

Lawyer Trust Accounts in Iowa

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Office of Professional Regulation

Establishing an Account

Need for a Trust Account:

Not every lawyer needs a trust account. The key issue is whether you accept funds of the kind that must be placed in a trust account. (See the discussion regarding required trust account deposits under “Operating the Account,” below.) Government attorneys or corporate counsel generally will not need to maintain a trust account. Most private practitioners will need to maintain a trust account. Iowa R. of Prof'l Conduct 32:1.15; Iowa Ct. R. 45.1.

What Kind of Trust Account is Required:

For most client funds, the appropriate account is the pooled, or IOLTA account, in which funds belonging to multiple clients or third parties are pooled in a single account. Interest earned on a pooled trust account (net of allowable service charges for that type of account) is paid by the depository institution to the Lawyer Trust Account Commission (LTAC). LTAC distributes grants annually as approved by the Iowa Supreme Court for legal services for low-income persons and law-related education. Iowa Ct. R. 45.4(1).

Court rules also authorize establishment of a separate interest-bearing account for an individual client or third party. When a separate interest-bearing account is established for an individual client or third party, the interest earned on the account (net of account costs) is payable to the client or third party for whom the account was established. Iowa Ct. R. 45.4(2)(a).

Court rules also authorize establishing a pooled trust account with subaccounting, wherein the interest owed to each individual client is computed and paid, net of pro rata account costs, to the individual client. These accounts seldom are used due to the administrative overhead associated with interest computation and the generally insignificant amount of interest actually payable to any particular client after deduction of costs. Iowa Ct. R. 45.4(2)(b).

In determining whether to deposit client or third-party funds into an IOLTA account or a separate account for the individual client, the lawyer must assess whether the funds to be invested could produce a positive net return for the client. Note that the key phrase “significant net return” no longer appears in the rule. The lawyer should consider the following factors:

The amount of the funds to be deposited

The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

The rates of interest or yield at the financial institution in which the funds are to be deposited;

The cost of establishing and administering the account, including service charges, and the cost of preparing any tax reports required for interest accruing to a client’s benefit;

The depository institution’s ability to calculate and pay interest to individual clients;

Any other circumstances that affect the ability of the client’s funds to earn a net return for the client.

Iowa Ct. R. 45.4(3).

Tip: This is not a one-time analysis. Every client balance in a pooled trust account should be considered in light of these factors on a recurring basis. An excellent time to consider this issue is incident to the monthly reconciliation of client balances with the trust account checkbook and bank statement.

What Institutions May Serve as Trust Account Depositories:

A bank, savings bank, trust company, savings and loan association, credit union, or federally regulated investment company may serve as a depository institution, provided the institution is authorized to do business in Iowa, and is FDIC/NCUSIF insured. However, trust monies may be deposited at credit unions only to the extent that each individual client’s funds are eligible for insurance. Iowa Ct. R. 45.3.

The trust account must be located in Iowa. Iowa Ct. R. 45.1.

Other factors the attorney should consider when selecting a depository institution:

Amount of deposit insurance available and likely client balances
Institutional stability
Convenience
Bank interest rate and fees
Return of cancelled checks or facsimiles thereof

Deposit Insurance

So long as a trust account at a bank is properly titled (“trust account”) and the attorney maintains current records regarding the interest of each client (subaccount ledger cards), deposit insurance limits will be applied per client. If a trust account is located at a credit union, the foregoing requirements must be met, and in addition the client personally must qualify to be a depositor at the credit union, to qualify for deposit insurance.

The standard insurance amount is \$250,000 per depositor. The \$250,000 limit formerly was set to revert to \$100,000 per depositor on January 1, 2014, but now has been extended permanently by Congress.

In addition to, and separate from the standard coverage of \$250,000 per depositor, temporary unlimited coverage is provided for deposits in lawyer trust accounts under the Federal Deposit Insurance Act, as amended. All funds in IOLTA accounts are fully insured, without limit, from December 31, 2010 through December 31, 2012. Unlike the temporary coverage previously provided under the Transaction Account Guarantee Program (TAGP), banks are not allowed to opt out of the new temporary unlimited coverage.

Nature of the Account to be Established:

The account agreement must allow withdrawals and transfers without delay whenever the deposited funds are required, subject only to any notice period the institution is required to impose by law or regulation. In practice, this means a checking account or the functional equivalent thereof. Iowa Ct. R. 45.3.

A lawyer trust account must include in the title of the account the word “Trust Account.” Iowa Ct. R. 45.1. This account identification is required to ensure coverage for each client’s monies under federal deposit insurance rules.

Special Duty With Respect to Establishing an IOLTA Account:

The lawyer is responsible for directing the institution to perform the interest payment and reporting tasks required of IOLTA depositories no less often than quarterly. These tasks include remitting interest or dividends earned on the account, net of allowable service charges, to the Lawyer Trust Account Commission, along with a copy of the account statement. Iowa Ct. R. 45.4(4). If the allowable monthly service charge exceeds the IOLTA interest payable and the institution does not waive the excess, the law firm is responsible for paying the excess service charge. Charges associated with law firm activities with the account such as wire transfer fees or check printing charges may not be netted against IOLTA interest, and are a law firm responsibility also. Iowa Ct. R. 45.5. The Commission asks that depository institutions also prepare and send a summary report form with the statement. Copies of the report form and an instruction document for new IOLTA depository institutions are included in the forms portion of this outline.

Iowa Court Rule 45.4(4) allows a depository institution to collect an “allowable monthly service charge” from the interest earned on a pooled lawyer trust account. For purposes of chapter 45 of the Iowa Court Rules, “allowable monthly service charge” is defined as a monthly fee “customarily assessed by the institution against a depositor solely for the privilege of maintaining the type of account involved.” Approximately two-thirds of the banks and credit unions serving as depositories for trust accounts in Iowa do not assess a service charge on these accounts. Of those institutions that do assess a service charge, most simply assess a small flat monthly fee, which is considered permissible under the rule.

Recently, a few institutions have begun assessing an “activity-based” service charge, computed on the basis of account activity such as credit and debit transactions. These activity-based charges sometimes are assessed in addition to a flat minimum monthly service charge. Iowa Court Rule 45.5 provides that charges assessed for transactions involving the account are a lawyer or law firm responsibility, and may not be paid from interest or dividends otherwise payable to the Lawyer Trust Account Commission. Based on this rule, the Commission’s policy is that these activity-based charges may not be collected from interest due the Lawyer Trust Account Commission under the IOLTA (Interest on Lawyer Trust Account) program. If an institution chooses to assess these activity-based charges, and the lawyer or law firm continues to house the trust account at that institution, the lawyer or law firm is responsible for paying the activity-based charges.

The federal tax identification number for the Lawyer Trust Account Commission is 42-1245104. This number must be used in connection

with any IOLTA trust account established pursuant to Iowa Court Rule 45.4(1).

Overdraft Notification Program

With respect to any account established under Iowa Court Rule 45.4(1), the lawyer is required to direct the depository institution to report to the Client Security Commission any time an overdraft condition exists with respect to a lawyer trust account. This rule is modeled after a similar provision adopted in Minnesota in 1990. Forty-two states now have adopted a similar provision requiring that banks immediately notify the lawyer and the state disciplinary office whenever an overdraft occurs in a lawyer trust account. The experience in those states that have adopted such a rule is that early intervention following reporting of an overdraft helps prevent additional losses to clients that would occur absent a timely inquiry by the disciplinary authority. Iowa Ct. R. 45.4(c).

More than One Trust Account:

A lawyer or law firm may maintain more than one trust account. However, because a single IOLTA trust account can hold funds for multiple clients, most lawyers only need to maintain one IOLTA trust account. Multiple accounts create additional record-keeping overhead and increase the chance that mistakes will be made depositing and disbursing funds. Multiple trust accounts most often are used where circumstances dictate opening a trust account for an individual client under the provisions of Iowa Court Rule 45.4(2)(a) in addition to the IOLTA trust account normally maintained by the lawyer or firm.

Signature Authority on Trust Accounts:

Nothing in Iowa Rule of Professional Conduct 32:1.15 or chapter 45 of the Iowa Court Rules dictates that only attorneys may have signature authority on a trust account. However, it is recommended that staff not have signature authority. The personal responsibility and accountability for client funds is non-delegable, and the attorney will be personally responsible for any staff defalcation.

Operating an Account

Principles of Trust Account Operations:

Do not Commingle Your Own Funds in the Trust Account, except for the limited exception provided by Iowa Rule of Professional Conduct 32:1.15(b) and Iowa Court Rule 45.1(1).

Each Client's Funds in a Pooled Account Must Be Treated as a Separate Subaccount

A Client Can Only Spend His or Her Subaccount Monies

A Client Subaccount Never Should Show a Negative Balance

Only Make Disbursements from Known Good Funds

You Must Account to the Penny at All Times

The End Result for Any Client Subaccount Must be Zero

An Audit Trail is Essential

What Funds Must Be Deposited in the Trust Account:

All funds of clients, regardless of size, paid to a lawyer or law firm, including advances for costs and expenses and excluding only "general retainers" (a defined term), must be deposited in an interest-bearing trust account located in Iowa. Iowa R. Prof'l Conduct 32:1.15(a); Iowa Ct. R. 45.7(3), 45.9(1) and 45.10(2). The decision on where to place funds is based on ownership at the time the funds are received—not how quickly ownership will change from client to the lawyer. Common examples:

Any advance fee or retainer except a "general retainer." Iowa Ct. R. 45.7(7)(3)(advance fees and expenses), 45.9(1)(special retainers), and 45.10(2)(flat fees); *Board of Professional Ethics and Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998)

Advances from the client for costs and expenses

Settlement proceeds that include a portion that is the attorney's fee

Real estate loan proceeds prior to closing and disbursement

Funds from the sale of property belonging to the client

Funds and Property of Third Parties

The rules make clear that the obligation to safeguard and account extends to the property of third persons that comes into the lawyer's possession in the course of practice, in addition to client property. Former DR 9-102 addressed client funds and property but did not specifically

address property and funds of third parties. Iowa R. of Prof'l Conduct 32:1.15(a); Iowa Ct. R. 45.1.

Requirement to Inform Client or Third Party Regarding Effect of Deposit in IOLTA Trust Account

If the funds of a client or third person are deposited in a pooled account established under the provisions of Iowa Court Rule 45.4(1), the lawyer must inform the client or third person that interest accruing on the account, net of allowable monthly service charges, will be paid to the Lawyer Trust Account Commission under the IOLTA program described in chapter 45 of the Iowa Court Rules. Iowa Ct. R. 45.4(1). The rule does not require that this be done in writing.

Tip: Your law firm operating procedures should include this notice as a matter of course any time you accept monies from anyone—client or third party—that will be placed in your IOLTA account. Possible places you might put a written notice include your law firm brochure; your written fee agreements; the receipt or acknowledgement you give a client when you accept monies for deposit in the trust account. At a minimum, you probably will want to make it standard operating procedure to advise the clients verbally regarding the IOLTA program whenever you accept these kinds of funds.

What Funds May NOT Be Deposited in the Trust Account

No funds belonging to the lawyer or the law firm may be deposited in the trust account. Common examples of funds that should not be placed in the trust account include:

Fees already billed for and earned

Funds an attorney holds that are not related to the practice of law (e.g., the monies belonging to the county bar association for which the attorney is treasurer)

Exception: Funds reasonably sufficient to avoid or pay service charges may be deposited in the trust account. Iowa Ct. R. 45.1(1). Where a minimum balance requirement exists for the account, it is permissible to deposit funds sufficient to maintain the minimum balance. A separate subaccount ledger should be maintained for such deposits.

Exception: Funds belonging in part to a client and in part to the lawyer or law firm (presently or potentially) must be deposited in the trust

account. This rule applies even if the funds will be disbursed to the parties entitled thereto on the same day they are received. However, the lawyer or law firm's portion must be withdrawn promptly when due, unless entitlement to that portion is disputed by the client. Disputed portions must remain in trust until the dispute is resolved. Iowa Ct. R. 45.1(2).

What Payments or Disbursements May be Made from the Trust Account:

No payments for personal or office expenses of the lawyer should be made from a trust account. If some portion of the money in a trust account belongs to the lawyer because it is his or her earned fee, the lawyer should write a check on the trust account payable to the lawyer, deposit it in the lawyer's regular business account and pay his or her expenses from the regular account.

Fees may and should be withdrawn as soon as they are earned and undisputed. An accounting to the client for the fees deemed earned should be provided the client no later than contemporaneously with the withdrawal for such fees or expenses. Iowa Ct. R. 45.7(4).

Costs or expenses incident to services performed may be paid based on agreement with the client. An accounting to the client for costs and expenses paid from the client's subaccount should be provided the client no later than contemporaneously with the withdrawal for such expenses. Iowa Ct. R. 45.7(4).

Disbursements requisite to closing of a real estate transaction or settlement of an injury claim may be made from the client subaccount. An accounting to the client for all the disbursements should be provided to and approved by the client incident to the disbursements.

If two or more parties dispute entitlement to funds held by a lawyer in trust, the lawyer should retain those funds in trust until such time as the dispute is resolved. Iowa R. of Prof'l Conduct 32:1.15(e). The disputed funds should be placed in an account that will bear interest for the benefit of the parties if the considerations of Iowa Court Rule 45.4(3) indicate the funds could generate positive net earnings for the parties ultimately found entitled to the funds.

When Disbursements May be Made Based on a Deposit

Every deposit to a lawyer trust account must be allowed to clear through the banking process before disbursement is made based on that deposit. If this procedure is not observed, the likely eventual result will be wrongful disbursement of other clients' funds when a check or draft deposited to the trust account is dishonored.

Cash deposits and verified electronic transfers are reliable enough to support same day disbursement. Bank certified checks are reliable enough to support same day disbursement provided authenticity of the check is known to the lawyer or verified with the issuing bank. If authenticity is not known to the lawyer, verification should be sought from the issuing bank.

Cashier's checks, personalized checks and drafts should be allowed to clear completely through the issuing institution. Your own bank institution can provide guidance regarding normal clearance times and can verify clearance of individual instruments at the issuing bank.

Lawyers should be especially cautious regarding checks drawn on out-of-state or foreign banks, including certified checks and cashier's checks drawn on such institutions. In recent years, the number of counterfeit or fraudulent checks presented to Iowa lawyers has increased. Clearance times, particularly for checks drawn on foreign banks, are quite long. Con artists often provide one counterfeit or fraudulent check drawn on a foreign (even Canadian) bank, and then follow it up with another more substantial check drawn on the same bank when the first check *appears* to have been honored due to the long clearance times on checks drawn on foreign banks.

If a same-day closing or settlement is desired, the best solution generally will be to require that the deposit to your trust account be made by wire transfer or bank certified check.

Handling of Retainers and Advances for Fees and Expenses

In *Board of Professional Ethics and Conduct v. Apland*, 577 N.W.2d 50 (Iowa 1998) the Court ruled that all advance fee payments must be placed in the client trust account until earned. The Court also characterized so-called flat fees and special retainers as advance fees, and stated that they also must be placed and held in trust until earned. The Court distinguished a true general retainer, in which the consideration is paid in exchange for a commitment of future availability to provide services, as earned at the time it is paid.

The *Apland* requirements regarding handling of advance fees, general retainers, special retainers and flat fees now are specifically set out in Iowa Court Rules 45.7 through 45.10. The requirement for trust account deposit specifically applies to advances for expenses as well as any kind of advance fee. Iowa Ct. R. 45.7(2).

When a lawyer withdraws funds from the trust account to pay earned fees or expenses, the client must be provided written notice of the

time, amount and purpose of the withdrawal, along with a complete accounting. This notice and accounting must be transmitted no later than the date the withdrawal is made. Iowa Ct. R. 45.7(4).

Tip: It appears these rules dictate that a law firm handle advances for fees and expenses one of two ways. The first, and most cumbersome way, is to place the funds in your trust account, open a client subaccount ledger card, and then send the client an accounting every time you make a deduction for fees or expenses. The second, and less cumbersome way, is to place the funds in your trust account, open a client subaccount ledger card, and then include the fees and expenses owed by the client in your periodic billing cycle, with your statement showing the amounts owed for fees and advanced expenses, and the amount you intend to deduct from the client's trust account balance.

What You Must Not Do:

You must not deposit advances for unearned fees or advances for expenses in your business account.

You must not pay anything from a client's monies in your trust account until you provide notice and accounting for the deduction or payment.

Conflicting Claims to Funds in Trust

If a lawyer has possession of funds or other property to which there are conflicting claims, the property should be separately maintained until the dispute is resolved. Iowa R. of Prof'l Conduct 32:1.15(e). This may include third party claims against client funds in the trust account. If the third party claims are not frivolous, the lawyer must refuse to surrender the property to the client until the claims are resolved. Iowa R. of Prof'l Conduct 32:1.15, comment [5].

What Books and Records Must be Maintained

Every lawyer engaged in private practice of law must maintain books and records sufficient to demonstrate compliance with Iowa Rule of Professional Conduct 32:1.15(a). Books and records relating to funds or property of clients are to be maintained for at least six years after completion of the employment to which they relate. Iowa Ct. R. 45.2(2). A certification regarding this responsibility is included in the annual report filed with the Client Security Commission each year. Iowa Ct. R. 45.6.

A lawyer must maintain complete records of all funds, securities and other properties of a client coming into the possession of the lawyer, and render appropriate accounts to the client regarding them. Iowa Ct. R. 45.2(2).

Recommended Implementation of the Record-Keeping Duty:

The following books and records should be maintained for funds and property received and disbursed in a fiduciary capacity, whether for clients or for others:

An identification of all trust accounts maintained, including the name of the depository, account number, account name, date account opened, and its interest bearing nature. A record should also be maintained showing clearly the type of each such account, whether pooled with net interest paid to the Lawyers Trust Account Commission (IOLTA account), pooled with allocation of interest, or individual, including the client name.

A check register for each trust account that chronologically shows all deposits and withdrawals.

a. Each deposit entry should include the date of the deposit, the amount, the identity of the client(s) for whom the funds were deposited, and the purpose of the deposit.

b. Each withdrawal entry should include the date the check was issued, the payee, the amount, the identity of the client for whom the check was issued (if not the payee), and the purpose of the check.

Subsidiary (“subaccount”) ledgers for each client matter (“client ledgers”) for whom the attorney receives trust funds.

a. For every trust account transaction, attorneys should record on the appropriate client ledger the date of receipt or disbursement, the amount, the payee and check number (for disbursements), the purpose of the transaction, and the balance of funds remaining in the account on behalf of that client matter. An attorney shall not disburse funds from the trust account that would create a negative balance on behalf of an individual client matter.

b. A separate subsidiary (“subaccount”) ledger for nominal funds of the attorney held in the trust account pursuant to Iowa Court Rule 45.1(1), to accommodate reasonably expected bank fees and charges. This ledger should record any monthly service charges not offset or waived by the bank in the same month.

c. An attorney maintaining a non-IOLTA pooled account pursuant to Iowa Court Rule 45.4(2) should record on each client ledger the monthly accrual of interest, and the date and amount of each interest disbursement, including disbursements from accrued interest for costs of establishing and administering the account.

A monthly trial balance of all subsidiary ledgers identifying each client matter, the balance of funds held on behalf of the client matter at the end of each month, and the total of all the client balances. No balance for a client matter may be negative at any time.

A monthly reconciliation of the checkbook balance, the subsidiary ledger trial balance total, and the adjusted bank statement balance. The adjusted bank statement balance is determined from the month-end bank statement balance by adding outstanding deposits and subtracting outstanding checks. See the form at the end of the outline as an example of the structure of a monthly three-way reconciliation of the checkbook, subsidiary ledgers and the adjusted bank statement.

Bank statements, canceled checks, voided checks and duplicate deposit slips. Cash fee payments should be documented by copies of receipts, preferably countersigned by the payor. All disbursements should be made by check, except when payment by check would be economically imprudent or when circumstances require a transaction by wire transfer. For withdrawal by wire transfer, an attorney or law firm should create a written memorandum describing the transaction, signed by the attorney responsible for the transaction. The wire transfer must be entered in the check register.

A record showing all property, specifically identified, other than cash, held in trust from time to time for clients or others. Routine files, documents and items such as real estate abstracts that are not expected to be held indefinitely need not be so recorded but should be documented in the files of the lawyer as to receipt and delivery. A suggested form for recording property held in trust is included in the forms portion of this outline.

Use of Computer Accounting Systems

Lawyers or law firms may use computer systems to maintain trust account records. A number of functional software programs are available for this purpose. For an example of guidelines for use of a general accounting software program, and information regarding just a few of the many trust-account specific software modules available, see the following web pages:

[http://lprb.mncourts.gov/LawyerResources/TADocuments/MaintainingTrustAccountsUsingQuicken\(2006\).pdf](http://lprb.mncourts.gov/LawyerResources/TADocuments/MaintainingTrustAccountsUsingQuicken(2006).pdf)

<http://www.lsba.org/2007Solo/ClientTrustAcc.doc>

<http://law.lexisnexis.com/back-office-pclaw>

<http://www.easysoft-usa.com>

<http://www.abacuslaw.com/products/trustaccounting.html>

<http://www.tabs3.com>

<http://www.lawyertrustaccount.com>

<http://www.esilaw.com>

An attorney who maintains trust account records by computer should print and retain, on a monthly basis, the checkbook register, the balances of the subaccount ledgers, and the reconciliation report. Electronic records should be regularly backed up by an appropriate storage device. The frequency of the back up procedure should be directly related to the volume of activity in the trust account.

Accounting to the Client

The lawyer must render appropriate accounts to the client regarding all funds, securities and other properties of a client coming into the possession of the lawyer. Iowa Ct. R. 45.2(2). Prompt payment or delivery must be made to the client of all such items the client is entitled to when the client so requests. Iowa Ct. R. 45.2(2).

Simply stated: When clients ask you how much money you're holding for them or what you've done with the money while you've had it, you must tell them. You must advise the client every time something is added to the client's subaccount, and every time something is taken from the client subaccount.

Client Payments By Credit Card

Three key issues must be addressed if you want to accept credit card payments of retainers or billed fees. First, you must address the surcharge imposed by the credit card company, which you are not allowed to pass along to the client. The full face value of a retainer or payment against an outstanding bill paid by credit card must be credited to the client. The authority provided by Iowa Court Rule 45.1(1) may be used to

establish a law firm subaccount with a small, periodically refreshed balance, within the trust account, to pay the service charges associated with retainers paid by credit card. A better alternative, if the credit card issuer is willing, is to assess the service charges against the law firm's general business account.

Second, you must be careful not to make disbursements based on a credit card deposit in your trust account until there is no possibility the charges can be reversed. Normally there is an initial delay until the bank actually credits a credit card payment to the trust account, and there is a further period during which the client may object and reverse the charge on the card. You should ascertain from the credit card issuer how quickly it actually credits such deposits, and when these deposits become ineligible for charge back by the credit card holder. Once again, you may be able to arrange with your credit card issuer for charge-backs to be made against your firm operating account rather than your trust account.

Third, if you will be accepting credit card payments of both retainers and earned fees, and you only want to set up one account to accept the credit card payments, you should set up your trust account to accept the credit card payments, rather than your operating account. Put all credit card payments in your trust account, and keep the retainers there until earned and the contingencies have passed. Keep the earned fee payments there until the contingencies have passed, and then transfer them over to your business account for disbursement.

What Should be Done with Funds Owed a Client Who No Longer Can be Located? ("Stale Funds Procedure")

A lawyer or law firm must exercise due diligence to locate and communicate with the client or clients to whom stale or excess funds might rightfully belong. What constitutes reasonable due diligence will vary depending on the amount of the funds involved. Reasonable efforts might include, for example, corresponding with possible owners by mail, searching for possible owner addresses through the Social Security Administration if you have a Social Security Number for them, or employing one of the firms that conducts searches for heirs.

If it is impossible to make proper disposition of the monies to the client using the steps outlined above, then the monies should be considered potentially subject to the provisions of Iowa Code section 556.7. If the time period specified in section 556.7 has not passed, the monies may be deposited in a separate, interest-bearing account under the provisions of Iowa Court Rule 45.4(2)(a). If the time period specified in section 556.7 has passed, or when the time period specified in section 556.7 does pass, the lawyer or firm then may follow the procedures

specified in Iowa Code sections 556.11 and 556.13, regarding notice and tender of the monies to the Treasurer of the State of Iowa.

Closing an Account

Moving Your Trust Account to a New Depository Institution

A lawyer is not required to notify anyone before transferring a trust account to a new depository institution. However, care should be taken to ensure that all outstanding checks on the existing trust account are accounted for, and that interest owed the Lawyer Trust Account Commission will be properly disbursed by the institution. Moving a trust account likely will result in a change in information previously reported to the Client Security Commission, and will warrant an interim report to the commission within thirty days after the change.

Closing the Trust Account

Once again, a lawyer is not required to notify anyone before closing a trust and leaving practice. However, here also care should be taken to ensure that all outstanding checks on the trust account are accounted for, and that interest owed the Lawyer Trust Account Commission will be properly disbursed by the institution. All monies owed clients must be returned to the clients entitled thereto so that no remaining client monies exist in the trust account. If a particular client cannot be found, it may be necessary to complete the “stale funds” procedure before closing the account. Closing a trust account likely will result in a change in information previously reported to the Client Security Commission, and will warrant an interim report to the commission within thirty days after the change.

Audit Program, Client Security Commission

The director of the Office of Professional Regulation is responsible for conducting audits and investigations of attorneys’ accounts and office procedures to determine compliance with Iowa Rule of Professional Conduct 32:1.15 and chapter 45 of the Iowa Court Rules. Iowa Ct. R. 39.2(3)(c). Attorneys are required to cooperate fully with these audits and investigations as a continuing condition of their license to practice. Iowa Ct. R. 39.10, 39.12.

The director is assisted in the performance of audits and investigations by part-time trust account auditors. The general goal of the Commission is to conduct an unannounced periodic audit of each lawyer trust account in Iowa no less than every three to four years. Special audits or investigations are conducted on an as-needed basis. Possible

causes for special audits include claims against the Client Security Trust Fund, unexplained overdrafts of trust accounts, and some types of ethics complaints.

Common Issues

Improper Handling of Retainers: The Court has specified how retainers of various kinds must be handled in Iowa. Virtually all the commonly used variants of the retainer initially must be placed in the trust account.

Failure to Take Fees when Warranted: Lawyers are responsible for removing fees from retainers placed in the trust account on a timely basis when they are earned. An accounting should be provided the client no later than the time when the earned fee is withdrawn from the retainer. Failure to remove earned fees on a timely basis constitutes commingling, and over time can be the cause of unexplained excess funds in a trust account.

Outstanding Checks: Frequently clients or other payees will fail to promptly negotiate checks drawn on the trust account. The lawyer or law firm should have an established procedure for periodically following up on these outstanding checks, to clear them from the end of month reconciliations and aid in placing client subaccounts in zero status when warranted.

“Unintentional” Overdrafts: Overdrafts carry considerable risk of inadvertently using funds in one client’s subaccount to subsidize operations with respect to another client’s subaccount. Common causes of overdraft situations include failure to make trust account deposits in a timely manner; failure to ensure that a deposited check clears the bank upon which it is drawn before issuing trust account checks based on it; asking clients to “wait until tomorrow” to cash a settlement check.

Contact Information:

Mail: Office of Professional Regulation, Iowa Judicial Branch Building,
1111 E. Court Avenue, Des Moines, Iowa 50319

Telephone: (515) 725-8029 Voice, (515) 725-8032 Facsimile

E-Mail: client.security@iowacourts.gov

WebSite:

[http://www.iowacourts.gov/Professional_Regulation/Attorney_Regulation
Commissions/Client_Security/](http://www.iowacourts.gov/Professional_Regulation/Attorney_Regulation_Commissions/Client_Security/)

References

Grateful acknowledgement is made of the following resources, from which principles, concepts, tips and narrative have been readily adapted in the foregoing outline. Particular credit is noted for Opinion Number 9 of the Minnesota Lawyers Professional Responsibility Board, now appearing at Appendix 1 of the Minnesota Rules of Professional Conduct, which substantially provides the analysis regarding record keeping duties.

Appendix 1, Minnesota Rules of Professional Conduct (Maintenance of Books and Records);
[http://lprb.mncourts.gov/LawyerResources/TADocuments/Appendix 1 to MN Rules of Prof. Conduct re Books and Records.pdf](http://lprb.mncourts.gov/LawyerResources/TADocuments/Appendix_1_to_MN_Rules_of_Prof._Conduct_re_Books_and_Records.pdf)

The ABA Guide to Lawyer Trust Accounts, Jay G. Foonberg (ABA Section of Law Practice Management, 1996)

Trust Accounts – Everything You Ever Wanted to Know but Were Afraid To Ask (Minnesota State Bar Association Continuing Legal Education, April 2002)

Client Trust Accounting for Delaware Attorneys (Lawyers' Fund for Client Protection of the State Bar of Delaware, November 23, 1998),
<http://courts.delaware.gov/lfcg/publications.htm>

Illinois Client Trust Account Handbook (Attorney Registration and Disciplinary Commission of the Supreme Court of Illinois, July 2011),
<http://www.iardc.org/toc.html>

Temporary Unlimited Coverage for Non-Interest Bearing Transaction Accounts (but specifically including IOLTA accounts),
<http://www.fdic.gov/deposit/deposits/insured/temporary.html>

Forms

**NOTICE TO FINANCIAL INSTITUTION
TO ESTABLISH NEW INTEREST-BEARING ACCOUNT**

My law firm, as required by rules of the Iowa Supreme Court, is participating in the Interest on Lawyer Trust Accounts program. Under this program, please open an account subject to negotiable orders of withdrawals paying the highest rate of interest available for which the account qualifies.

Interest on this account should be remitted to the Lawyer Trust Account Commission, Judicial Branch Building, 1111 East Court Avenue, Des Moines, Iowa 50319. The tax identification number for the Commission is 42-1245104 and must be used in connection with this account.

Interest on the account, computed in accordance with your standard accounting practice (net of any service charge or fee you charge for the bare privilege of maintaining this kind of account) must be remitted by check mailed to the Commission preferably monthly but not less than quarterly. You are not permitted to deduct from interest any activity-based charges, or charges for transactions involving this account such as stop payment fees, wire transfer fees or check printing fees. These fees are the responsibility of the law firm to pay. With each remittance to the Commission, please transmit a completed remittance report along with a copy of the trust account statement for the reporting period. Remittance report forms are available from the Commission.

Should an overdraft condition ever exist with respect to this account, you are required to provide the Client Security Commission a copy of any notice issued the law firm regarding the overdraft condition. The mailing address of this commission is Judicial Branch Building, 1111 E. Court Avenue, Des Moines, Iowa 50319.

PRESENT ACCOUNT NAME

PRESENT ACCOUNT NO.

ALL ACCOUNT SIGNATORIES

DATE

LAWYER TRUST ACCOUNT COMMISSION
INTEREST REMITTANCE REPORT FOR
POOLED INTEREST-BEARING TRUST ACCOUNTS

TO BE COMPLETED BY FINANCIAL INSTITUTION AND SUBMITTED WITH EACH
REMITTANCE

FINANCIAL INSTITUTION:

Name: _____

Office or Branch: _____

Address: _____

Telephone: _____

Contact Person: _____

(Name and Title)

Alternate Contact Person: _____

(Name and Title)

Report Period: _____ through _____
(MM/DD/YY) (MM/DD/YY)

ATTORNEY/LAW FIRM POOLED INTEREST-BEARING TRUST ACCOUNT:

Name: _____

Address: _____

Account Number: _____

Rate of Interest Applied: _____%

Interest Earned for Period \$ _____

Less: Service Charges and Fees (if any) (_____)

Net Amount Remitted \$ _____

NOTES :

Attach this report to a copy of the depositor statement.

If remitting a lump sum payment for multiple attorneys/firms, please submit a separate Interest Remittance Report for each pooled interest-bearing trust account.

Even if no interest was earned in a quarter, this report is to be submitted for such account.

Interest should be remitted by check payable to the Lawyer Trust Account Commission, and mailed to:

LAWYER TRUST ACCOUNT COMMISSION
Iowa Judicial Branch Building
1111 E. Court Avenue
DES MOINES, IOWA 50319

Voice (515) 725-8029

Fax (515) 725-8032

Trust Safe Deposit Receipt

Received this _____ day of _____, 20____, by _____.

(Description of item(s) being placed into safe deposit box -- if items are numbered such as stocks or bonds, specify numbers.)

Item(s) being held in trust for: _____

Firm Name: _____

Client Name: _____

Item(s) being placed into safe deposit box by: _____

Any questions regarding contents should be addressed to: _____

Name and Address of Bank Where Safe Deposit Located:

Safe Deposit Box ID Number: _____

Anticipated period item(s) will be held: _____

**Excerpt from Iowa Rules of Professional Conduct and
Other Applicable Iowa Court Rules, As Amended July 1, 2005**

RULE 32:1.15: SAFEKEEPING PROPERTY

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in the course of representation a lawyer is 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.

(f) All client trust accounts shall be governed by chapter 45 of the Iowa Court Rules.

Comment

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. A lawyer should maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any recordkeeping rules established by law or court order. *See, Iowa Ct. R. ch 45.*

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party; but when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Such a fund has been established in Iowa, and lawyer participation is mandatory to the extent required by chapter 39 of the Iowa Court Rules.

CHAPTER 45
CLIENT TRUST ACCOUNT RULES

Rule 45.1 Requirement for client trust account.

Funds a lawyer receives from clients or third persons for matters arising out of the practice of law in Iowa shall be deposited in one or more identifiable interest-bearing trust accounts located in Iowa. The trust account shall be clearly designated as “Trust Account.” No funds belonging to the lawyer or law firm may be deposited in this account except:

1. Funds reasonably sufficient to pay or avoid imposition of fees and charges that are a lawyer’s or law firm’s responsibility, including fees and charges that are not “allowable monthly service charges” under the definition in rule 45.5, may be deposited in this account; or
2. Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited in this account, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved. Other property of clients or third persons shall be identified as such and appropriately safeguarded. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.2 Action required upon receiving funds.

45.2(1) Authority to endorse or sign client’s name. Upon receipt of funds or other property in which a client or third person has an interest, a lawyer shall not endorse or sign the client’s name on any check, draft, security, or evidence of encumbrance or transfer of ownership of realty or personalty, or any other document without the client’s prior express authority. A lawyer signing an instrument in a representative capacity shall so indicate by initials or signature.

45.2(2) Maintaining records, providing accounting, and returning funds or property. A lawyer shall maintain complete records of all funds, securities, and other properties of a client coming into the lawyer’s possession and regularly account to the client for them. Except as stated in this chapter or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and shall promptly render a full accounting regarding such property. Books and records relating to funds or property of clients shall be preserved for at least six years after completion of the employment to which they relate. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.3 Type of accounts and institutions where trust accounts must be established.

Each trust account referred to in rule 45.1 shall be an interest-bearing account in a bank, savings bank, trust company, savings and loan association, savings association, credit union, or federally regulated investment company selected by the law firm or lawyer in the exercise of ordinary prudence. The financial institution must be authorized by federal or state law to do business in Iowa and insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund. Interest-bearing trust funds may be placed in accounts at credit unions only to the extent that each individual client’s funds are eligible for insurance. Interest-bearing trust funds shall be placed in accounts from which withdrawals or transfers can

be made without delay when such funds are required, subject only to any notice period which the depository institution is required to observe by law or regulation. [Court Order April 20, 2005, effective July 1, 2005; April 25, 2008]

Rule 45.4 Pooled interest-bearing trust account.

45.4(1) *Deposits of nominal or short-term funds.* A lawyer who receives a client's or third person's funds shall maintain a pooled interest-bearing trust account for deposits of funds that are nominal in amount or reasonably expected to be held for a short period of time. A lawyer shall inform the client or third person that the interest accruing on this account, net of any allowable monthly service charges, will be paid to the Lawyer Trust Account Commission established by the supreme court.

45.4(2) *Exceptions to using pooled interest-bearing trust accounts.* All client or third person funds shall be deposited in an account specified in rule 45.4(1) unless they are deposited in:

a. A separate interest-bearing trust account for the particular third person, client, or client's matter on which the interest, net of any transaction costs, will be paid to the client or third person; or

b. A pooled interest-bearing trust account with sub-accountings that will provide for computation of interest earned by each client's or third person's funds and the payment thereof, net of any transaction costs, to the client or third person.

45.4(3) *Accounts generating positive net earnings.* If the client's or the third person's funds could generate positive net earnings for the client or third person, the lawyer shall deposit the funds in an account described in rule 45.4(2). In determining whether the funds would generate positive net earnings, the lawyer shall consider the following factors:

a. The amount of the funds to be deposited;

b. The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

c. The rates of interest or yield at the financial institution in which the funds are to be deposited;

d. The cost of establishing and administering the account, including service charges, the cost of the lawyer's services, and the cost of preparing any tax reports required for interest accruing to a client's benefit;

e. The capability of financial institutions described in rule 45.3 to calculate and pay interest to individual clients; and

f. Any other circumstances that affect the ability of the client's funds to earn a net return for the client.

45.4(4) *Directions to depository institutions.* As to accounts created under rule 45.4(1), a lawyer or law firm shall direct the depository institution:

a. To remit interest or dividends, net of any allowable monthly service charges, as computed in accordance with the depository institution's standard accounting practice, at least quarterly, to the Lawyer Trust Account Commission;

b. To transmit with each remittance to the Lawyer Trust Account Commission a copy of the depositor's statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, the amount of allowable monthly service charges deducted,

if any, and the account balance(s) for the period covered by the report; and

c. To report to the Client Security Commission in the event any properly payable instrument is presented against a lawyer trust account containing insufficient funds. In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors. In the case of instruments that are honored when presented against insufficient funds, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment and the date paid, and the amount of overdraft. If an instrument presented against insufficient funds is not honored, the report shall be made simultaneously with, and within the time provided by law for, any notice of dishonor. If the instrument is honored, the report shall be made within five banking days of the date of presentation for payment against insufficient funds. [Court Orders April 20, 2005, and July 1, 2005, effective July 1, 2005]

Rule 45.5 Definition of “allowable monthly service charges.” For purposes of this chapter, “allowable monthly service charges” means the monthly fee customarily assessed by the institution against a depositor solely for the privilege of maintaining the type of account involved. Fees or charges assessed for transactions involving the account, such as fees for wire transfers, stop payment orders, or check printing, are a lawyer’s or law firm’s responsibility and may not be paid or deducted from interest or dividends otherwise payable to the Lawyer Trust Account Commission. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.6 Lawyer certification. Every lawyer required to have a client trust account shall certify annually, in such form as the supreme court may prescribe, that the lawyer or the law firm maintains, on a current basis, records required by Iowa R. of Prof’l Conduct 32:1.15(a). [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.7 Advance fee and expense payments.

45.7(1) Definition of advance fee payments. Advance fee payments are payments for contemplated services that are made to the lawyer prior to the lawyer’s having earned the fee.

45.7(2) Definition of advance expense payments. Advance expense payments are payments for contemplated expenses in connection with the lawyer’s services that are made to the lawyer prior to the incurrence of the expense.

45.7(3) Deposit and withdrawal. A lawyer must deposit advance fee and expense payments from a client into the trust account and may withdraw such payments only as the fee is earned or the expense is incurred.

45.7(4) Notification upon withdrawal of fee or expense. A lawyer accepting advance fee or expense payments must notify the client in writing of the time, amount, and purpose of any withdrawal of the fee or expense, together with a complete accounting. The attorney must transmit such notice no later than the date of the withdrawal.

45.7(5) When refundable. Notwithstanding any contrary agreement between the lawyer and client, advance fee and expense payments are refundable to the client if the fee is not earned or the expense is not incurred. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.8 General retainer.

45.8(1) Definition. A general retainer is a fee a lawyer charges for agreeing to provide legal services on an as-needed basis during a specified time period. Such a fee is not a payment for

the performance of services and is earned by the lawyer when paid.

45.8(2) *Deposit.* Because a general retainer is earned by the lawyer when paid, the retainer should not be deposited in the trust account. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.9 Special retainer.

45.9(1) *Definition.* A special retainer is a fee that is charged for the performance of contemplated services rather than for the lawyer's availability. Such a fee is paid in advance of performance of those services.

45.9(2) *Prohibition.* A lawyer may not charge a nonrefundable special retainer or withdraw unearned fees. [Court Order April 20, 2005, effective July 1, 2005]

Rule 45.10 Flat fee.

45.10(1) *Definition.* A flat fee is one that embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.

45.10(2) *When deposit required.* If the client makes an advance payment of a flat fee prior to performance of the services, the lawyer must deposit the fee into the trust account.

45.10(3) *Withdrawal of flat fee.* A lawyer and client may agree as to when, how, and in what proportion the lawyer may withdraw funds from an advance fee payment of a flat fee. The agreement, however, must reasonably protect the client's right to a refund of unearned fees if the lawyer fails to complete the services or the client discharges the lawyer. In no event may the lawyer withdraw unearned fees. [Court Order April 20, 2005, effective July 1, 2005]