

TRUST ACCOUNT GUIDANCE during COVID-19

We know you and your clients are being challenged by these trying times, including financial transactions, while being mindful of staying-at-home and social distancing.

Practice 2.0 and Lawyer Regulation* have teamed up to bring you some guidance, and suggestions, for ways in which you may conduct (IOLTA) trust account-related transactions while remaining compliant with the trust accounting rules of the Rules of the Supreme Court.

Please remember that this guidance does not relieve you of your responsibility follow the minimum trust account standards [Rule 43(b)(1)(C)]. You should not use any service that makes it impossible to comply with the rules. Also, the services described below may vary by financial institution/provider and these services may not be available to everyone. Additional terms and restrictions may apply depending on your bank and your specific accounts. Please check with your bank/provider to ensure there are no unexpected fees associated with the services or transaction/amount restrictions.

ELECTRONIC BANKING OPTIONS

Mobile Banking – Almost all financial institutions offer proprietary cellphone applications that enable users to manage accounts.

Features:

- Verify Balance
- Deposit Checks
- Electronic Transfers

For trust account compliance, please remember:

- You must keep adequate documentation for all transaction activity relating to your client trust account (IOLTA). There is no exception for crisis situations such as the one we are currently experiencing due to COVID-19. You should take a screenshot of the record on your cellphone to preserve the required duplicate deposit records when making deposits; or duplicate disbursement records when transferring funds. Assuming you keep a duplicate deposit record of the transaction (such as a screenshot of the deposit), lawyers may deposit trust account checks using mobile banking.
- Encourage clients to also take advantage of their bank's mobile app, if available, to deposit their checks so they do not need to go to the bank.

Remote Deposit Capture – Some banks offer dedicated scanners specifically made for depositing checks. These are acceptable for trust deposits – again – as long as you retain a record of each deposit transaction.

Features:

- Avoid financial center and ATM

- Deposit multiple checks easily
- Later deposit cutoff times

Note:

- Deposits can be rejected or fail to post due to technical errors. We encourage you to wait the recommended 10-day period before disbursing based on deposits. The best practice is to verify that deposits have cleared after the 10-day waiting time before you disburse those funds in whole or in part.

View-only Account/Account Authorization Restrictions – This allows users to delegate cash management activities to multiple users on a single account by creating individual and unique user profiles. This solution may be ideal for oversight of teleworking staff who are assisting in the management of the IOLTA and for firms with multiple attorneys using the IOLTA but with a single appointed person responsible for the oversight.

Features:

- Ability to delegate tasks to remote employees
- Ability to restrict available features by user
- Ability to monitor employee activity.
- Facilitate monthly three-way reconciliation review by third-party

Electronic Check Payments (ACH) These are an electronic version of paper check available through some banks and third-party merchants that permit electronic transfers directly from one bank account to another.

Features:

- Saves time and paper
- Virtually instantaneous

Note:

- If you are using a third-party provider funds cannot be held in a third-party account before being transmitted to the final recipient (payee) of the funds. This issue is why PayPal and Venmo, for example, aren't appropriate for trust account transactions.
- You must be able to maintain a proper audit trail that reflects the date of disbursement, amount, and payee. This may require you to print the confirmation page if alternative receipts are not generated.
- The disbursement must be identified as originating from your trust account.

FAQs:

- May I use Venmo or PayPal for trust account transactions? No. Both of these services use an intermediary account to hold funds before they are sent to the final recipient of the funds.
- What about Zelle? It appears that Zelle may be used ONLY IF you are able to capture or memorialize the information required below (see Trust Account Records – The Basics).

Merchant Processing Services – Credit card processors

Features:

- Payment can be conducted remotely
- No need to visit the bank

Note:

- Cardholder has 90- to 120-day dispute period – In case of “chargeback” you must have funds available to replace any disputed amount removed from your account.
- You will need to be sure that transaction fees are properly deducted.
 - If they are deducted from your trust account, you will need to be sure you have enough administrative funds on hand to cover them. (NOTE: This amount needs to be reasonably related to the anticipated costs; your processor can help you with an estimate.)
 - The best practice is to use a processor that permits you to have transaction or administrative fees deducted from your operating account, even if the transaction is related to your client trust account.

TRUST ACCOUNT RECORDS – The Basics

To comply with the trust accounting rules, you must always have and keep (for five years from the termination of the representation) the following documentation:

- An individual client ledger for each client, person or entity for which funds have been received
 - The ledger must show:
 - The date, amount, check/ACH/wire number, reason for transaction and payor of the funds
 - The date, amount, check/ACH/wire number, reason for transaction and payee of each disbursement
 - Any unexpended balance (this is a running balance after each transaction)
 - If you keep a small amount of personal/business funds in the account to cover bank fees, you will need a separate ledger to account for those funds.
- A record of your monthly three-way reconciliation
 - You must reconcile your client and administrative ledgers, your trust account general ledger (checkbook register) and your trust account bank statement
- Duplicate deposit slips (or the equivalent of the record of the deposit, including credit card processing)
- Copies of cancelled checks, or records of funds disbursed.
 - These must include to whom the funds were disbursed, the amount, and the date on which they were disbursed
 - This may include a unique transaction code for electronic transfers
- Bank statements for your client trust account

Reminder: You still cannot do a “split deposit” – where you deposit a portion of received funds and get some back in cash or deposit some of a check into trust and some of a check into operating. You need to deposit all of the funds and then disburse to yourself in a rule-compliant way.

Still have questions?

Call the State Bar's **Trust Account Hotline at 602-340-7305** for **free, confidential advice** on this issue or other trusts account management questions.

Check the [Trust Account Manual](#)

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