Q. *How do I know if I need to have a trust account?*
A. If you are presently or potentially in the future going to be in possession of client or third party funds then you should set up a trust account. You also need to look at how you handle client costs. If the client advances payment of his/her costs then you would need to place those funds into your trust account. Even if the client pays you a flat fee with an advanced cost in one check, the check would need to be deposited into your trust account and then the flat fee portion would be transferred to your operating account once the check had cleared. Then you could pay the cost(s) from your trust account or reimburse yourself for costs you pay. An example of this type of transaction would be if you charge a flat $590.00 to do a corporation formation, $500.00 of the $590.00 is an earned upon receipt fee and the other $90.00 is for the filing fees. The entire $590.00 would be deposited into your trust account and then the $500.00 would be transferred to your operating account, once the check cleared, and then you would issue a $90.00 trust account check to corporation commission for the filing of the corporation or a check to reimburse yourself for the filing fee in the event that you already paid it.

Q. *How do I set-up a trust account?*
A. Read Rules 42, E.R. 1.15 and 1.5 and Rule 43 Ariz.R.Sup.Ct. You should also contact the State Bar of Arizona Law Office Management Assistance Program ("LOMAP"), for forms to take to your bank as well as other helpful trust account materials. 602-340-7313. You can also obtain forms from the LOMAP page of the State Bar of Arizona's website, [http://www.myazbar.org/Members/lomap](http://www.myazbar.org/Members/lomap).

Q. *What kinds of records do I need to maintain on my trust account?*
A. Pursuant to the Rules you need to keep the following items:
   1. Bank statements
   2. Cancelled checks (unless microfilmed/imaged by your bank) and other evidence of disbursement (electronic transfers or wire transfers)
   3. Duplicate deposit slips or the equivalent
   4. Individual client ledgers and Administrative ledger or the equivalent
   5. Trust account general ledger or check register
   6. Reconciliation reports
   7. Reports to clients (example: billing statement)

Q. *What is an individual client ledger and what information needs to be captured on it?*
A. A client ledger is simply a record in which all of the trust account transactions for a particular client are documented on. The ledger needs to reflect five things:
   1. Date of transaction, i.e. date on which you deposit funds or disburse funds from your trust account
   2. Type of transaction, i.e. if you are depositing funds, indicate DEP, if disbursing funds indicate Check number
   3. Payee, i.e. to whom deposit or disbursement is made
   4. Description of transaction, i.e. filing fees, earned fees, settlement proceeds, advanced fees/unearned.
   5. Amount of transaction, i.e. deposits should be entered as a positive figure, disbursements as a negative
   6. Running balance, i.e. total deposits minus disbursements

Q. *What are the components of a proper "Three-Way Reconciliation" and how often do I have to do one?*
A. The components of a Three-Way Reconciliation are:
   - Total of all client/administrative ledgers =
   - Ending balance of the general ledger/check register =
   - Reconciled bank statement balance

Determine the ledger totals and balances “as of the bank statement ending date.” Also, if you have deposited personal funds into the trust account to cover bank charges (“bank service charges” ledger), be sure to include this balance, as well, when totaling your client ledgers. Pursuant to the new trust account rules that went into effect on December 3, 2003, a three-way reconciliation of the trust account needs to occur on a monthly basis.

Q. *I use a computer program to track my trust account activity. Do I need to keep manual "ledgers" too?*
A. No. There are several computer programs, which automate the process of keeping a trust account so that you do not need to keep manual records, too. Just be certain that you have your computer program set up appropriately so that you can meet the requirements of proper trust record maintenance as described above,
including what to show on a transaction entry, how to easily view a client’s funds, and how to perform a monthly reconciliation. Be sure you have a secure backup system in place. As an added security, you may keep monthly printouts of the general trust ledger.

Q. **How long do I need maintain these records?**
A. You need to keep these trust account records for a Period of Five (5) years after the termination of the representation. Rule 42, ER 1.15(a) Ariz.R.Sup.Ct.

Q. **What types of funds should be deposited into my client trust account?**
A. Funds belonging entirely to the client, funds belonging in part to a client and in part presently or potentially to the lawyer, funds belonging to a third party in connection with a representation, and personal funds in an amount necessary for that purpose to cover bank charges. See Rule 42, ER 1.15(b) Ariz.R.Sup.Ct.

Q. **May I keep personal funds in my trust account to cover bank service charges or to just keep the account open?**
A. Yes, pursuant to Rules 42, ER 1.15(b) and 43, Ariz.R.Sup.Ct., you are allowed to keep a nominal balance of lawyer or law firm funds in the trust account to cover bank service charges. Be sure to ledger these funds on a “bank service charges” ledger. **It's important to note:** this money is only to cover bank service charges or to keep the account open - and not for any other reason.

Q. **May I wire transfer in and out of my trust account?**
A. Yes. You may wire transfer in and out of the trust account. You are now permitted to disburse by electronic transfer provided there is a record of the disbursement.

Q. **How long must I wait for a deposited check to clear before I can disburse against it?**
A. The prior ethics rules required verification from the issuing bank that the check had cleared. Pursuant to the new trust account rules that went into effect on December 3, 2003, this requirement has been relaxed to allow for disbursements against specific types of deposits.

Q. **What is a "limited-risk uncollectible deposit"?**
A. Certain categories of trust account deposits are considered to carry a limited and acceptable risk of failure so that disbursements of trust account funds may be made in reliance on such deposits without disclosure to and permission of clients and third persons owning trust account funds that may be affected by such disbursements. Notwithstanding that a deposit made to the lawyer’s trust account has not been finally settled and credited to the account, the lawyer may disburse funds from the trust account in reliance on such deposit under any of the following circumstances, if the lawyer has other sources of funds, other than client or third party funds, available at the time of disbursement to replace any uncollected funds:

i. when the deposit is made by certified check or cashier’s check;
ii. when the deposit is made by a bank check, official check, treasurer’s check, money order, or other such instrument where the payor is a bank, savings and loan association, or credit union;
iii. when the deposit is made by a check issued by the United States, State of Arizona, or any agency or political subdivision of the State of Arizona; or
iv. when the deposit is made by a check or draft issued by an insurance company, title insurance company, or a licensed title insurance agency authorized to do business in the state of Arizona.


Q. **What types of disbursements are not allowed from my client trust account?**
A. Disbursements that are not by pre-numbered check or electronic transfers such as counter checks or cash-back transactions from deposits are not permitted. See Rule 43(b)(4) Ariz.R.Sup.Ct.

Q. **How do I handle credit card payments through my trust account?**
A. If you are taking an unearned fee, advanced cost from a client, or funds belonging to a third party or a client via a credit card those funds need to first be placed into your trust account. It is not proper to have those funds credited to your general or operating account and then transfer them into your trust account. Check with your credit card processing company about the possibility of being able to designate credit card payments to different accounts. Therefore, earned funds (clients paying on their bill or a completely earned fee) could be routed to your operating or general account, and those unearned “trust account” funds could be deposited to your trust account.

When dealing with credit card payments it is important to be aware of the fees and charges that could possibly be debited from your trust account, in those situations you would need to have your own funds in the account to cover those charges. In addition, you should also keep in mind the fact that a client that pays with credit card has the opportunity to dispute a credit card charge up to 90 days after the charge occurred. In the event that a client does dispute a charge and that charge was credited to your trust account, the credit card company will
reverse the charge from your trust account, often without first notifying you. A reverse charge against the trust account when the funds have been withdrawn could potentially result in the conversion of other client funds in the trust account. You should also consult the credit card Ethics Opinions 89-10, 08-01 and Rule 43 (b)(3) Ariz. R. Sup. Ct.

Q. How do I handle client funds that are in dispute?
A. When in the course of representation, a lawyer in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute. As to the portion of the property in dispute, the lawyer shall commence an interpleader action if otherwise not able to resolve the dispute. See Rule 42, ER 1.15 Ariz. R. Sup. Ct.

Q. What do I do with unclaimed money left in my trust account?
A. Try to make contact with the client or third party who is entitled to the funds and be sure to document your efforts. In the event that you are unsuccessful in locating the entity entitled to the funds, you should escheat the funds to unclaimed property department of the State of Arizona. Also review Ethics Opinion 97-03.

Q. What if my client gives me a check today for work I will do tonight? I know I'm going to earn it right away. Do I deposit the check into my trust account or my operating account?
A. If you have not performed the work at the time the client gave you the money, then you must deposit it into the trust account prior to disbursing funds to pay yourself for the work you performed.

Q. I want to advance a cost for my client, should I advance it from my trust account?
A. No. You should only advance client costs (where you are paying on behalf of the client and then will be reimbursed by the client) from your operating account.

Q. May I have my legal assistant be a signer on the trust account?
A. The rules do permit for a non-attorney to be a signer on a client trust account. However, you may want to strongly evaluate having a non-attorney be a signer as you will be ultimately responsible for any problems with the trust account. Often planning can avoid the need of having someone other than an attorney be a signer on the trust account.

Q. Who gets the interest from my client trust account?
A. A lawyer or law firm receiving client funds shall maintain a pooled interest bearing or dividend-earning trust account for deposit of client funds where the interest or dividends reasonably expected to be earned thereon are nominal in amount. The interest or dividends accruing on this account, net of any service or other charges or fees imposed by the financial institution or investment company in connection with the account, shall be paid by the financial institution or investment company to the Arizona Foundation for Legal Services and Education, and shall be used solely for the following purposes: to pay the actual administrative costs of this interest or earnings on lawyers' trust accounts (IOLTA) program; to fund programs designed to assist in the delivery of legal services to the poor; to support law-related education programs designed to teach young people, educators and other adults about the law, the legal process and the legal system; to fund studies or programs designed to improve the administration of justice; and to maintain a reasonable reserve therefore. See Rule 43(f)(2) Ariz. R. Sup. Ct.