

TRUST ACCOUNT

(Also known as an IOLTA account – Interest on Lawyer’s Trust Account)

Is a trust account required for all attorneys in Arizona? No, not all attorneys will require the use of a trust account. Public, corporate and indigent representation agency attorneys are a few that do not require the use of a trust account. Also, attorneys who do not accept money that belongs in the trust account do not need one. Be sure to read Rules 42 E.R. 1.5 (fees), 1.15 (safekeeping property) and Rule 43, Ariz.R.Sup.Ct.

I How to determine whether your practice requires a trust account.

1. What does your fee agreement determine? As stated in Rule 42, E.R. 1.5, written agreements are required with every client. This should include the scope of representation and how much. Therefore, does your fee agreement say earned upon receipt or advanced fees and costs.
2. Do you hold money on behalf of a client (settlement, hold for division of property, etc)?
3. If you do not accept any money in advance for work, costs (filing fees, expert witnesses etc) or from third parties (settlements, etc) you may not need a trust account. Review the rules again to be sure that you do not require the use of a trust account. Also you may call ethics counsel at 602-340-7284.
4. If you accept money in advance for fees and costs, you will need a trust account.
5. If you answered yes to question 2, you will need a trust account.

II. You determine you need a trust account – now what?

A. Pick a financial institution

1. Are the institution’s location and hours convenient?
2. Do they charge if there is no activity on the account?
3. Do they close the account if there is a zero balance?
4. What types of charges do they charge (monthly fees, NSF charges)?
5. How does your institution deal with checks (return them to you, store them on microfilm)?
6. When will you receive your ordered checks?

B You picked the financial institution – now what?

1. You will need two forms which you can find at: www.azbar.org/practice20/forms
 - a. Notice to Financial Institution – this form must be given to your financial institution. This allows them to send the interest earned to the Foundation.
 - b. Enrollment form. This form notifies the State Bar that you have a trust account. You receive this form every year. For questions about completing this form, please contact the State Bar of Arizona's Trust Account Hotline at (602) 340-7305.
2. Do not set up overdraft protection on this account. This is considered co-mingling of funds if the overdraft protection ever takes effect.
3. Do not get an ATM/Debit card for your trust account.
4. Order your checks immediately. The trust account checks should be a different color than your operating account. Also include "Trust Account" or "Iolta Account" on the check.

Be sure to give yourself enough time to receive them before the need to disburse. The temporary checks given to you when you open your account are acceptable to use in an emergency. However, they are not recommended. Do not use the withdrawal slip at the bank or ATM machine to disburse money.

5. Order deposit slips, again if available choose a different design than your operating account deposit slips.
6. Deposit a small amount of money of your own, called administrative fees. This cannot be enough money to keep the account from bouncing. However it should be enough to cover items such as check printing charges, credit card transactions, monthly service charges and NSF for funds deposited.
7. Create your ledgers. You can use a manual system or an accounting program such as QuickBooks or some practice management software has built in trust accounting. Samples of the forms are also available on our Forms page.
 - a. General ledger or check register (just like your personal check register). This will be a running total of all transactions in the account, including date, type of transactions, check number, client name, description of transaction, deposit or withdrawal and a running balance.

- b. Client ledger for each client who has money in the trust account. This looks very much like the general ledger. (also available on the Forms page in other formats)
- c. Administrative ledger for money deposited to cover bank charges.
- d. 3-way reconciliation worksheet. A 3-way reconciliation must be completed each month. This will determine whether you have made any errors in your trust account. If the three figures do not match, there is a problem that you need to clarify. *It is important that this is done each month, if not you may magnify the problem two months down the line, bounce the account and the State Bar is notified of the problem.
- e. Copy all checks and deposit slips ***before*** they are sent out or deposited at the bank. Write on the deposit slip who the money belongs especially if you are making a deposit for multiple clients on one slip, detail out how much belongs to each client. Indicate on the check who and why the money is being disbursed (example - Client Jones/medical records).

C. How to determine what money goes into the trust account.

- 1. Who does the money belong to when you ***accept*** it?
 - a. If it is money that belongs to the client until the work is completed. It is client's money and it belongs in the trust account. Even if you are handed the money at 10:00 a.m. and know by 2:00 p.m. that you will have earned it, it is still required to be deposited into the trust account. The reason – when the money was handed to you it was client's funds.
 - b. If you receive money from a third party on behalf of your client (i.e. settlement) this money also should be deposited into the trust account. The reason – that money does not belong to you and again belongs to the client.
 - c. If you receive money that belongs to both you and the client (i.e. settlement) it should be deposited into the trust account. The reason – part of that money belongs to the client and therefore the entire amount needs to be deposited into the trust account.
 - d. If you receive money from a third party, which does not belong to you or to the client, but is part of the representation (such as settlement funds used to pay medical liens) it should be deposited into the trust account. The reason – it does not belong to you.
 - e. Exception – if you receive a settlement check made payable to you for your

portion, one payable to the client for their portion and yet another for other parties (medical liens), you may deposit your portion into your operating account, give the client their check and send the third party their check. See Rule 43(b)(4) Disbursement Against Uncollected Funds for additional information.

D. How to deposit money into the trust account.

1. Enter all deposit information on the client ledger and general ledger.
2. Use the correct deposit slip for your trust account. Complete the deposit slip (be sure to include who the client is on the slip) and make a copy.
3. Money can be deposited into the trust account by going to the bank or by electronic transfer. You need documentation of the transaction.

E. How to disburse money from the trust account.

1. Wait at least 10 business days for the deposit to clear the payor's bank. You may call the payor's bank (not your bank) and inquire as to whether the check has cleared. Also see Rule 43(b)(4) Disbursement Against Uncollected Funds" for additional information.
2. Verify with the client ledger and general ledger that the money is available to be disbursed. Enter all disbursements on the client ledger and general ledger.
3. Use the correct pre-numbered check for the trust account, include the name of client and why check is written on the memo field of check (example: Jones/earned fees or Jones/filing fees) and make a copy.
4. Disburse money from the trust account by pre-numbered check or electronic transfer which generates a record of the transaction.
5. Do not disburse money by going to bank and withdrawing cash or using the ATM or debit card.

F Disbursing against Uncollected Funds (exception to waiting for a deposit to clear)
Rule 43(b)(4) Ariz.R.Sup.Ct.

1. You may disburse against uncollected funds if the deposit is a limited-risk deposit. What are limited-risk deposits and risks of disbursing against them:
 - a. Certified checks, cashier's checks, bank checks, official checks, treasurer's checks, money orders, other instruments in which the payer is a bank, savings and loan association, or credit union, checks issued by United States or Arizona or any agency or political subdivision of the state, checks or drafts issued by insurance companies, title insurance

companies, or a licensed title insurance agencies authorized to do business in this state are limited-risk deposits.

- b. You **must** have personal funds available to cover any limited-risk deposit that does not clear. *You must deposit the money into the trust account within three (3) business days of learning that the deposit did not clear.*

G. Monthly reconciliation of trust account.

1. *Open and review your bank statement every month.* Staff should not open the bank statement. It should be given to the responsible attorney unopened.
2. If there was a bank charge that you were not aware of until you received the bank statement, add this to your general ledger and adjust as necessary. You will also need to add this to your administrative ledger and adjust as necessary. There is a place on the reconciliation for bank charges.
3. Reconcile the bank statement to the general ledger, checking off all checks and deposits that have cleared. Subtract checks and add deposits that have not cleared **AS OF** the ending date of the bank statement (example – bank statement ends on 1/31/05 and check #555 was written on 2/1/05. You would not include this transaction on this month's reconciliation). You may use the back of the bank statement to complete this part of the reconciliation or the 3-way reconciliation worksheet provided by LOMAP.
4. Add the total of your client ledgers, including the administrative ledger together. Again use only transactions up to the ending date of the bank statement. Write this number on the 3-way reconciliation worksheet.
5. Take the balance on the general ledger, again, as of the ending date of the bank statement. Write this amount on the 3-way reconciliation worksheet.
6. All three figures should match on the 3-way reconciliation worksheet, the reconciled bank statement, total of client ledgers and general ledger. If they match, congratulations – your trust account is reconciled. If they do not match, you must review your records to find the problem.
 - a. If the client ledger total or general ledger total does not match, the problem is generally that you did not log a transaction on one of the ledgers. Review and compare each client ledger to the general ledger.
 - b. If the reconciled bank statement does not match, you may have missed a transaction that has not yet cleared. This could be from a previous month. Be sure to check last month's reconciliation for check numbers or deposits that did not clear. They may not have cleared again.

- c. Do not close out client ledgers until all transactions on the ledger have cleared.

III. Separate interest bearing accounts.

- A. If you have a substantial amount of money that you will be holding for one client, you may wish to open a separate interest bearing account. Call the Trust Account Hotline for questions.
 1. Items to consider before opening a separate interest bearing account:
 - a. The expense and time of setting up this account.
 - b. The preparation and filing of appropriate tax forms.
 - c. Maintenance of the account (same records as the pooled trust account).
 - d. Expense of opening the account with a minimum balance, if required by the financial institution.
 - e. Expense of ordering checks for the account.
 2. Client should be aware and understand that they are responsible for any taxes associated with the interest on this account.
 3. The attorney should be the only signor on this account. However, some financial institutions feel uncomfortable because the client's name is on the account. You may put something like this on the account and checks:

Law Offices of John Jones
For Benefit of Paul Smith

IV. Credit cards and the trust account, see Rule 43(b)(3), 2009 Comment and Ethics Opinion 08-01.

“A lawyer or law firm may permit funds from a credit card transaction to be deposited into a client trust account for payment of advance fees, costs or expenses, and merchant or credit card transaction fees, but only if the lawyer has sources of funds, other than client or third-party funds, available at the time of the credit card transaction to replace any funds that may be debited from the account due to a credit card chargeback and any associated fees or charges...” Rule 43(b)(3).

1. If you are going to set up a credit card transaction machine and accept money that should be placed in the trust account, the credit card transaction ***must*** be set up on the trust account. You may not transfer money from your operating account to your trust account.

2. Risks and costs associated with using a credit card on your trust account.
 - a. If there is a dispute, the credit card company will, often without notice, remove the disputed amount from the trust account. It does not matter that you may have already disbursed against it, they will just take it back. The client has anywhere from 60-90 days to dispute a charge. ***Currently, you have three business days to return the money to the trust account if there is a dispute (and you have disbursed it).***
 - b. Fees associated with the credit card can be costly, including rental charges and a percentage of each transaction. You need to be clear who is paying for those fees (firm or client)
 - c. Attorney must know whether the client's credit card company allows the client to use their credit card to pay for future services. (See 2009 comment to Rule 43).
 - d. Recommendations – you can ask your client to provide you with a check or a cash advance from their credit card company.

VI. Staff assistance with maintaining the trust account.

1. Staff can assist with maintaining the trust account, including entering documentation on all ledgers, 3-way reconciliation each month and yes even signing checks.
2. If you decide to allow staff to maintain the record keeping of your trust account, be sure to review all transactions each month – even if you trust your staff and have had them for many years. Why – you as the attorney are still responsible for any mistakes made in the trust account. The fact that your staff made a mistake and you did not properly supervise is not a defense. You and only you are responsible for the safekeeping of the trust account.
3. While mentioned above that non-lawyers can sign trust account checks, LOMAP does not recommend this. Again, this is due to the fact that you as the attorney are responsible.

VII. Unable to locate client, what to do with remaining trust account funds.

1. Document all efforts to locate the client.
2. Review Ethics Opinion 97-03 and Opinion #01-08.
3. Call the Trust Account Hotline, 602-340-7305, for advice.

VIII. Safekeeping your trust account.

1. Secure and lock your trust account records, especially the checks.

2. Back-up all computer information, including your accounting system.

IX. Death of an attorney

1. Make arrangements for your trust account in the event of your death or disability. Review Ethics Opinion 04-05 and our Succession Planning Handbook. Call the Trust Account Hotline for guidance.