

**Trust Accounts in Iowa<sup>1</sup>**  
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Office of Professional Regulation  
of the Supreme Court of Iowa

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**Authority**

Iowa Rule of Professional Conduct 32:1.15 addresses the duty to safeguard property of clients and third persons. Chapter 45 of the Iowa Court Rules provides substantial detail regarding trust account operations. Notably, chapter 45 addresses proper handling of client advances for fees or expenses, and requires notice to clients when advances are applied to earned fees or expenses. Chapter 45 also lists the specific trust account records that must be maintained for at least six years after termination of any representation.

**Establishing an Iowa Trust Account**

**Need for a Trust Account:**

Not every attorney 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.

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<sup>1</sup> The contributions of former Director Paul H. Wieck II to this outline are gratefully acknowledged.

office whenever an overdraft occurs in a 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:**

Because a single IOLTA trust account can hold funds for multiple clients, most attorneys only need to maintain one IOLTA trust account.

An attorney or law firm may maintain more than one trust account. Having multiple accounts will create additional record-keeping overhead and increase the chance that mistakes will be made depositing and disbursing funds. However, in certain circumstances it is required. 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 attorney or firm.

### **Signature Authority on Trust Accounts:**

Only an attorney admitted to practice in Iowa or a person under the direct supervision of an attorney may be an authorized signatory on a trust account. Iowa Ct. R. 45.2(3)(b). The Client Security Commission recommends that attorneys carefully evaluate whether non-attorney staff members should be authorized to sign checks or authorize transfers. The responsibility and accountability for client funds is non-delegable, and the attorney will be personally responsible for any staff defalcation.

*Tip:* If signature or transfer authority is delegated to non-attorney staff, the Client Security Commission recommends procuring employee dishonesty insurance coverage.

### **Succession Planning & Provision for Stand-by Signature Authority:**

Planning for death or disability is now required of every attorney engaged in the private practice of law in Iowa. Iowa Ct. R. 39.18. As part of the annual Client Security report, each attorney in private practice must identify a qualified attorney-servicing association, an Iowa law firm that includes Iowa attorneys in good standing, or an active Iowa attorney in good standing, to serve as the attorney's designated representative or representatives. Specific key information must be maintained by the attorney and provided to the designee.

Upon the attorney's death or disability, the designee is authorized to serve as a successor signatory for any client trust account maintained by the private practitioner under Iowa Court Rule 45.11, prepare final trust accountings for clients, make trust account disbursements, properly dispose of inactive files, and arrange for storage of files and trust account records. Helpful information and resources on succession planning are available at the Office of Professional Regulation's website and from the Iowa State Bar Association.

## **Flat Fees**

A flat fee “embraces all services that a lawyer is to perform, whether the work be relatively simple or complex.” Iowa Ct. R. 45.10(1). If a flat fee is paid prior to performance of the services, it must be deposited in the trust account. Iowa Ct. R. 45.10(2). Contracts providing for nonrefundable flat fees are unethical and void. *Board of Prof. Ethics and Conduct v. Frerichs*, 671 N.W.2d 470, 475 (Iowa 2003).

Absent an agreement with the client to the contrary, an attorney is entitled to the flat fee when the contemplated services have been completed. However, the attorney and client may agree regarding when and how much of the flat fee will be earned and may be withdrawn as the work progresses to completion. The agreement must reasonably protect the client’s right to a refund of the unearned portion of the flat fee in the event the client engages new counsel or the attorney fails to complete the work. Iowa Ct. R. 45.10(3). Any withdrawal of a portion of the flat fee from the trust account requires notice and accounting to the client under rule 45.7.

## **Conflicting Claims to Funds in Trust:**

If an attorney 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 attorney 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 attorney 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 termination of the representation to which they relate. Iowa Ct. R. 45.2(3). A certification regarding this responsibility is included in the annual report filed with the Client Security Commission each year. Iowa Ct. R. 45.6. Upon dissolution of a firm or practice or sale of a firm or practice, arrangements must be made for maintenance of the books and records for the required six year period. Iowa Ct. R. 45.2(3)(d), (e).

## **Implementation of the Record Keeping Duty:**

Effective February 20, 2012, Iowa Court Rule 45.2 was amended to describe in detail the financial records an attorney must maintain for a client trust account. Records required by the rule may be maintained by electronic, photographic, computer, or other media, so long as they otherwise comply with the rules and printed copies can be produced. Iowa Ct. R. 45.2(3)(c).

For each account maintained, records should identify the name of the depository, account number, account name, and date the account was opened. The records should also show 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. In addition to this basic record for each account, the following records must be maintained:

- Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
- Ledger records for all trust accounts showing, for each separate trust client or beneficiary, the source 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;
- Copies of retainer and compensation agreements with clients as required by Iowa R. of Prof'l Conduct 32:1.5;
- Copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;
- Copies of bills for legal fees and expenses rendered to clients;
- Copies of records showing disbursements on behalf of clients;
- The physical or electronic equivalents of all checkbook registers, bank statements, records of deposit, pre-numbered canceled checks, and substitute checks provided by a financial institution;
- Records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient, and the trust account name or number from which money is withdrawn;
- Copies of monthly trial balances and monthly reconciliations of the client trust accounts maintained by the attorney;
- Copies of those portions of client files that are reasonably related to client trust account transactions; and
- 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 attorney as to receipt and delivery.

## **Monthly Triple Reconciliations Are Required:**

Monthly reconciliations of the 1) main trust account ledger (a/k/a check register), 2) client subaccount ledgers, and 3) adjusted bank statement are required by rule 45.2(3)(a)(9). This is the so-called “three-way reconciliation.” All three components should balance to the penny each month. The Client Security Commission’s experience is that failure to perform triple reconciliations on a monthly basis is a key contributor to loss of accountability for client monies.

*Tip:* At the end of this outline are a couple of template triple reconciliation forms. The form should be prepared as of the same day each month (most attorneys calculate the numbers based on the last day of the month). Maintaining this form and the three supporting documents in a binder, or together in electronic form, is sure to expedite the attorney’s next audit.

*Tip:* A monthly statement from your bank is a vital part of the reconciliation process. If your bank normally provides statements on a quarterly basis instead of monthly, you will need to make arrangements to receive monthly statements or access monthly statement information electronically.

## **Use of Computer Accounting Systems:**

Attorneys or law firms may use computer systems to maintain trust account records. Many trust-account specific software modules are available. Based on recent trust account audits, QuickBooks and Clio seem to be the programs most commonly used by Iowa attorneys for trust account management.

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 attorney must render appropriate accountings to the client regarding all funds, securities and other properties of a client coming into the possession of the attorney. 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 a client asks you how much money you are 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.

showing the amounts owed for fees and advanced expenses, and the amount you intend to deduct from the client's trust account balance. Once the periodic statement and accounting has been provided the client, the law firm may withdraw the amount of the advanced filing fee from the trust account. The withdrawal might be performed by ACH transfer from the trust account to the business or operating account, or by trust account check payable to the business or operating account. The withdrawal also could be performed by trust account check direct to the credit card company, if the credit card is used only for advanced expenses. The deduction also would need to be recorded on the main trust account ledger and the client's subaccount ledger.

### **Prompt Return and "Stale Funds" Procedure:**

Iowa Rule of Professional Conduct 32:1.15(d) requires that attorneys promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. Ideally that would happen immediately at the conclusion of a matter, however that isn't always possible. Client Security's rule of thumb for prompt return is no more than six months for outstanding checks, and no more than one year for inactive client balances.

A regular quarterly or biannual review process for stale checks and client balances is strongly recommended, so that due diligence can be undertaken and the sub-account can be zeroed out within that 6mo/1yr time frame. 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.

*Tip:* Clients and third parties do not become easier to find with the passing of time. The Great Iowa Treasure Hunt is one option for clients that cannot be located.<sup>2</sup> It is important to keep in mind that this program was not designed for lawyers or with a lawyer's ethical obligation in mind. There are some administrative requirements in the code provisions which are not consistent with Client Security's definition of prompt return. In practice, however, it seems to be the case that attorneys who have undertaken due diligence to find a client need not wait the 3 years specified in the statute, nor until November 1<sup>st</sup> of each year, to remit the money to the Treasurer; the GITH will accept the money.

In the event a client's location is known and they simply refuse to cash the check, issuance of a certified cashier's check is something to consider. There is a fee associated with that approach, but it has the advantage of getting the money out of the trust account and will help avoid just kicking the can down the road.

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<sup>2</sup> See Iowa Code sections 556.7, 556.11 and 556.13, regarding notice and tender of the monies to the Treasurer of the State of Iowa.

## **Closing the Account**

### **Moving Your Trust Account to a New Depository Institution:**

An attorney 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. Also 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. Iowa Ct. R. 39.8(1).

### **Closing the Trust Account:**

Here also care should be taken to ensure that all outstanding checks on the trust account are accounted for, and that interest owed LTAC 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. Records for the account must be retained for a minimum of six years, even if the law firm is sold or dissolved. Iowa Ct. R. 45.2(3(d), (e).

## **Audit Program, Client Security Commission**

The Director of Client Security 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 Client Security Commission is to conduct an unannounced periodic audit of each trust account in Iowa every three to four years. Special audits or investigations are conducted on an as-needed basis.

## **Best Practices for Trust Account Security and Online Banking**

In recent years, would-be thieves have identified trust accounts as potentially lucrative targets. The schemes used to target trust accounts have become more sophisticated as electronic banking and international transactions have become more common. Common schemes include the following:

## **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 Provide Notice and Accounting:** When a withdrawal is made from a client's trust account balance to pay an expense or to pay fees, notice of the withdrawal and an accounting regarding the client's trust account balance must be provided the client no later than the day of the withdrawal.

**Outstanding Checks:** Frequently clients or other payees will fail to promptly negotiate checks drawn on the trust account. The attorney 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.

**Failure to Take Fees when Warranted:** Attorneys 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.

## **Contact Information**

Office of Professional Regulation  
Iowa Judicial Branch Building  
1111 E. Court Avenue  
Des Moines, Iowa 50319  
Telephone: (515) 348-4670  
Fax: (515) 348-4698

Email: [client.security@iowacourts.gov](mailto:client.security@iowacourts.gov)

Web Site: <https://www.iowacourts.gov/opr/attorneys/attorney-practice/>

## TRUST ACCOUNT RECONCILIATION

\_\_\_\_\_, 20\_\_\_\_

BEGINNING BALANCE	\$ _____
TOTAL RECEIPTS THIS MONTH	\$ _____
SUBTOTAL	\$ _____
LESS CHECKS WRITTEN THIS MONTH	\$( _____ )
<b>GENERAL LEDGER BALANCE</b>	<b>\$ _____*</b>

### ITEMIZATION OF SUBACCOUNT BALANCES

Client Name	Amount
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
_____	\$ _____
<b>TOTAL OF SUBACCOUNT BALANCES</b>	<b>\$ _____*</b>

### BANK STATEMENT CONFIRMATION

BANK BALANCE PER STATEMENT	\$ _____
PLUS OUTSTANDING DEPOSITS	\$ _____
LESS OUTSTANDING CHECKS	\$( _____ )
BALANCE	\$ _____
LESS INTEREST	\$( _____ )
<b>RECONCILED BANK STATEMENT BALANCE</b>	<b>\$ _____*</b>

\* Asterisked Fields Should Be Equal \*

**TRIPLE RECONCILIATION FOR BANK STATEMENT ENDING : \_\_\_\_\_**

1. BANK STATEMENT RECONCILIATION					Amounts
Bank Balance Per Statement:					\$ _____
<i>Plus</i> Outstanding Deposits:	Payor	Date	Amount		
			\$ _____		
			\$ _____		
			\$ _____		
			\$ _____		
Total:					\$ _____
Subtotal:					\$ _____
<i>Less</i> Outstanding Checks:	Payee	Date	Check #	Amount	
				\$ _____	
				\$ _____	
				\$ _____	
				\$ _____	
Total:					(\$ _____ )
<b>Reconciled Balance:</b>					\$ _____

2. CHECK REGISTER RECONCILIATION		Amounts
(* all information in this section comes from the check register, <i>not</i> from the bank statement)		
Check Register Balance as of: _____ (Prior Month's Statement End Date)		\$ _____
<i>Plus</i> Total Receipts This Month:		\$ _____
Subtotal:		\$ _____
<i>Less</i> Checks Written This Month:		(\$ _____ )
<b>Reconciled Balance:</b>		\$ _____

3. CLIENT SUB-ACCOUNT BALANCE RECONCILIATION				Amounts
Itemization:	Name of Trust Sub-Account	Date of Last Transaction	Amount	
			\$ _____	
			\$ _____	
			\$ _____	
			\$ _____	
			\$ _____	
			\$ _____	
			\$ _____	
			\$ _____	
Total of Client Sub-Acct Balances:				\$ _____
<i>Plus</i> IOLTA Interest Still in the Trust Account:				\$ _____
<b>Reconciled Balance:</b>				\$ _____

[ All Reconciled Balances Should Be Equal ]