

Managing Lawyer Trust Accounts

Presented by:

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When is a trust account required by Rule 1.15, WRPC?

Whenever a lawyer comes into possession of funds of

- clients, or
- third persons
- "in connection with a representation"

the funds must be held "separate from the lawyer's own property."

Why are trust accounts required?

- Policy: Avoiding “**commingling**”; i.e., maintaining a clear line between
 - funds belonging to a client/third person; and
 - funds belonging to the lawyer.
- ***Commingling is a two-way no-no.***
 - Must keep funds belonging to clients/third persons out of the lawyer’s operating account; and
 - Must keep funds belonging to the lawyer out of the trust account.

Two kinds of trust accounts

- IOLTA account – pooled account on which interest is paid to the Equal Justice Wyoming Foundation
whose mission is to strengthen and defend access to justice and civil legal services in Wyoming through fundraising and other supporting activities.
- Non-IOLTA account – interest is paid to the client. Two types of non-IOLTA accounts:
 - Individual non-IOLTA account for each client
 - Pooled non-IOLTA account (rarely used)

Requirements applicable to all trust accounts

- The depository institution must be on the Bar's approved list; i.e., must have a Trust Account Overdraft Notification Agreement on file with the Bar
- Must have a physical location in Wyoming
- Must be insured by an agency of the federal government
- List of approved trust account depository institutions is available on the Bar's website

Requirements applicable to all trust accounts (cont'd)

- The account must be in the lawyer/law firm's name and clearly labeled "trust account"
- Lawyer must be able to write checks/make disbursements directly from the account
- Debit cards/ATM cards shall not be used; no cash withdrawals
- Only a member of the Wyoming State Bar or a person supervised by a member shall be an authorized signatory on the account

Requirements applicable to all trust accounts (cont'd)

- No interest from the account shall be made available to the lawyer/law firm
- Required records include quarterly bank reconciliations, receipt and disbursement journal, and a separate ledger for each client
- Records must be retained for five years after termination of the representation
- "Copies of those portions of client files that are reasonably related to trust account transactions" must also be retained

When is a non-IOLTA account required?

- When the funds can earn income for the client or third person in excess of the costs incurred to secure such income
- Rule 1.15(a)(3) provides, "A lawyer's good-faith decision regarding the deposit of all client or third person funds in an IOLTA Account versus a Non-IOLTA Account is not reviewable by a disciplinary body."
- Lawyers have continuing duty to monitor

Requirements for IOLTA accounts

- May be used when the funds cannot earn income for the client or third person in excess of the costs incurred to secure such income
- Generally, should use if you will handle client money for a short period of time, or if the amount of funds is nominal
- EJWF maintains a list of IOLTA-eligible institutions on its website:
equaljusticewyomingfoundation.org

Annual License Fee Statement: Trust Account Certification

8 Trust Account Certification

☐ I have complied with Rule 1.15 of the Wyoming Rules of Professional Conduct by maintaining a trust account with a bank or savings and loan association that is located or has a branch located in Wyoming, the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

Wyoming Financial Institution: _____

Wyoming Branch Location: _____

Account Number: _____

Wyoming IOLTA: ☐ Yes ☐ No

Name of Account: _____

Attach additional sheets as necessary

or

☐ I am not required to maintain a Wyoming trust account because the nature of my practice is such that I do not, in the course of providing legal representation requiring me to be a member of the Wyoming State Bar, receive funds of clients or third persons. See Rule 1.15(h).

Section 8 MUST be completed by ALL members.

I certify under penalty of perjury that the foregoing information is true and correct and that I understand my obligation under Rule 1.15 of the Wyoming Rules of Professional Conduct to maintain a separate account for the deposit of funds belonging to clients or third parties. I consent to the above-listed financial institution disclosing such account overdraft notification to the Wyoming State Bar's Office of Bar Counsel as is required by Rule 1.15(b)(1) of the Wyoming Rules of Professional Conduct.

Signature _____

Date _____

Trust Account Certification: What the Numbers Tell Us

- Of approximately 2,900 active practitioners, slightly more than half choose option 2 – not required to maintain a trust account
- Of those who do maintain trust accounts, more than 75% are IOLTA accounts
- There are more than 50 Bar-approved trust account depository institutions – available on the Bar's website
- There are approximately 50 IOLTA-eligible institutions – available on EJWF's website

Advantages of IOLTA Accounts

- Interest from IOLTA accounts goes to further access to justice efforts in Wyoming
- For lawyers, IOLTA accounts carry the advantage of eliminating the bookkeeping headaches associated with allocating interest among clients which is a necessity for pooled interest-bearing non-IOLTA accounts

What about bank fees for IOLTA accounts?

Rule 1.15(a) states what "reasonable account fees" may properly be charged to IOLTA accounts before the net interest is paid to EJWF:

- Per deposit and per check charges
- Fees in lieu of minimum deposit
- Sweep fees
- FDIC insurance fees
- Reasonable IOLTA administration fees

All other fees/charges must be paid by the lawyer, e.g. check printing and stop payment fees.

Client funds which must be deposited in trust account

- Advance fee and costs deposits
- Settlement payments
- Overpayments
- Funds held in other fiduciary capacities – trustee, escrow agent, guardian, personal representative, executor if “in connection with a representation”

Client funds which must not be deposited in trust account

- Fully earned fees
- Reimbursement for litigation expenses that have been advanced by the lawyer
- Retainers
- Flat fees
- Lawyers' personal or business transactions

What is a retainer?

- Case law generally holds that a retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability during a specific period of time or on a specific matter, in addition to, and apart from any legal services to be performed.
- A retainer is not a deposit for fees for legal services that are to be performed in the future.
- Any payment made that is later applied to a client's account as the lawyer renders services is not a retainer.

What about flat fees?

- Must comply with WRPC 1.5: "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses."
- As long as the flat fee meets the requirements of Rule 1.5 and you have a clear agreement with your client, you may treat it as earned.
- However, the flat fee is still subject to Rule 1.16: "Upon termination of representation, a lawyer shall ... [refund] any advance payment ... that has not been earned."

Deposits, Disbursements and Related Recordkeeping



What do I deposit into the trust account?

- Test: Does the client have an ownership interest in any portion of the funds?
- For instance, if your client sends a check that contains both earned fees and an advance fee deposit and/or cost advance, the check must initially be deposited to your trust account.
- Once the funds have cleared the banking system and been collected, transfer the earned fees to your general business account.

What about credit card payments?

- It is critical for attorneys to handle credit card transactions between their trust and operating accounts correctly.
- If you decide to accept credit card payments for both earned fees and advance fees/costs, you must have two merchant accounts. Advance fees and costs cannot be deposited into a non-trust account with earned fees and then transferred to a trust account.

The Bar recommends



- Offers credit card processing designed for the unique needs of attorneys and has earned the approval of the ABA and 39 state bar associations, including Wyoming.
- LawPay's unique processing program correctly separates earned and unearned fees in compliance with the WRPC.
- For more information, see <https://lawpay.com/wyomingbar/>

How do I keep proper deposit records?

- Clearly identify the client by name or file number on the deposit slip.
- Make copies of the deposited items to back up your deposit slip.
- If a deposit is made via bank or electronic transfer, keep a copy of the transfer confirmation.

How do I disburse funds from the trust account?

- Preferably, this issue should be addressed in a written fee/engagement agreement.
- Whether in writing or not, must have a clear understanding with your client.
- Wait until deposited funds have cleared the banking system; i.e. have been “collected.”
- Do not confuse “collected” funds with “available” funds – Regulation CC requires banks to make certain funds available for withdrawal before they have been collected.

When do funds become “collected”?

- As a general matter, the following are considered collected when deposited:
 - Cash
 - Electronic deposits/wire transfers
- Other deposit items will have varying times for collection:
 - Checks
 - Money orders

Check with your bank!

Have written evidence supporting all disbursements from trust.

- For fees that have been earned, send your client a bill and give the client an opportunity to review.
- Don't send the bill and pay it from trust the same day.
- If the client disputes the bill, the disputed portion should remain in the account until the dispute is resolved.
- You must provide a written accounting to your client upon demand.

Dos and don'ts of disbursements

- **Don't** disburse funds on behalf of a client in excess of the amount that the client has in trust; i.e., **don't** use one client's funds on behalf of another
- **Do** identify the client on the face of each check
- **Do** beware of scamsters who provide funds for deposit and press for a quick turnaround in the form of a disbursement from the trust account – be certain that the funds have been collected before any disbursements are made

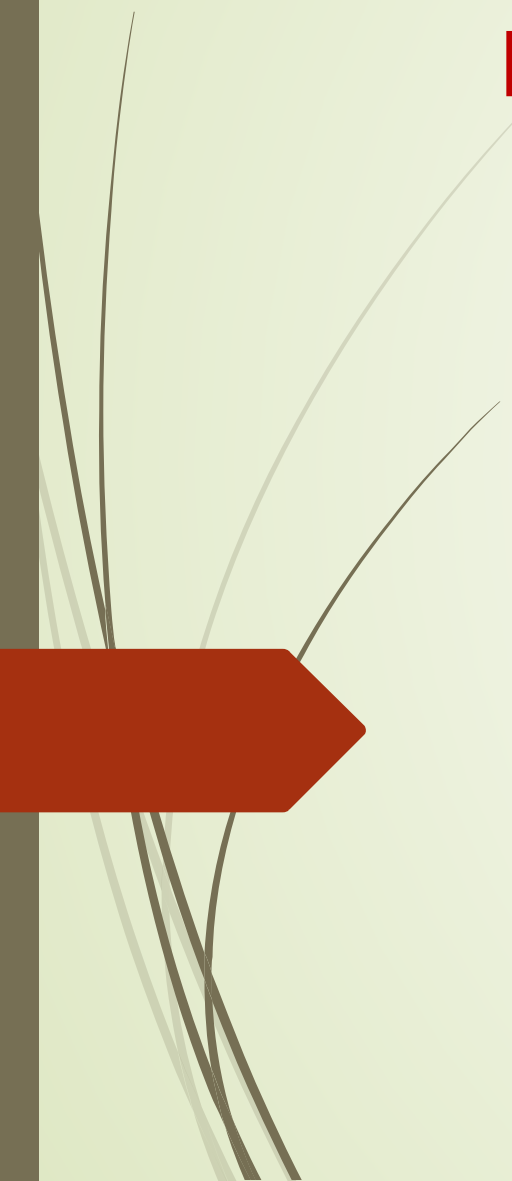
Required Trust Account Records



Current trust account records must be maintained.

- May be in electronic, photographic or other media, but you must be able to produce printed copies.
- Must be “readily accessible.”
- Must be retained for five years after termination of the representation.

Six categories of records are required by WRPC 1.15.



1. Receipt and disbursement journal containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement.

Receipt and disbursement journal

- Essentially, a check register
- Promptly record all deposits
- Promptly record all disbursements, whether by check or electronic transfer
- For every transaction, list the date of the transaction, payor or payee, client, description, and amount
- After every transaction, calculate a new trust account balance

Six categories of records are required by WRPC 1.15.

2. Ledger records for all trust accounts showing, for each separate client, the payor of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed.

Client ledgers

- Individual client transaction summaries
- Contain all deposits and disbursements for a particular client and current balance for client
- Maintain a separate ledger for each client with trust account activity
- Transactions to client ledger should be posted simultaneously with entries in the receipt and disbursement journal
- Should contain same information as receipt and disbursement journal entries

Six categories of records are required by WRPC 1.15.

3. At least quarterly a written reconciliation of trust account journals, ledgers, and bank statements.

Account reconciliation

- You should receive a bank statement monthly, though some trust account depositories issue quarterly statements
- Account balance on the bank statement must be reconciled to the account balance shown on your receipt and disbursement journal
- After completing the account reconciliation, make sure the individual client ledger balances are equal to the reconciled receipt and disbursement journal balance

Six categories of records are required by WRPC 1.15.

4. The physical or electronic equivalents of all checkbooks registers, bank statements, records of deposit, and canceled or voided checks.

5. Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed.

6. Copies of those portions of client files that are reasonably related to trust account transactions.

Disbursement of settlement proceeds

Prepare a settlement statement showing:

- Source of funds
- Total amount of recovery
- Amount of attorney fees
- Total costs
- Liens or other obligations being paid
- Amount held in reserve for future expenses
- Net proceeds available to client

Obtain client's signature on statement

Third person interests in trust funds

Examples:

- Statutory lienholders, e.g., Medicare, Medicaid, Wyoming Worker's Compensation
- Contractual subrogees, e.g., health/casualty insurers with subrogation rights
- Contractual lienholders – not unusual for creditors to forbear from collection efforts in exchange for promise to pay from settlement
- Persons entitled to funds held in escrow

Third person interests in trust funds

Not always possible to determine amount that each person claiming an interest is entitled to receive.

- Negotiation with lienholders/subrogees is common.
- May have fee dispute with client

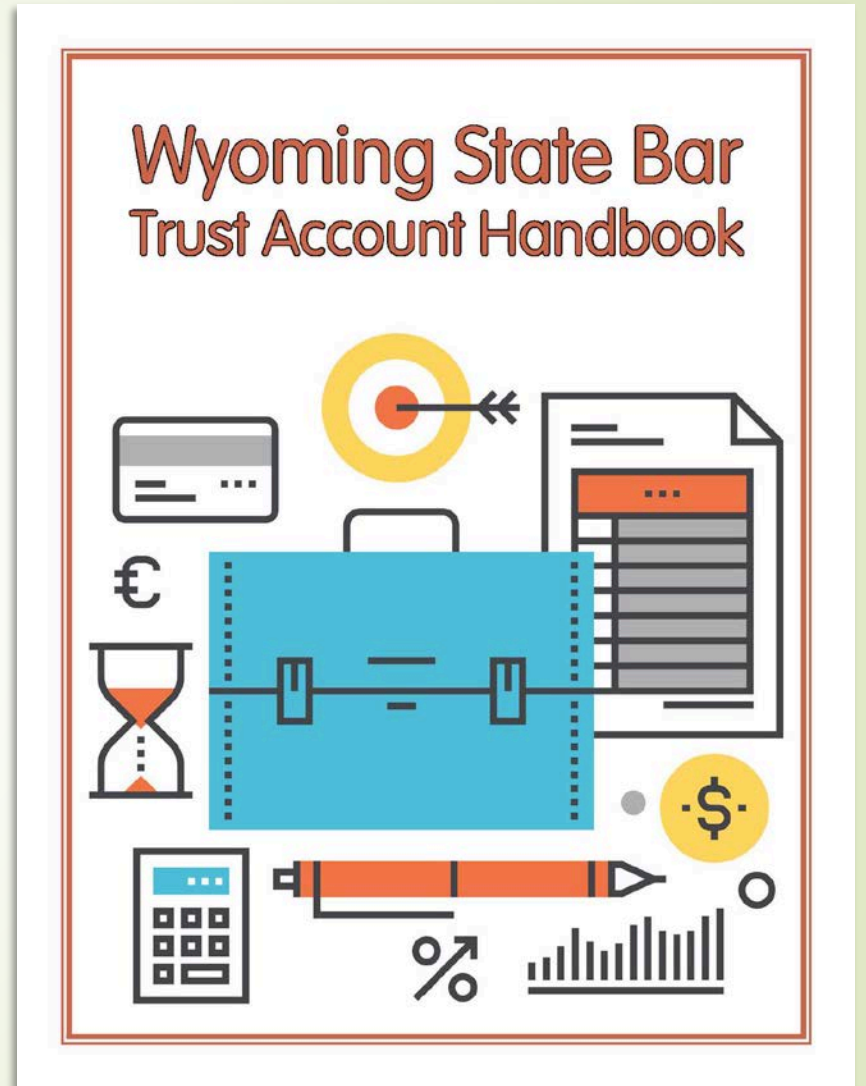
WRPC 1.15(f) requires that disputed amounts be kept in trust until dispute is resolved.

Non-cash property belonging to clients/third persons

WRPC 1.15 imposes a fiduciary responsibility on the lawyer when holding property other than funds.

- Comment [1] provides, "A lawyer should hold property of others with the care required of a professional fiduciary."
- Securities should be kept in a safe deposit box
- All property must be kept separate from the lawyer's property.

Wyoming State Bar Trust Account Handbook (www.wyomingbar.org)





Questions About IOLTA Accounts?

Contact the Equal Justice Wyoming Foundation

www.equaljusticewyomingfoundation.org

(307) 777-8383

or email Angie Dorsch

angie.dorsch@equaljusticewyomingfoundation.org





Questions About Professional Responsibility Issues?

Call the Wyoming State Bar's

Ethics Hotline

(307) 432-2106

or email Mark Gifford

mgifford@wyobc.org