c. Ability of the financial institution or law firm to calculate and pay interest, dividends or other income to the clients and/or third parties; and
 - d. Any other circumstance that affects the generation of income on the funds.
4. **Professional Judgment.** A lawyer has discretion to establish a non-IOLTA Trust Account when there would be a financial benefit to the client or third party in doing so, i.e., when the costs of setting up and accounting for the funds will be less than the amount of income generated. A lawyer's good faith determination to place funds in an IOLTA account or a non-IOLTA account does not constitute a breach of ethics.

See, Matter of Disciplinary Proceedings against Britton, 180 Wis. 2d 109; 508 N.W.2d 412 (1993). (Discipline imposed for failing to deposit a client's \$12,000 settlement into an interest-bearing account for client's benefit. Funds were held for over a year in an IOLTA trust account.)

D. SCR 20:1.15(d) Interest on Lawyer Trust Account (IOLTA) Requirements

1. **Location.** IOLTA accounts must be held at an IOLTA participating institution²⁰ that is authorized to do business in Wisconsin and has at least one branch in Wisconsin.

2. **Certification by IOLTA Participating Institutions.**
 - a. IOLTA participating institutions are subject to annual certification requirements that are overseen by the Wisconsin Trust Account Foundation (“WisTAF”).
 - b. WisTAF must annually confirm the accuracy of the certifications made by IOLTA participating institutions.
 - c. WisTAF must annually publish a list of IOLTA participating institutions. [The list is available throughout the year on WisTAF’s website: <http://wistaf.org>.]
 - d. If an IOLTA participating institution is removed from WisTAF’s list of participating institutions, OLR is required to notify the affected lawyers and law firms and provide them with a reasonable amount of time to transfer their IOLTA accounts to participating institutions.
 - e. For purposes of complying with SCR 20:1.15(c)(1), lawyers and law firms are entitled to rely on the most recently published list of IOLTA participating institutions that appears on WisTAF’s website, unless notified otherwise by OLR.

3. **Safekeeping Requirements.**
 - a. IOLTA participating institutions must comply with the requirements of SCR 20:1.15(b)(5), including the requirement to be insured by the FDIC, the NCUSIF, the SIPC or another type of investment institution financial guaranty insurance.
 - b. IOLTA accounts utilizing a repurchase agreement may only be established at IOLTA participating institutions that meet certain capitalization requirements.

²⁰ SCR 20:1.15(a)(9) defines an IOLTA participating institution as: a financial institution that voluntarily offers IOLTA accounts and certifies to WisTAF annually that it meets the IOLTA account requirements of SCR 20:1.15(d).

- c. IOLTA accounts utilizing an open end money market fund may only be established at IOLTA participating institutions whose money market funds meet certain minimum asset requirements.
4. **Income Requirements.**
- a. **Beneficial Owner.** Interest and dividends on IOLTAs, less any allowable fees, are to be paid to WisTAF.
 - b. **Interest and Dividend Requirements.** IOLTAs must generate the highest non-promotional interest rate or dividend available to non-IOLTA customers when the IOLTA meets or exceeds the eligibility requirements of the non-IOLTA account, including any minimum balance requirements.
 - c. **IOLTA Account.** IOLTA participating institutions may establish IOLTAs or convert existing IOLTAs to any of the types of accounts described in this section.
 - d. **Options for Compliance.** IOLTA participating institutions may establish IOLTAs in whatever type of account qualifies under the IOLTA program, subject to the lawyer or law firm’s direction, or, in the alternative, simply pay the interest rate or dividend for that type of account without actually converting the IOLTA to the new account type.
 - e. **Paying Rates above Comparable Rates.** IOLTA participating institutions may elect to pay higher rates than the “comparable” rates required under this rule.
5. **Allowable Reasonable Fees on IOLTA Accounts.**
- a. IOLTA participating institutions may impose various types of fees on IOLTA accounts, including: per check charges; per deposit charges; fees in lieu of a minimum balance; sweep fees; administrative fees approved by WisTAF; and federal deposit insurance fees.
 - b. The allowed charges are subject to a number of requirements that are identified in this subsection.
6. **Remittance and Reporting Requirements.**
- Lawyers and law firms are required to direct their financial institutions to comply with the remitting and reporting requirements that are described in this subsection.

E. SCR 20:1.15(e) Prompt Notice and Delivery of Property

1. **Notice and Delivery.** Upon receipt of funds or property in which a client has an interest or a third party has a documented interest, a lawyer must:
 - a. Promptly notify the client or third party in writing; and
 - b. Promptly deliver to client or third party the funds to which they are entitled, subject to limited exceptions that are identified in this subsection.



NOTE:

Any third party who has informed the lawyer of an interest that is identified by a lien, a court order, a judgment or a contract is entitled to written notice of the lawyer's receipt of the property.

2. **Accounting.** A lawyer must render a full accounting to a client or third party for funds and property received in trust, at the time it is distributed or when asked to do so.



Pursuant to **SCR 20:1.5(c) - Fees**, settlement break-downs must be provided to the client, regardless of whether a specific request is made.²¹

3. **Disputes regarding Trust Property.** Whenever a lawyer and another person or a client and another person claim an ownership interest in funds held in trust, and that interest is identified by a lien, a court order, a judgment or a contract, the lawyer must hold the disputed portion in the trust account until there has been an accounting and severance of the interests, and any dispute has been resolved. This rule does not relate to disputes between a lawyer and a client. Those disputes are subject to a rule relating to legal fees, SCR 20:1.5(h).

(Continued)

²¹ SCR 20:1.5(c) states, in pertinent part, as follows: "A fee may be contingent on the outcome of the matter for which the service is rendered . . . Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and if there is a recovery, showing the remittance to the client and the method of its determination."

For guidance on handling disputes regarding funds held in trust, see:

- ◆ *Formal Ethics Opinion E-09-01 Lawyer's Responsibilities when a Client gives a Third Party a "Lien" on Settlement Proceeds*
- ◆ *Riegelman v. Krieg and Warshafsky, Rotter, et al.*, 2004 WI App 85; 271 Wis. 2d 798; 679 N.W.2d 857 (2004)
- ◆ *Yorgan v. Durkin*, 2006 WI 60; 290 Wis. 2d 671; 715 N.W.2d 160 (2006)
- ◆ *Disciplinary Proceedings against Barrock*, 2007 WI 24; 299 Wis. 2d 207; 727 N.W.2d 833 (2007)



NOTE: **Fee Disputes:** Disputes between a lawyer and a client regarding fees are subject to **SCR 20:1.5(h)** .

F. SCR 20:1.15(f) Security Requirements and Restricted Transactions

1. Security of Transactions.

A lawyer must not conduct or authorize transactions in connection with a trust account unless commercially reasonable security measures are in place. The lawyer is responsible for establishing and maintaining procedures to assure that funds are not disbursed without the lawyer's authorization and that those funds are disbursed to the proper payee. Signatory and transfer authority is limited to the lawyer or an employee for whom the lawyer has supervisory authority under SCR 20:5.3.

2. Prohibited Transactions.

- a. **Cash.** This includes cash withdrawals, checks payable to "Cash," deductions from deposits, and automated teller or cash dispensing machines;
- b. **Telephone Transfers.** This does not include calls to initiate wire transfers or transfer funds between non-pooled accounts maintained for a client.
- c. **Electronic Transfers by 3rd Parties.** A lawyer cannot authorize a third party to withdraw funds from a trust account. In addition, a lawyer cannot authorize deposits by a third party if that deposit can be reversed without the lawyer's permission.

3. **Electronic Transactions.**

Electronic transactions are prohibited, except as provided for in SCR 20:1.15(f)(3) a. - c.

a. **Remote Deposits.** Remote deposits can be made to any trust account if the lawyer keeps a record of the client or matter relating to each deposit, and the financial institution keeps an image of the front and reverse of each deposit for at least 6 years.

b. **E-Banking Trust Account.**

A lawyer can accept funds by credit, debit, prepaid and other types of payment cards, and by electronic deposit, and can make electronic disbursements that are not prohibited by SCR 20:1.15(f)(2)c., if the lawyer:

1. Maintains an IOLTA account (the primary IOLTA) in which no electronic transactions are permitted other than remote deposits, and transfers to and from the lawyer's E-Banking Trust Account;
2. Maintains another IOLTA account with commercially reasonable security for electronic transactions, which is titled: "E-Banking Trust Account";
3. Holds lawyer or law firm funds in the E-Banking Trust Account to cover monthly account fees and fees deducted from deposits, and keeps a ledger for the account fees.
4. Transfers the gross amount of each deposit within 3 business days after the funds are available for disbursement, and adds lawyer or law firm funds to cover deposit fees and surcharges, subject to the following:
 - a. Advanced fees that will be held in trust until earned pursuant to SCR 20:1.5(f), and advanced costs must be transferred to the primary IOLTA by check or electronic transfer.
 - b. Earned fees, cost reimbursements and advanced fees that will be transferred to the business account pursuant to SCR 20:1.5(g) must be transferred to the business account by check or electronic transaction

- c. Funds that a client directs the lawyer to disburse electronically must be promptly disbursed from the E-Banking Trust Account by electronic transaction.
 - d. Funds received in trust, other than those identified in subs. a., b., and c., must be transferred to the primary IOLTA by check or electronic transaction.
 - e. Except for legal fees and costs identified in subs. a. and b., a lawyer may deduct fees or surcharges from a client's funds, provided that the client agrees, in writing, to accept an electronic payment after being informed of the anticipated fees and surcharges.
5. Identifies certain required information²² relating to each disbursement on the check or in the financial institution's electronic payment system, and makes no disbursement by credit, debit, prepaid or other payment card or an electronic transaction for which the required information cannot be entered in the financial institution's electronic payment system.
6. Replaces any funds withdrawn due to a chargeback, surcharge or ACH reversal within 3 business days after being notified of such withdrawal and, otherwise replaces such withdrawal prior to accepting a new electronic deposit or transferring funds from the primary IOLTA to make an electronic disbursement.

c. **Alternative to E-Banking Trust Account.**

A lawyer can accept funds by credit, debit, prepaid and other types of payment cards, and by electronic deposit, and can make electronic disbursements that are not prohibited by SCR 20:1.15(f)(2)c, without establishing an E-Banking IOLTA, if the lawyer:

- 1. Maintains commercially reasonable account security for electronic transactions.
- 2. Maintains a bond or crime policy in an amount to cover the maximum daily balance in the account for the prior year.

²² The required information is the date, amount, payee, client matter and reason for disbursement.

3. Arranges for all chargebacks, ACH reversals, monthly account fees and fees deducted from deposits to be deducted from the lawyer's or law firm's business account OR replaces those types of withdrawals within 3 business days after being notified of the withdrawal AND reimburses the account for any shortfall caused by a chargeback, surcharge or ACH reversal AND makes such reimbursement prior to disbursing funds from the account.
4. **Availability of Funds for Disbursement.**
 - a. **Standard for Trust Account Transactions.** Funds must not be disbursed unless the deposit from which the funds will be disbursed has cleared.
 - b. **Exception: 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. Consequently, certain types of funds received at a real estate closing will be deemed available for disbursement, even though the funds have not actually cleared. The types of funds covered by this exception include: cashier's checks, money orders, trust account checks, title company checks, government checks, and a number of other instruments.
 - c. **Uncollected Funds.** The disbursing lawyer must reimburse the trust account for any funds received in a real estate transaction that are not collected and for any fees, charges or interest assessed as a result of funds being disbursed before the related deposit is available for disbursement. In addition, the lawyer must keep a ledger reflecting any lawyer or law firm funds deposited to reimburse the account for uncollected funds and related fees.
 - d. **Exception: Collection Trust Accounts.** Funds collected on behalf of a client, which have been 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.

G. Record-keeping Requirements for All Trust Accounts

1. **Record Retention.** Trust account records must be maintained and preserved for at least 6 years after a representation has terminated. Electronic records must be backed up. Record-keeping Guidelines will be published by OLR.

2. **Record Production.** Trust account records must be produced for inspection/audit whenever requested by OLR or the Supreme Court. Failure to provide such records constitutes misconduct.
3. **Standard of Proof.** Failure to promptly deliver trust property to a client or 3rd party, OR failure to promptly submit trust account records to OLR, OR failure to promptly account for trust property to OLR will result in a rebuttable presumption that a lawyer has not held funds in trust, in violation of SCR 20:1.15(b)(1).


H. SCR 20:1.15 (h) Dishonored Payment Notification (Overdraft Notices)

All draft trust accounts, and any draft fiduciary account for which an alternative under SCR 20:1.15(k)(10) is not in place, are subject to the following:

1. **Overdraft Reporting Agreement.** All trust accounts that are draft accounts (i.e., accounts on which checks can be written and electronic payments can be disbursed) must be maintained in a financial institution that agrees to report overdrafts on the account to OLR. A lawyer or law firm must notify the financial institution that the account is subject to overdraft reporting when the account is opened.
2. **Overdraft Report.** Whenever a properly payable instrument or an electronic transaction is presented for payment from a trust or fiduciary account that has insufficient funds to cover the payment, the financial institution must notify OLR, regardless of whether the payment is honored.
3. **Content of Report.** The overdraft notice provided to OLR regarding a dishonored instrument or electronic payment must be identical to the notice sent to the account holder. If the instrument or electronic payment is honored, the notice should identify the amount of the overdraft caused by the payment.
4. **Timing of Report.** Notice of overdraft must be sent to OLR at same time that the account holder's notice is sent.

(Continued)

5. **Confidentiality of Report.** Reports made by financial institutions pursuant to the overdraft reporting requirements are confidential, pursuant to SCR 22.40.²³
6. **Withdrawal of Report by Financial Institution.** OLR must hold an overdraft notice for 10 days to allow the financial institution to withdraw a report filed inadvertently or by mistake.

	<p>Covering the Overdraft: Depositing additional funds to rectify the overdraft will <u>not</u> result in the withdrawal of the overdraft report.</p>
---	--

7. **Lawyer Compliance.** Every lawyer must comply with the reporting and production requirements of SCR 20:1.15(h), including the requirement to file an overdraft agreement with OLR for each IOLTA account, draft trust accounts and any fiduciary account that is not subject to an alternative under SCR 20:1.15(k)(10).
8. **Service Charges.** The financial institution can charge a lawyer or law firm for the cost of producing an overdraft report.
9. **Immunity of Financial Institution.** Claims cannot be brought against a financial institution for failing to report an overdraft to OLR or otherwise failing to comply with SCR 20:1.15(h).

I. SCR 20:1.15 (i) Trust Account Certificate and Acknowledgements.

1. **Annual Requirement.** Each member of the State Bar must annually notify the Bar whether he or she is practicing law, and if so, provide the Bar with a list of the financial institutions in which the member has a trust account, a fiduciary account, or a safe deposit box. The account number is no longer required.

²³ SCR 22.40 states: “Prior to the filing of a misconduct complaint, medical incapacity petition, or petition for temporary license suspension, all papers, files, transcripts, and communications in any matter involving the office of lawyer regulation are to be held in confidence by the director and staff of the office of lawyer regulation, the members of the district committees, special investigators, the members of the special preliminary review panel, and the members of the preliminary review committee. Following the filing of a complaint or petition, the proceeding and all papers filed in it are public, except where expressly provided otherwise in this chapter or by law.”



NOTE:

Effective, Fiscal Year 2018, Bar members are required to acknowledge awareness of specific fiduciary obligations, including the requirement to segregate trust and fiduciary property from the member's property, to maintain complete records and fully account for that property, to file an overdraft agreement with OLR, and to hold IOLTA accounts at IOLTA participating institutions.

2. **Certification by Law Firm.** A law firm must file a certificate of accounts for the lawyers in the firm.
3. **Compliance with SCR 20:1.15.** Each member of the Bar must annually acknowledge his or her awareness of the following requirements:
 - a. That SCR 20:1.15 establishes fiduciary obligations, including the duty to hold trust property in trust, safeguard it, maintain complete records of it, fully account for it, and promptly deliver it to the owner.
 - b. That SCR 20:1.15 requires maintaining IOLTA accounts held at IOLTA participating institutions, filing overdraft agreements with OLR, and annually reporting to the Bar all trust and fiduciary account that are not subject to an exception under SCR 20:1.15(m).
4. **Suspension for Non-compliance.** A Bar member who fails to file the required acknowledgements or a trust account certificate, unless the law firm files it, will be administratively suspended by the State Bar.

J. SCR 20:1.15(j) Multi-jurisdictional Practice

If a lawyer is licensed in another state, trust funds and property held in connection with a representation in that state are subject to the rules of the other state.

K. SCR 20:1.15 (k) Fiduciary Property

1. **Segregation of Fiduciary Property.** Funds belonging to clients and third parties that a lawyer receives when acting in a fiduciary capacity must be held in trust and segregated from the lawyer's own funds and property.

2. **Accounting.** A lawyer must promptly provide a full written accounting of fiduciary property when the final distribution is made or when a client or 3rd party having an ownership interest in the property requests it.

3. **Fiduciary Accounts.**

Funds received in a fiduciary capacity may be deposited in the any of the following types of accounts:

- a. a pooled, income-generating account, with sub-accounting by the financial institution, the lawyer or the law firm, with the income paid to each fiduciary entity;
- b. an income-generating investment vehicle on which income is paid to the fiduciary entity, or its beneficiary;
- c. an income-generating investment vehicle, approved by the court in a guardianship proceeding;
- d. an income-generating investment vehicle, approved by the trustee or the court in a bankruptcy proceeding; or
- e. a non-interest bearing account if, in the lawyer's professional judgment, it is consistent with the needs and purposes of the fiduciary entity or its beneficiary.

4. **Location.** A fiduciary account must be maintained in a financial institution that is authorized in writing by the client, the governing trust instrument, organizational by-laws, or a court order. Absent such direction, a lawyer must place the funds in a financial institution that, in the lawyer's professional judgment, will best serve the needs or purposes of the client or third party for whom the lawyer serves as a fiduciary. A lawyer's good faith determination regarding the type of account into which the funds are placed does not constitute a breach of ethics.

(Continued)



NOTE:

With respect to **Overdraft Notification requirements, this subsection further specifies:**

When fiduciary property is held in a draft account outside the state of Wisconsin, the lawyer must comply with one of the alternatives to overdraft reporting, identified in SCR 20:1.15(k)(10).

5. **Prohibited Transactions.**
 - a. **Cash.** This includes cash withdrawals, checks payable to “Cash,” deductions from deposits, and automated teller or cash dispensing machines.
 - b. **Card Transactions.** This includes credit, debit, prepaid and other payment card transactions to or from a fiduciary account.
6. **Availability of Funds for Disbursement.** Funds cannot be disbursed from a fiduciary account unless the deposit from which the funds will be disbursed has cleared. However, the exception for real estate transactions applies to fiduciary accounts.
7. **Record Retention.** Complete records of fiduciary funds and property must be kept for the most recent 6 years of the fiduciary relationship. At a minimum, summary records of preceding years must be maintained. OLR must publish Record-keeping Guidelines for fiduciary accounts

Note: Termination of Fiduciary Relationships: At the termination of a fiduciary relationship, a lawyer must preserve the records required by this section for at least 6 years.

8. **Record Production.** Fiduciary account records must be produced for inspection/audit whenever requested by OLR or the Supreme Court. Failure to provide such records constitutes misconduct.
9. **Standard of Proof.** Failure to promptly submit fiduciary account records to OLR, OR failure to promptly account for fiduciary property to OLR will result in a rebuttable presumption that a lawyer has not held fiduciary property in trust, in violation of SCR 20:1.15(k)(1).
10. **Dishonored Payment Notification or Alternative Protection.** A lawyer holding fiduciary property in a draft account must take one of the following steps:
 - a. Comply with the overdraft reporting requirements of SCR 20:1.15(h); or
 - b. Have the account independently audited by a CPA on at least an annual basis; or
 - c. Hold the funds in a draft account that requires the approving signature of a co-trustee, co-agent, co-guardian, or co-personal for all disbursements; or

- d. Document the approval of two people consisting of the lawyer, a member of the lawyer's firm, or an employee of the firm before any disbursement is made; or
- e. Provide an annual accounting, at minimum to all beneficiaries eligible for income distributions in connection with an estate or trust; or
- f. Timely file all annual financial accountings with the court in a guardianship proceeding.

11. **Fiduciary Account Certificate and Acknowledgements.** A lawyer holding fiduciary property must comply with the certification requirements of SCR 20:1.15(i).

L. Omitted.

M. SCR 20:1.15 (m) Exceptions to this Section [SCR 20:1.15]

The provisions of SCR 20:1.15 do not apply to the following circumstances in which a lawyer acts as a fiduciary:

- 1. The lawyer serves as a bankruptcy trustee, subject to the oversight of the bankruptcy court; or
- 2. The lawyer serves as an assignee or receiver, subject to Ch. 128, Wis. Stats.
- 3. The lawyer serves in a fiduciary capacity for the benefit of an immediate family member; or
- 4. The lawyer serves in a fiduciary capacity for a civic, fraternal, or non-profit organization, which is not a client and has other officers participating in the governance of the organization.
- 5. The lawyer is employed by an employer that is not itself engaged in the practice of law, provided that the employment is not ancillary to the lawyer's practice of law.

**MANAGING YOUR
CLIENT TRUST ACCOUNT

WORK BOOK**

Office of Lawyer Regulation
2016 Edition

WORK BOOK

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TRUST ACCOUNT WORK BOOK

The exercises in this Work Book include a number of scenarios in which lawyers are required to utilize a trust account. They are specifically designed to enable you to understand and work with the records that are recommended for IOLTA trust accounts.

I. “IOLTA” ACCOUNTS VS. OTHER CHECKING ACCOUNTS

- ◆ An IOLTA trust account is a pooled, interest-bearing account, which operates similarly to a standard checking account, but requires some additional features that are not typical of a business or personal checking account.
- ◆ Like a standard checking account, an IOLTA should have a transaction register (more commonly referred to as a check register), checks, deposit slips, monthly statements, service charges, interest income, and potentially, although more problematically than in a business or personal account, overdraft notices.
- ◆ Unlike the standard checking account, it is recommended that imaged checks, duplicate deposit slips, and client ledgers (one for each client and/or each matter of a client) be maintained for IOLTAs. Any interest that accrues on an IOLTA is paid to the Wisconsin Trust Account Foundation, Inc. (WisTAF).
- ◆ As an IOLTA is a pooled account that can hold funds belonging to more than one client at any given time, it is crucial to perform a monthly reconciliation of the account. The reconciliation of an IOLTA requires an additional step that is not required to reconcile a standard checking account. In addition to reconciling the checkbook balance to the bank statement’s balance, the balance held for each client or matter must also be reconciled.
- ◆ Effective, July 1, 2016, electronic banking will be permitted in E-Banking Trust Accounts, which are a new type of IOLTA account, and in a standard IOLTA account when the lawyer or law firm complies with a number of security and insurance requirements.

II. WHAT DO THE RECORDKEEPING GUIDELINES RECOMMEND?

OLR Trust Account Guideline 1., formerly SCR 20:1.15(f)(1), recommends that lawyers and law firms maintain the following records for a draft trust account:

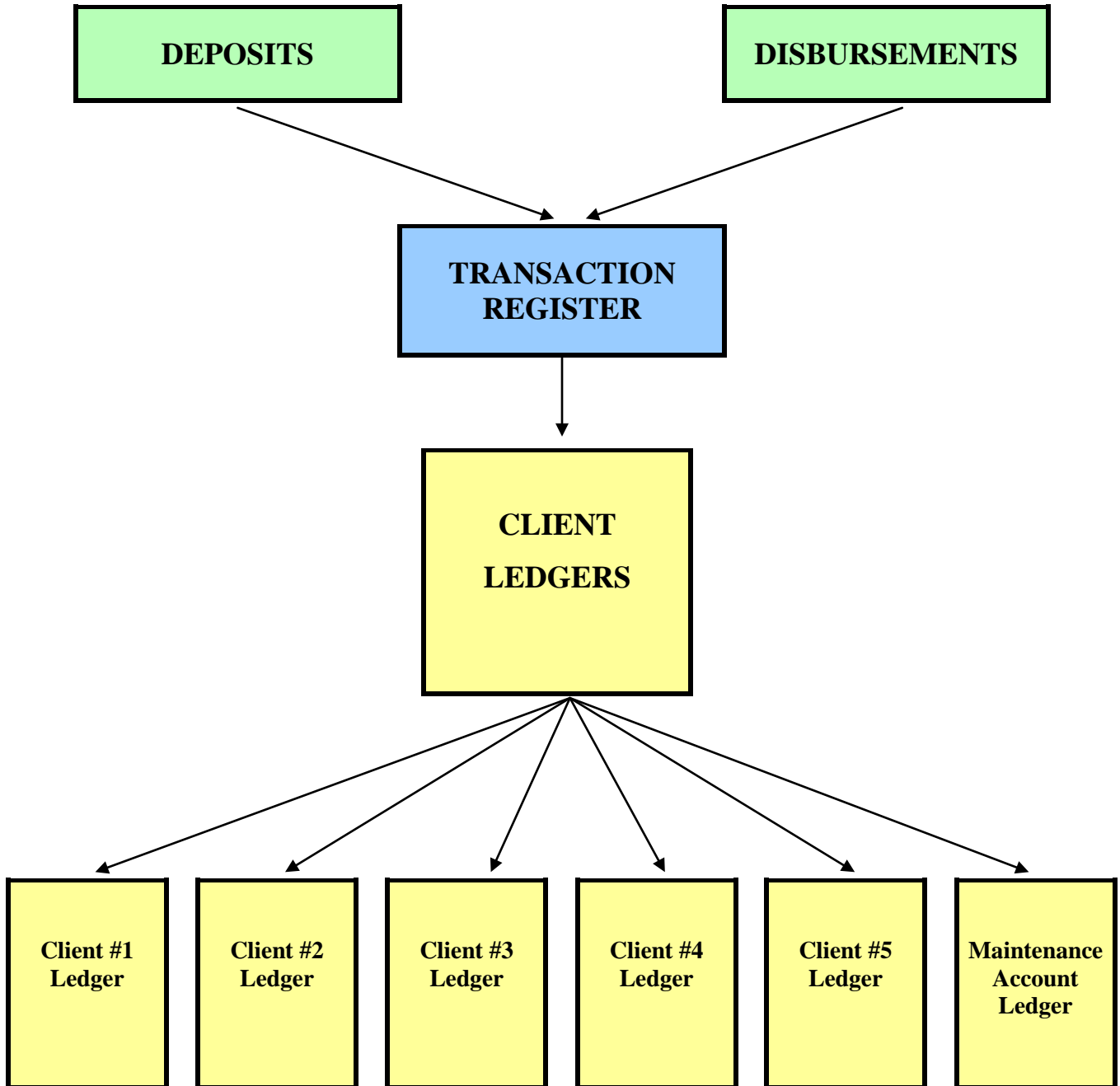
- a. **A Transaction Register**, containing a chronological record of all deposits and disbursements, along with the balance in the account after each transaction;
- b. **Individual Client Ledgers**, containing a record of deposits and disbursements for each client, client matter, or third person for whom the lawyer receives funds in trust, along with the balance following each transaction;
- c. **A Ledger for Account Fees and Charges**, also known as a “Maintenance Account Ledger,” containing a record of deposits and disbursements of any funds belonging to the lawyer that are held in the trust account to cover monthly service charges, check printing charges, NSF fees, etc.;
- d. **Deposit Records** that identify the client or matter associated with each deposit, along with the date and amount of the deposit;
- e. **Disbursement Records**, including checks that identify the client and/or the matter as well as the reason for the disbursement on the memo line; canceled or imaged checks that document the payment of each such disbursement, and wire transfer records;
- f. **Monthly Statements** provided by the financial institution; and
- g. **Reconciliation Reports**, which document, on a monthly basis, that the account is in balance, i.e., that the balance in the transaction register is identical to the total of the client ledger balances, and that those balances are further identical to the adjusted balance in the monthly statement.

TERMINOLOGY

As the standard accounting terminology of “debits” and “credits” may become confusing to those who do not have an accounting background, it will not be used here. **For purposes of handling an IOLTA account, the terms “deposit” and “disbursement” will suffice.** Those concepts are fairly straightforward:

1. A “deposit” increases the balance in the trust account; and
2. A “disbursement” decreases the balance.

TRUST ACCOUNT FLOW CHART



III. INDIVIDUAL CLIENT LEDGERS

Definition: A subsidiary ledger for each client or matter, containing the following information:

- 1) the date, source, and amount of each deposit relating to that client or matter;
- 2) the date, payee, and amount of each disbursement relating to that client or matter; and
- 3) the running balance in the account for that client or matter.

It is recommended that the check number for each disbursement also be included in this ledger. This record is, in essence, a transaction register for each client or matter.

NOTE: If multiple matters are handled for a client, a separate ledger should be established for each matter. For example, if a client sells three separate properties, each of the real estate transactions constitutes a separate representation, even though there is only one client. Consequently, a separate ledger should be established for each of those transactions.

EXAMPLES:

CLIENT LEDGERS

Client: Fight, Marvin
 Matter: Divorce

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/12/20	DEP	Advanced Fees	\$2,000.00		\$2,000.00
02/17/20	1003	Clerk of Court		\$ 212.00	1,788.00
02/17/20	1004	Register of Deeds		5.00	1,783.00

Client: Fight, Marvin and Bea
 Matter: Divorce - Homestead

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
03/18/20	DEP	Real Estate Proceeds	\$78,367.12		\$78,367.12

Client: Innocent, James
Matter: Personal Injury

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/02/20	DEP	IOU Insurance	\$15,000.00		\$15,000.00
02/08/20	1000	James Innocent		\$7,262.50	7,737.50
02/08/20	1001	Wm. B. Accurate		5,137.50	2,600.00

Client: None
Matter: Maintenance Account

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/01/20	DEP	Deposit	\$ 100.00		\$ 100.00
02/07/20	DM	Check Printing Charge		\$ 25.32	74.68



IV. TRUST ACCOUNT CASE STUDIES

This section of the Work Book is designed to provide some practical experience in managing an IOLTA trust account. It includes a variety of transactions, and includes step-by-step guidelines for keeping the recommended records for a personal injury matter, a family law matter and a real estate transaction.


The opening transaction that appears below identifies a way to safeguard client funds by preventing those funds from being used to cover bank charges. This requires the lawyer to establish a “Maintenance Account.” For further information, see **Bank Service Charges** (Trust Account Manual, p. 7).

OPENING TRANSACTION

First:

Prepare a Deposit Slip and deposit \$100.00 into the trust account on February 1, 2020 to open the account and cover account service charges. Be sure to identify the source of the funds as the law office.

EXAMPLE:

<p>Deposit Ticket</p> <p>ACCURATE LAW OFFICES IOLTA TRUST ACCOUNT 1234 Main Street, Suite 100 Anytown, WI 54321</p> <p>Date: <u>February 1, 2020</u></p>  <p>We-Got Money Bank 0123 45 6789: 9876543</p>	<p>Currency > _____</p> <p>Checks > <u>Accurate Law</u> <u>100.00</u> > <u>(Maintenance)</u> > _____ > _____</p> <p>Total from Other Side: _____</p> <p style="text-align: right;">Sub Total: <u>100.00</u></p> <p style="text-align: right;">Less Cash Received: <u>-----</u></p> <p style="text-align: right;">Total: <u>100.00</u></p>
---	---

Next:

Set up a Ledger titled: “Maintenance Account,” to track bank service charges. This Ledger should be maintained with the Client Ledgers.

- Step 1:** Record the Deposit in the Transaction Register. (See, App. A)
- Step 2:** Record the Deposit in the “Maintenance Account” Ledger (See, App. B, Page 3)



CASE STUDY NO. 1: INNOCENT PERSONAL INJURY MATTER

James Innocent hired Atty. William B. Accurate regarding a slip and fall. Innocent was injured when he slipped on some ice in a parking lot. Atty. Accurate negotiated with the parking lot's insurer, IOU Insurance Company, and ultimately received a \$15,000.00 settlement offer. After discussing the offer with Atty. Accurate, Innocent agreed to accept it. Atty. Accurate deposited the settlement check to his trust account on February 2, 2020.

Atty. Accurate has a one-third contingent fee agreement, and Innocent agreed to pay his chiropractor, Dr. Ben Chiopsu, from the settlement proceeds. Dr. Chiopsu's bill is \$2,600.00.

Atty. Accurate prepared the following settlement breakdown:

ACCURATE LAW OFFICES		
1234 Main Street, Suite 100 Anytown, WI 54321		
SETTLEMENT STATEMENT		
February 2, 2020		
James Innocent Personal Injury		
Settlement from IOU Insurance:		\$15,000.00
Wm. B. Accurate (Fee):	\$5,000.00	
Costs:	137.50	
Dr. Ben Chiopsu:	<u>2,600.00</u>	
Total Deductions:		- <u>7,737.50</u>
Settlement to Client:		\$ 7,262.50

Transaction # 1:


Deposit the \$15,000.00 settlement check from the IOU Insurance Co. relating to James Innocent’s personal injury case on February 2, 2020.

In addition, set up a Client Ledger titled: “Innocent, James.”

- Step 1:** Record the Deposit in the Transaction Register. (See, App. A)
- Step 2:** Record the Deposit in the “Innocent” Client Ledger. (See, App. B, Page 2)

Transaction # 2:


Disburse Check No. 1000 in the amount of \$7,262.50 to James Innocent on February 8, 2020, constituting his share of the personal injury settlement.

ACCURATE LAW OFFICE IOLTA TRUST ACCOUNT 1234 MAIN STREET, SUITE 100 ANYTOWN, WI 54321	1000
	Date: <u>February 8, 2020</u>
Pay to the Order of: <u>James Innocent</u>	<u>\$ 7,262.50</u>
<u>Seven Thousand Two Hundred Sixty-two & 50/100---</u> Dollars	
 We-Got Money Bank	
Memo: <u>Innocent PI Settlement</u>	<u>William B. Accurate</u>
"0001000"	":07500028 " 000123 45 6789

- Step 1:** Record the Disbursement in the Transaction Register. (See, App. A)
- Step 2:** Record the Disbursement in the “Innocent” Client Ledger. (See, App. B, Page 2)

Transaction # 3:

Disburse a \$5,137.50 check (No. 1001) to Atty. Accurate or his firm on February 8, 2020 for his 1/3 contingent fee and the reimbursement of costs.

ACCURATE LAW OFFICE IOLTA TRUST ACCOUNT 1234 MAIN STREET, SUITE 100 ANYTOWN, WI 54321	1001
	Date <u>February 8, 2020</u>
Pay to the Order of: <u>Accurate Law Office</u>	<u>\$ 5,137.50</u>
<u>Five Thousand One Hundred Thirty-seven & 50/100-----</u> Dollars	
 We-Got Money Bank	
Memo: <u>Innocent PI Fees & Costs</u>	<u>William B. Accurate</u>
"0001001"	":07500028 " 000123 45 6789

Step 1: Record the Disbursement in the Transaction Register. (See, App. A)

Step 2: Record the Disbursement in the "Innocent" Client Ledger. (See, App. B, Page 2)

Cost Advance Account: Some attorneys maintain a Cost Advance Account. If such an account is maintained, separate checks may be issued for fees and costs. In this case, a \$5,000.00 check would be issued to Atty. Accurate for fees, and a \$137.50 check would be issued to the Cost Advance Account to reimburse that account for funds advanced on the client's behalf.

Transaction # 4:

Disburse a \$2,600.00 check (No. 1002) to Dr. Ben Chiopsu on February 8, 2020, in payment of his chiropractic services.

Step 1: Record the Disbursement in the Transaction Register. (See, App. A)

Step 2: Record the Disbursement in the "Innocent" Client Ledger. (See, App. B, Page 2)



CASE STUDY NO. 2: FIGHT DIVORCE MATTER

Marvin Fight hired Atty. Accurate to represent him in a divorce. Fight paid an advanced fee of \$2,000.00, which Atty. Accurate will bill against at an hourly rate. Shortly after the petition was filed, the parties agreed to a marital property settlement. The settlement requires that the proceeds of the sale of the couple's homestead, totaling \$78,367.12, are to be held in trust by Atty. Accurate, pending an evaluation of Fight's pension plan. It is estimated that the evaluation won't be completed for at least six months.

Atty. Accurate's first invoice to Fight reflects the following:

Law Offices of William B. Accurate

To: Mr. Marvin Fight
1023 Lois Lane
Rome, WI 54321

Date: March 18, 2020

STATEMENT

02/12/20	Advanced Fees/Costs:		\$ 2,000.00
02/17/20	Filing fees/Service	\$ 212.00	
02/17/20	<i>Lis Pendens</i> :	5.00	
02/27/20	Copies of Orders:	4.00	
02/27/20	Legal Fees (earned):	620.00	
03/18/20	Real Estate Proceeds:		\$78,367.12

Balance in Trust Account:

Fees/Costs:	\$ 1,159.00
Real Estate Proceeds:	\$78,367.12

Transaction # 5:

Deposit a \$2,000.00 check from Marvin Fight on February 12, 2020, constituting an advance of fees for divorce representation.

In addition, set up a Client Ledger titled: “Fight, Marvin.”

- Step 1:** Record the Deposit in the Transaction Register. (See, App. A)
- Step 2:** Record the Deposit in the “Fight” Client Ledger. (See, App. B, Page 1)

Transaction # 6 (*Series of Transactions*):

Make the following disbursements regarding the Fight Divorce:

- ◆ A \$212.00 check on February 17, 2020 to the Clerk of Courts for the filing fee;
- ◆ A \$5.00 check on February 17, 2020 to the Register of Deeds for a *Lis Pendens*; and
- ◆ A \$4.00 check on February 27, 2020 to the Clerk of Courts for photocopies.
- ◆ A \$620.00 check on February 27, 2020 to Atty. Accurate for fees.

- Step 1:** Record each of the Disbursements in the Transaction Register. (See, App. A)
- Step 2:** Record each of the Disbursements in the “Fight” Client Ledger. (See, App. B, Page 1)



TIME TO RECONCILE

Receive, Review, and Reconcile the Monthly Bank Statement on March 8:



WE-GOT MONEY BANK

Account: Accurate Law Office
IOLTA Trust Account
Account No. 123-45-6789

Statement Date: March 4, 2020

Beginning Balance:		\$	0.00
Deposits:			17,100.00
Interest:			1.58
Checks:	\$ 15,217.00		
Other Deductions:	33.68		
Ending Balance:		\$	1,850.90

Deposits:

02/01/20	\$	100.00
02/04/20		15,000.00
02/13/20		2,000.00

Checks:

1000	\$	7,262.50
1001		5,137.50
1002		2,600.00
1003		212.00
1004		5.00

Other Deductions:

02/07/20	Check Printing	\$	25.32
02/28/20	Service Charge	\$	6.78
02/28/20	Interest to WisTAF	\$	1.58

- Step 1:** Record the Check Printing and Service Charges in the Transaction Register. (See, App. A)
- Step 2:** Record the Check Printing Charge in the “Maintenance Account” Ledger. (See, App. B)
- Step 3:** Reconcile the Account.

TRUST ACCOUNT RECONCILIATION SHEET

Date of Statement : March 4, 2020 Date of Reconciliation: March 8, 2020

1.	Bank Statement Ending Balance:		\$1,850.90	
2.	Subtract: Outstanding Checks			
		Check No.	Amount	
		1005	\$ 4.00	
		1006	620.00	
3.	Total of Outstanding Checks:		\$ 624.00	
4.	Add: In Transit Deposits:			
			Amount	
			0	
5.	Total of In-Transit Deposits:		0	
6.	Reconciled Bank Statement Balance: (Subtract Line 3 from Line 1, and Add Line 5)			\$ 1,226.90
7.	Transaction Register Balance:			\$ 1,226.90
8.	Client Ledger Balances			
	Client Name:		Client Balance	
	Fight, Marvin:		\$ 1,159.00	
9.	Maintenance:		67.90	
10.	Client Ledger Balance: (Total of Client Balances and Maintenance Account Balance)			\$ 1,226.90

TO COMPLETE THE MONTHLY RECONCILIATION, THE FOLLOWING BALANCES MUST BE EQUAL:


Line 6 Reconciled Bank Statement Balance: \$ 1,226.90
Line 7 Transaction Register Balance: \$ 1,226.90
Line 10 Client Ledger Balance: \$ 1,226.90

Transaction # 7 (Two Transactions):

On March 18, 2020, deposit a \$78,367.12 check from the Johnson Closing Service. This check constitutes the proceeds from the sale of the Marvin and Bea Fight’s home and relates to the Fight divorce. Enter the amount in the Transaction Register and set up a new Client Ledger for Marvin and Bea Fight. Record the amount in that new ledger.

NOTE: At minimum, a separate sub-account record should be created in the IOLTA Trust Account to track the sale proceeds since both the client, Marvin, and his wife, Bea, have an interest in those funds. Both Marvin and opposing counsel should be consulted about whether to establish a separate trust account for Marvin and Bea for those funds. A separate trust account, possibly an investment-type account, would allow any interest income to be paid to the client and his wife rather than WisTAF.

On March 22, 2020, prepare a check (No. 1007) in the amount of \$78,367.12, payable to We-Got Money Bank – Investments to establish a separate investment account. Be sure to identify “Marvin and Bea Fight – Home Proceeds” in the check’s Memo Line. Enter that check in both the Transaction Register and the Client Ledger for Marvin and Bea and calculate the new balances.

ACCURATE LAW OFFICE	1007
IOLTA TRUST ACCOUNT	
1234 MAIN STREET, SUITE 100	
ANYTOWN, WI 54321	
	Date <u>March 22, 2020</u>
Pay to the	
Order of: <u>We-Got Money Bank - Investments</u>	\$ <u>78,367.12</u>
<u>Seventy-eight Thousand Three Hundred Sixty-seven & 12/100-- Dollars</u>	
 We-Got Money Bank	
Memo: <u>Fight - Home Proceeds</u>	<u>William B. Accurate</u>
"0001007"	":07500028 " 000123 45 6789

Later that day, before the investment account has been opened, opposing counsel calls to advise that the parties are arguing about where to invest the funds.

VOID CHECK No. 1007 in both the Transaction Register and Client Ledger. Destroy the check, or write “VOID” on the face of the check and maintain it with your trust account records. A new check may be issued after an agreement is reached.



CASE STUDY NO. 3: TENANT REAL ESTATE TRANSACTION

Robert Tenant has decided to buy the building he has been renting for his business from Samantha Landlord. They have agreed upon a sale price of \$123,276.66. The closing takes place on March 23, 2020. The closing statement is below:

CLOSING STATEMENT	
MARCH 23, 2020	
Seller:	Samantha Landlord
Buyer:	Robert Tenant
Property:	1313 Mockingbird Lane Royal Oaks, WI 12345
<hr/>	
Purchase Price:	\$123,276.66
Due from Buyer at Closing:	
Amalgamated Mortgage:	\$120,000.00
Tenant – Cashier’s Check:	<u>\$ 3,276.66</u>
Total Due from Buyer:	<u>\$123,276.66</u>
Disbursements:	
American Title Company	\$ 375.00
Register of Deeds:	\$ 623.00
Village of Royal Oaks: (Property Assessment)	\$ 2,717.37
I.B. Rich Mortgage Co.:	\$ 98,231.85
Wm. B. Accurate:	\$ 1,000.00
Samantha Landlord:	<u>\$ 20,329.44</u>
Total Disbursements:	<u>\$123,276.66</u>

Transaction # 8 (Series of Transactions):

Atty. Accurate is responsible for depositing and disbursing funds relating to the real estate transaction involving Robert Tenant and Samantha Landlord. In connection with this matter, set up a Client Ledger titled: “Tenant, Robert.”

Step 1: Record each of the following transactions in the Transaction Register on March 23, 2020. (See, App. A, Page 2)

- 1) A \$120, 000.00 Wire Transfer from Amalgamated Mortgage;
- 2) A \$3,276.66 Cashier’s Check from Robert Tenant;
- 3) A Disbursement of \$375.00 to American Title Co. (*Check 1008*);
- 4) A Disbursement of \$623.00 to the Register of Deeds (*Check 1009*);
- 5) A Voided Check due to error in amount owed to Village (*Check #1010*);
- 6) A Disbursement of \$2,717.37 to the Village of Royal Oaks (*Check 1011*);
- 7) A Disbursement of \$98,231.85 to the I.B. Rich Mortgage Co. (*Check 1012*);
- 8) A Disbursement of \$1,000.00 to Atty. Accurate (*Check 1013*); and
- 9) A Disbursement of \$20,329.44 to Samantha Landlord (*Check 1014*).

(See, Closing Statement, Page 15)

Step 2: Record each of the above-referenced transactions in the “Tenant” Client Ledger on March 23, 2020. (See, App. B, Page 4)

Transaction # 9

On April 6, 2020, deposit a \$32.10 check from the law firm into the trust account to restore the balance in the Maintenance Account to \$100.00.

Step 1: Record the Deposit in the Transaction Register. (See, App. A, Page 2)

Step 2: Record the Deposit in the “Maintenance Account” Ledger (See, App. B, Page 3)



TIME TO RECONCILE

Receive, Review and Reconcile the Monthly Bank Statement on April 8:



WE-GOT MONEY BANK

Account: Accurate Law Office
IOLTA Trust Account
Account No. 123-45-6789

Statement Date: April 5, 2020

Beginning Balance:		\$ 1,850.90
Deposits:		201,643.78
Interest:		5.99
Checks:	\$ 122,525.66	
Other Deductions:	5.99	
Ending Balance:		\$ 80,969.02

Deposits:

03/18/20	\$ 78,367.12
03/23/20	120,000.00
03/23/20	3,276.66

Checks:

1005	\$ 4.00	****
1006	620.00	1011 \$ 2,717.37
****		1012 98,231.85
****		****
1009	623.00	1014 20,329.44

Other Deductions:

03/31/20	Interest to WisTAF	\$ 5.99
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V. USING COMPUTER SOFTWARE FOR RECORD KEEPING

There are a variety of accounting programs on the market that can assist in maintaining trust account records. However, some of those accounting programs may need to be adapted in order to maintain complete records of all transactions.

ONE OF THE KEY ADAPTATIONS relates to the assignment of a “category” for each transaction. The standard categories that are part of the software program should **not** be used. Instead, the category for each transaction should be the client’s name, or the client matter to which the transaction relates. This is very important because the category information is used to create Client Ledgers. *See*, Trust Account Guideline (f)(1)b.

NOTE: In order to facilitate the production of Client Ledgers in alphabetical order, each category should be created by using the client’s name in the following format: “Last Name, First Name(s) or First Initial(s).” If the client is a business, the name of the business will suffice as the category.

Regardless of whether the client is an individual or a business, the client’s name must be consistent in all records. For example, “Jones, John” should always be entered as “Jones, John,” not sometimes that way, and other times as “Jones, Jack.”

Depending upon the nature of an attorney’s practice, he or she may simultaneously handle more than one matter for any given client. If so, most programs allow for the creation of a subcategory to track activity relating to two or more matters. For example, assume that Atty. Accurate handles real estate closings for various mortgage companies, including ABC Mortgage. ABC Mortgage would be the category assigned to each closing conducted for ABC, and the subcategory could be the buyer’s name and the closing date. The subcategories for ABC Mortgage could include: “Jones-10/5/20” and “Smith-10/5/20.” This will enable Attorney Accurate to create a category report that identifies the deposits and disbursements relating to each closing that he handles for ABC Mortgage.

A SECOND KEY ADAPTATION is to designate each category (client) as either an “income” item or an “expense” item. Most software programs require each category to be designated as “income” or as an “expense.” While this is a helpful feature for some businesses or individuals, it can cause a tremendous amount of confusion in trust account recordkeeping. If some clients are designated as “income,” and other clients are designated as “expenses,” you will produce an alphabetical list of clients who were identified as income items, and a second alphabetical list of clients who were identified as expense items. The goal of the category report in trust accounting is to create one alphabetical listing of trust account activity, broken down by client. Consequently, it is essential to designate each client as “income,” or each client as “expense.”

NOTE: If a client is mistakenly designated as an income item when all other clients have been designated as expense items, or vice versa, it is possible to correct that error by editing the information relating to that category.

A THIRD KEY ADAPTATION relates to the information contained in the **Memo Line** of the checks and/or the register. The Memo should include the name of the client, possibly in an abbreviated version to conserve space, and some indication as to the purpose of the check. For example, a check payable to Samantha Landlord relating to the real estate matter described in these materials could include the following information in the memo line: “Tenant Closing-Seller’s Proceeds.”

A FOURTH KEY ADAPTATION relates to the information recorded in the Transaction Register regarding deposits. The first line of the entry, which is normally used to identify the Payee of a check, should identify the **Source of the Deposit**, rather than simply the word, “Deposit.” For example, the deposit of James Innocent’s personal injury settlement could be identified in the Transaction Register as: “Ck from IOU Insurance Co.” The **Memo Line** is also important in recording deposits. It should include the name of the client and the reason for the deposit. In the Innocent case, the Memo Line could include the following information: “Innocent-PI Settlement.”

SPLIT TRANSACTIONS: Another noteworthy device that many software programs include is called the “Split Transaction.” A split transaction allows you to break down a deposit that includes two or more checks into individual deposits entries. For example, if a real estate closing includes the deposit of a \$175,000.00 certified check from a mortgage company and a \$1,500.00 cashier’s check from the buyer, those two checks would most likely be included on one deposit slip. The source and amount of each deposit item should also be recorded in the Transaction Register. Computer software programs often allow you to create a split transaction in the Transaction Register, where you record the amount, source, and category of each of those deposit items.

Quickbooks A sample of computer-generated trust account records for the case studies in this Work Book has been generated using *Quickbooks*. See, Appendix D.

TAMgmtWkBk-04/16

**William B. Accurate, Esq.
Client Trust Account**

TRANSACTION REGISTER

DATE	CK. No.	TRANSACTION	DEPOSITS	PAYMENTS	✓	BALANCE
		CLIENT MATTER & PURPOSE				
02/01/20	DEP	Ck from Law Office	100.00		✓	100.00
		Maintenance Account				
02/02/20	DEP	Ck from IOU Insurance Co.	15,000.00			15,100.00
		Innocent PI Settlement				
02/08/20	1000	James Innocent		7,262.50		7,837.50
		P.I. Settlement				
02/08/20	1001	Wm. B. Accurate		5,137.50		2,700.00
		Innocent (Fees & Costs)				
02/08/20	1002	Dr. Ben Chiopsu		2,600.00		100.00
		Innocent				
02/12/20	DEP	Ck from Marvin Fight	2,000.00			2,100.00
		Fight (Advance)				
02/17/20	1003	Clerk of Court		212.00		1,888.00
		Fight – Filing Fee				
02/17/20	1004	Register of Deeds		5.00		1,883.00
		Fight – Lis Pendens				
02/27/20	1005	Clerk of Court		4.00		1,879.00
		Fight – Copies				
02/27/20	1006	Wm. B. Accurate		620.00		1,259.00
		Fight – Atty Fees				
02/07/20	DM	Check Print Fees		25.32		1,233.68
		Maintenance Account				
02/28/20	DM	Bank Service Charge		6.78		1,226.90
		Maintenance Account				

DATE	CK. No.	TRANSACTION	DEPOSITS	PAYMENTS	✓	BALANCE
		CLIENT MATTER & PURPOSE				
----	----	Balance from Previous Page	-----	-----		1,226.90
03/18/20	DEP	Ck from Johnson Closing Service	78,367.12			79,594.02
		Fight, Marvin & Bea				
03/22/20	1007	We Got Money Bk Investments		VOID		-----
		Fight, Marvin & Bea				
03/23/20	DEP	Wire from Amalgamated	120,000.00			199,594.02
		Tenant				
03/23/20	DEP	Cashier's Ck from Tenant	3,276.66			202,870.68
		Tenant				
03/23/20	1008	American Title Co.		375.00		202,495.68
		Tenant				
03/23/20	1009	Register of Deeds		623.00		201,872.68
		Tenant				
03/23/20	1010	Village of Royal Oaks - VOIDED		-----		-----
03/23/20	1011	Village of Royal Oaks		2,717.37		199,155.31
		Tenant – Property Tax				
03/23/20	1012	I.B. Rich Mortgage Co.		98,231.85		100,923.46
		Tenant				
03/23/20	1013	Wm. B. Accurate		1,000.00		99,923.46
		Tenant – Atty Fees				
03/23/20	1014	Samantha Landlord		20,329.44		79,594.02
		Tenant				
04/06/20	DEP	Ck from Law Office	32.10			79,626.12
		Maintenance Account				

INDIVIDUAL CLIENT LEDGER

Client: Fight, Marvin

Matter: Divorce

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/12/20	DEP	Advanced Fees	2,000.00		2,000.00
02/17/20	1003	Clerk of Court (Filing Fees)		212.00	1,788.00
02/17/20	1004	Reg. of Deeds (<i>Lis Pendens</i>)		5.00	1,783.00
02/27/20	1005	Clerk of Ct. (Copies)		4.00	1,779.00
02/27/20	1006	Wm. B. Accurate (Fees)		620.00	1,159.00

Client: Fight, Marvin and Fight, Bea

Matter: Real Estate Proceeds

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
03/18/20	DEP	Real Estate Proceeds	78,367.12		78,367.12
03/20/20	1007	We Got Money Invstmts		VOID	78,367.12

INDIVIDUAL CLIENT LEDGER

Client: Innocent, James

Matter: Personal Injury

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/02/20	DEP	IOU Insurance Co.	15,000.00		15,000.00
02/08/20	1000	James Innocent		7,262.50	7,737.50
02/08/20	1001	Wm. B. Accurate		5,137.50	2,600.00
02/08/20	1002	Dr. Ben Chiopsu		2,600.00	-----

INDIVIDUAL CLIENT LEDGER

Client: Law Office Funds
Matter: Maintenance Account

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
02/01/20	DEP	DEPOSIT	100.00		100.00
02/28/20	DM	Check Printing Charge		25.32	74.68
02/28/20	DM	Service Charges		6.78	67.90
04/06/20	DEP	DEPOSIT	32.10		100.00

INDIVIDUAL CLIENT LEDGER

Client: Tenant, Robert
Matter: Real Estate Transaction

Date	Ck No.	Transaction	Deposits	Disbursemts	Balance
03/23/20	WIRE	f/Amalgamated Mortgage	120,000.00		120,000.00
03/23/20	DEP	Cashier's Check f/Tenant	3,276.66		123,276.66
03/23/20	1008	American Title (Title Fees)		375.00	122,901.66
03/23/20	1009	Register of Deeds (Trans. Fee)		623.00	122,278.66
	1010	Village of Royal Oaks		VOID	-----
03/23/20	1011	Village of Royal Oaks (Assessment)		2,717.37	119,561.29
03/23/20	1012	I.B. Rich Mortgage (Mortgage)		98,231.85	21,329.44
03/23/20	1013	Wm B. Accurate (Fee)		1,000.00	20,329.44
03/23/20	1014	Samantha Landlord		20,329.44	-----

TRUST ACCOUNT RECONCILIATION

Date of Statement: _____ Date Reconciled: _____

1.	Bank Statement Ending Balance:	\$	
2.	Subtract: Outstanding Checks		
	Check No.	Amount	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
3.	Total of Outstanding Checks:	\$	
4.	Add: In-Transit Deposits:		
		Amount	
		\$	
		\$	
		\$	
		\$	
5.	Total of In-Transit Deposits:	\$	
6.	Reconciled Bank Statement Balance: (Subtract Line 3 from Line 1, and Add Line 5)		\$



Before inserting the Register Balance below, be sure to make any necessary adjustments to the balance in your Transaction Register due to service charges and/or other deductions or credits to the account that are identified in the Bank Statement.

7.	Transaction Register Balance:	\$
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RECONCILIATION SHEET
Page Two

8.	Client Ledger Balance:		
	Client Name:	Client Balance	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
		\$	
9.	Maintenance Account	\$	
10.	Client Ledger Balance: (Total of Client Balances and Maintenance Account Balance)		\$

TO COMPLETE THE MONTHLY RECONCILIATION, THE FOLLOWING BALANCES MUST BE EQUAL:

Line 6 Reconciled Bank Statement Balance: \$ _____

Line 7 Transaction Register Balance: \$ _____

Line 10 Client Ledger Balance: \$ _____