



Professional Liability Fund presents

# Trust Accounting: Your Financial and Ethical Responsibilities

Thursday, May 12, 2011  
Registration – 8:30 a.m.  
Program – 9:00a.m. - 12:15 p.m.

Program Faculty: Dee Crocker, Beverly Michaelis, Helen Hirschbiel

3.25 MCLE Ethics Credits  
Oregon State Bar CLE Program No.: 558\*1689

Oregon State Bar Center  
Columbia Rooms A & B  
16037 SW Upper Boones Ferry Road  
Tigard, Oregon 97224



# MCLE FORM 1: Recordkeeping Form (Do Not Return This Form to the Bar)

**Instructions:**

Pursuant to MCLE Rule 7.2, every active member shall maintain records of participation in **accredited** CLE activities. You may wish to use this form to record your CLE activities, attaching it to a copy of the program brochure or other information regarding the CLE activity.

**Do not return this form to the Oregon State Bar. This is to be retained in your own MCLE file.**

Name:		Bar Number:	
Sponsor of CLE Activity: OSB Professional Liability Fund			
Title of CLE Activity: Trust Accounting: Your Financial and Ethical Responsibilities			
Date: May 12, 2011		Location: OSB Center, Tigard, Oregon	
<input checked="" type="checkbox"/> <i>Activity has been accredited by the Oregon State Bar for the following credit:</i>  ____ <b>General</b> 3.25 <b>Prof Resp-Ethics</b> ____ <b>Access to Justice</b> ____ <b>Child Abuse Rep.</b> ____ <b>Practical Skills</b>		<input type="checkbox"/> <b>Full Credit.</b> <i>I attended the entire program and the total of authorized credits are:</i>  ____ <b>General</b> ____ <b>Prof Resp-Ethics</b> ____ <b>Access to Justice</b> ____ <b>Child Abuse Rep.</b> ____ <b>Practical Skills</b>	
		<input type="checkbox"/> <b>Partial Credit.</b> <i>I attended _____ hours of the program and am entitled to the following credits*:</i>  ____ <b>General</b> ____ <b>Prof Resp-Ethics</b> ____ <b>Access to Justice</b> ____ <b>Child Abuse Rep.</b> ____ <b>Practical Skills</b>	

**\*Credit Calculation:**

One (1) MCLE credit may be claimed for each sixty (60) minutes of actual participation. Do not include registration, introductions, business meetings and programs less than 30 minutes. MCLE credits may not be claimed for any activity that has not been accredited by the MCLE Administrator. If the program has not been accredited by the MCLE Administrator, you must submit a Group CLE Activity Accreditation application (See MCLE Form 2.)

**Caveat:**

If the actual program length is less than the credit hours approved, Bar members are responsible for making the appropriate adjustments in their compliance reports. Adjustments must also be made for late arrival, early departure or other periods of absence or non-participation.



# Trust Accounting: Your Financial and Ethical Responsibilities

May 12, 2011 – Oregon State Bar Center – Tigard, Oregon

## Agenda

- 8:30-9:00 am**            **Registration/Breakfast**
- 9:00-11:00 am:**        **Ethical Trust Accounting Procedures (Dee Crocker and Beverly Michaelis)**
- Setting Up a Lawyer Trust Account
    - Selecting a Bank – ORPC 1.15-2(h)-(k)
    - IOLTA Accounts – ORPC 1.15-2(b)
    - Pooled Lawyer Trust Accounts – ORPC 1.15-2(c)(2)
    - Interest Bearing Accounts for Specific Clients – ORPC 1.15-2(c)-(f)
  - Key Trust Accounting Concepts
    - Unearned Funds Belong in Trust – ORPC 1.15-1(c)
    - Waiting for Funds to Clear – ORPC 1.15-1
    - Accounting to the Client – ORPC 1.15-1(e)
    - Earned on Receipt Fees – ORPC 1.5(c)(3); 1.15-1(c); OSB Op. No. 2005-151
    - Remitting Unclaimed Funds – OSB Op. No. 2005-48, ORS 98.302 et seq.
    - Avoiding Overdrafts – ORPC 1.15-2
    - Safekeeping Property – ORPC 1.15-1(a)
  - Proper Recordkeeping
    - Tracking Funds – ORPC 1.15-1(e)
    - Keeping a Paper Trail – ORPC 1.15-1(e)
    - Reconciling the Account – ORPC 1.15-1(e)
    - Retaining Records – ORPC 1.15-1(a)
  - Implementing Safeguards
    - Protecting Client Funds from Embezzlement – ORPC 1.15-1
- 11:00-11:15 am**        **Break**
- 11:15-12:15 pm**        **Q & A with OSB General Counsel (Helen Hirschbiel)**
- Monitoring the IOLTA Account
  - Setting Up Separate Interest-Bearing Accounts
  - Accepting Credit Cards
  - Responding to Fee Disputes, Garnishments, and Third Party Liens
  - Investigating Embezzlement
  - Accounting for Unidentified Funds
  - Questions from the Audience
- 12:15 pm**                **Program Ends**



# Trust Accounting: Your Financial and Ethical Responsibilities

May 12, 2011 – Oregon State Bar Center – Tigard, Oregon

## Faculty

**Dee Crocker** has over 30 years of experience in the legal field, including 14 years as a legal secretary, three years as a secretarial supervisor to over 50 legal secretaries, and three years as a law office manager. She is a practice management advisor with the Professional Liability Fund, where she provides confidential assistance to lawyers and their staff on office systems, technology, conflict systems, and other crucial malpractice avoidance techniques. She is a past president of the Oregon Association of Legal Secretaries and a past member of the Board of Directors of the National Association of Legal Secretaries. Ms. Crocker is a contributing author to *A Guide to Setting Up and Running Your Law Office*, *A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, and *A Guide to Setting Up and Using Your Lawyer Trust Account*, published by the Oregon State Bar Professional Liability Fund. In addition, Ms. Crocker is the author of *The Office Policy Manual* and *The Office Procedures Manual*, published by the National Association of Legal Secretaries; *Basic Litigation Forms for Oregon Courts*, published by the Oregon Association of Legal Secretaries and endorsed by the Oregon State Bar; and *The Litigation Handbook for the Lawyer's Assistant*, published by West Publishing Company. Ms. Crocker joined the PLF as a practice management advisor in 1992.

**Helen M. Hirschbiel** received her JD from Lewis & Clark, Northwestern School of Law, in 1991. She is currently general counsel of the Oregon State Bar where, among other things, she gives ethics guidance to lawyers. She started working at the Oregon State Bar in December 2003 in the Client Assistance Office, screening complaints against lawyers. While at the bar, she has written numerous articles and given dozens of presentations regarding lawyers' ethical obligations. Prior to working for the Oregon State Bar, she worked at Dunn Carney Allen Higgins & Tongue in Portland, Oregon and for DNA-Peoples Legal Services on the Navajo and Hopi Reservations in Arizona.

**Beverly Michaelis** received her J.D. from Lewis & Clark Law School. She is a member of the Oregon Bar with over 20 years experience in the legal field. Ms. Michaelis practiced with a personal injury firm in Portland and provided pro bono legal services through the Volunteer Lawyers Project for over 8 years. She is a practice management advisor for the Professional Liability Fund, where she provides confidential assistance to attorneys and law office personnel in docket control, software, conflict of interest systems, file management, trust accounting, time management, and other practice management issues. Before joining the Professional Liability Fund as a practice management advisor in 1996, she was placement director and associate executive director of the Multnomah Bar Association for 8 years. She is co-author of *A Guide to Setting Up and Running Your Law Office*, *A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death*, and *A Guide to Setting Up and Using Your Lawyer Trust Account* published by the Oregon State Bar Professional Liability Fund.





# Trust Accounting: Your Financial and Ethical Responsibilities

May 12, 2011 – Oregon State Bar Center – Tigard, Oregon

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*A Guide to Setting Up and Using Your Lawyer Trust Account (2011)* can be downloaded or ordered on the Professional Liability Fund Web site. Visit [www.osbplf.org](http://www.osbplf.org), then select Books from the PLF. PLF publications are free to lawyers in private practice whose principal offices are in Oregon.



## Trust Accounting

### Your Financial and Ethical Responsibilities

Presented by the Professional Liability Fund  
May 12, 2011



## Agenda

1. Setting Up a Lawyer Trust Account
2. Key Concepts
3. Proper Recordkeeping
4. Implementing Safeguards
5. Bar Counsel Q & A



## Setting Up A Lawyer Trust Account



## Selecting a Bank

- Properly Authorized
- FDIC Insured
- Complies with OLF Requirements
- Participates in Overdraft Program



The screenshot shows the Oregon Law Foundation website. The main heading is "OREGON LAW FOUNDATION". Below it, there is a navigation menu with items: History, Info for Lawyers, Info for Banks, Leadership Banks, Grantees, Board of Directors, Annual Report, Membership, and Contact Info. The "Leadership Banks" section is highlighted. The text in this section reads: "Lawyers can help the Oregon Law Foundation by establishing their IOLTA accounts at (or moving their IOLTA account to) a bank that is committed to maximizing the rate of return on IOLTA accounts." Below this text, there is a button labeled "OLF Leadership Banks Listing". At the bottom of the page, the address "Oregon Law Foundation | 16037 SW Upper Boones Ferry Road | Tigard, Oregon 97224" is displayed.

[www.oregonlawfoundation.org](http://www.oregonlawfoundation.org)

## IOLTA Accounts

1. Use OLF's Taxpayer ID
2. Bank Remits Interest to OLF
3. OLF Pays Customary Charges



## **IOLTA Accounts**

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4. [Your Name] "Lawyer Trust Account"
5. You Pay All Other Bank Fees
6. Review at Reasonable Intervals



## **Interest Bearing Accounts**

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- Pooled or Separate
- Subject to FDIC Insurance Limits
  - Allocate Funds
  - Remind Clients



## **Calculating "Net Interest"**

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1. Amount
2. Duration
3. Interest Rates
4. Cost
5. Ability to Calculate and Pay
6. Other Circumstances



## **Pooled Accounts**

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1. Funds Pooled in One Account
2. Subaccounting Required
3. Interest Computed for Each Client



## **Separate Accounts**

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- Establish as Lawyer Trust Account for [Client]
- Use Lawyer's Taxpayer ID
- Lawyer is Authorized Signer



## **Separate Accounts**

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- Lawyer Receives 1099 from Bank
- Lawyer Issues 1099 to Client
- Client Pays Costs



**Notice of Enrollment  
Interest on Lawyers' Trust Accounts (IOLTA) Program**

Rule 1.15-2 of the Oregon Rules of Professional Conduct requires that lawyers deposit and hold client funds that cannot earn net interest in an Interest on Lawyers' Trust Accounts (IOLTA) account, with all interest earned on such funds paid to the Oregon Law Foundation. Oregon RPC 1.15-2 (a) requires a lawyer establishing an IOLTA account to advise the Oregon Law Foundation in writing within 30 days of establishing the account. The undersigned hereby certifies compliance with Oregon RPC 1.15-2 (a).

I HAVE established the following interest bearing trust account for client funds I hold that cannot earn net interest and directed the financial institution to pay the interest earned on such funds to the Oregon Law Foundation:

Name of Account \_\_\_\_\_  
 Name of Financial Institution \_\_\_\_\_  
 FDIC Equal Bank Branching Number \_\_\_\_\_ Account Number \_\_\_\_\_

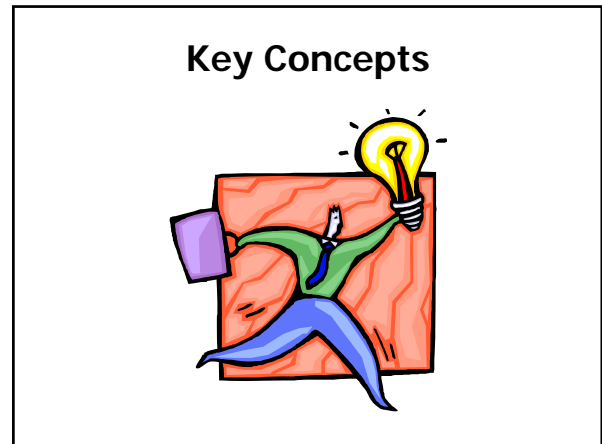
This is the only IOLTA account I have opened.  
 The IOLTA account replaces an existing account that was previously held at \_\_\_\_\_ (bank).  
 This is an additional IOLTA account.

Name of Lawyer (please print) \_\_\_\_\_ OIB Number \_\_\_\_\_  
 Signature of Lawyer \_\_\_\_\_ Date \_\_\_\_\_

Please attach a bank deposit slip, or copy of one, for this account. If this account will be used to open this one lawyer please attach a list with the names, OIB numbers and signatures of all such lawyers.

Inquire concerning the IOLTA program may be directed to the Oregon Law Foundation, 18037 SW Upper Business Ferry Road, P.O. Box 234935, Tigard, OR 97138-1935. Telephone (503) 628-9222 Ext. 323 or, within Oregon, 1-800-452-8260 Ext. 323.

PLEASE RETURN THIS FORM TO THE OREGON LAW FOUNDATION  
18037 SW Upper Business Ferry Road, P.O. Box 234935, Tigard, OR 97138-1935



### Unearned Money Belongs in Trust

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1. Retainers
2. Overpayments
3. Settlement Proceeds

### Promptly Deposit Funds

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- Deposit Daily
- Lock Up After Hours
- Issue Receipts For Cash

### Don't Spend What You Don't Have

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1. Funds Must Clear
2. Use the 3-5-10 Day Formula
3. Be Wary Of Scams

### Account to the Client

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## **Withdrawing Funds**

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1. Explain Billing Procedures
2. Use Written Fee Agreements
3. Wait Before Withdrawing Funds



## **Earned On Receipt Fees**

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- Client Must Sign Written Agreement
- Designate as "Earned on Receipt"
- Subject to Refund if Work Not Done



## **Earned On Receipt Disclaimer**

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1. Funds Will Not Be Deposited in Trust
2. Client May Discharge Lawyer Any Time
3. Client May Be Entitled to Refund
4. Don't Use "Non-Refundable"



## **Unclaimed Funds**

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1. Follow-up on Uncashed Checks
2. Funds are Abandoned After 2 Years
3. Report to DSL Each October  
<http://www.oregon.gov/DSL/UP/upforms.shtml>
4. Remit Funds to OSB



## **Avoiding Overdrafts**

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1. Separate Account Supplies
2. Order Uniquely Colored Checks
3. Keep Proper Records
4. Reconcile!
5. Comply with ORPC 1.15-2(l)



## **Safekeeping Property**

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- Hold Separately
- Properly Identify
- Use Safeguards



## Proper Recordkeeping



## Tracking Funds

- Keep a Running Total
- Treat Each Client as a Separate Account
- Record All Activity



## Keep a Running Total

TRUST ACCOUNT JOURNAL

Date	Client	Payee	Receipts	Disbursements	Balance
3/4/11	Brown	Brown	500.00		500.00
3/4/11	Smith	States Ins.	30,000.00		30,500.00
3/4/11	Jones	Jones	1,000.00		31,500.00
3/4/11	Martin	Martin	250.00		31,750.00

## Each Client is a Separate Account

NAME: Brown, Chris MATTER: Corporate FILE NO. 674  
 ADDRESS: 789 Your Street, Anywhere, OR 97000 PHONE: 503-522-4567 LAWYER: Roberts Long

DATE	NAME	MEMO	CK. NO.	TRUST		
				Disbursed	Received	Balance
3/4/11	Brown, Chris	Retainer	Cash		500.00	500.00

## Record All Activity

CLIENT LEDGER CARD

NAME: JONES, JOHN MATTER: DIVORCE/LITIGATION FILE NO. 453  
 ADDRESS: 102 MAIN STREET, ANYWHERE, OREGON 97000 PHONE: 503-555-8888 LAWYER: ROBERTS LONG

DATE	NAME	MEMO	CK. NO.	FEES			COSTS ADVANCED			TRUST			
				Charged	Received	Adj. Bal.	Advanced	Received	Balance	Disbursed	Received	Balance	
10/21/11	JONES, JOHN	Retainer	110									1,000.00	1,000.00
11/21/11	Third Court Admin.	Filing Fee	824							200.00		800.00	800.00
11/21/11	Shirley	Service Fee	825							20.00		780.00	780.00
12/11/11	Office	Photocopy				0.00			0.00				
1/15/12	Fee - Roberts Long	Statement Serv	826	800.00		800.00						800.00	278.00
12/11/11	Exp To Office Ass	A/R	827		500.00	0.00			0.00	0.00		500.00	278.00
2/24/12	Office	Long Distance					0.00		0.00				
2/28/12	Fee - Roberts Long	Statement Serv	828	200.00		200.00						278.00	0.00
3/12/12	Roberts Long	Fee & Costs	829									278.00	0.00
8/23/12	Exp To Office Ass	A/R	830		275.00	30.00			0.00	0.00			
10/6/12	Jones, John	Retainer	875									1,000.00	1,000.00
11/8/12	Third Court Admin.	Filing Fee	826							200.00		800.00	800.00

## Accounting Software

SAMPLE REPORT USING QUICKBOOKS

(Example of printout of all trust account activity and of each individual client transaction)

11:42 a.m.  
02/28/2011  
Cash Basis

Type	Date	Num	Memo	Paid Amount	Balance
<b>Client Trust Accounts</b>					
<b>David Jones</b>					
Deposit	1/13/2011		Deposit	3,000.00	3,000.00
Check	1/24/2011	0001	Filing Fee	-250.00	2,750.00
			Total David Jones	2,750.00	2,750.00
<b>Harold Anderson</b>					
Deposit	1/13/2011		Deposit	5,000.00	5,000.00
			Total Harold Anderson	5,000.00	5,000.00
<b>Sharon Brown</b>					
Deposit	1/24/2011		Deposit	2,500.00	2,500.00
Check	2/10/2011	0002	Medical Report	-500.00	2,000.00
			Total Sharon Brown	2,000.00	2,000.00
			Total Client Trust Accounts	9,950.00	9,950.00
			<b>TOTAL</b>	<b>9,950.00</b>	<b>9,950.00</b>

## Keeping a Paper Trail

1. Don't Take Cash Draws
2. Don't Pay Your Rent From Trust
3. Use Caution With Transfers
4. Beware Online Banking



## Reconciling the Account

- Reconcile Monthly
- Supervise Staff
- Do a "Three Way" Balance



## Sample Reconciliation

For the Month Ended March 2011	
Lawyer Individual Trust Account Ledger Balances	Amounts
Client Brown	\$ 500.00
Client Jones	1,000.00
Client Martin	250.00
Attorney Funds for Bank Charges, if any	0
1. Total Lawyer Individual Trust Account Ledger Balances	\$ 1,750.00*
2. Lawyer Trust Account Journal Balance	\$ 1,750.00*
Bank Statement Balance	\$ 1,750.00
Less Outstanding Checks	- 0
Plus In-Transit Deposits	- 0
3. Reconciled Bank Statement Balance	\$ 1,750.00*

*\*These amounts (1, 2, and 3) must be identical to each other for the trust account to balance.*

## Retaining Records

Keep Complete Records  
For Five Years



## Washington Rules

1. Random Audits
2. Non-Lawyers Cannot Sign
3. Seven Year Record Retention
4. Two Merchant Accounts Required
5. Flat Fee Disclaimers Different



## Implementing Safeguards





## **12 Ways to Protect Client Money**

1. Lock Up Checks and Deposit Slips
2. Limit Checks On Hand
3. Require Documentation
4. Watch Signature Stamps



## **12 Ways to Protect Client Money**

5. Endorse Checks ASAP
6. Protect Credit Card Numbers
7. Avoid ATM Cards
8. Use Passwords



## **12 Ways to Protect Client Money**

9. Back Up Your Computer
10. Know Your People
11. Take Responsibility
12. Buy Bonds or Insurance



## **Thank You!**

Practice Management Advice is  
Free and Confidential

Dee Crocker      [deec@osbplf.org](mailto:deec@osbplf.org)  
Beverly Michaelis      [beverlym@osbplf.org](mailto:beverlym@osbplf.org)  
Sheila Blackford      [sheilab@osbplf.org](mailto:sheilab@osbplf.org)

503.639.6911  
800.452.1639



## **Q & A**

- Monitoring Your Account
- Accepting Credit Cards
- Fee Disputes
- Trust Account Garnishments
- Your Questions



## IOLTA ACCOUNTS

### What is IOLTA?

The Interest on Lawyers' Trust Accounts (IOLTA) program is an innovative way to supply a public good. Client funds that are too small in amount or held for too short of a time to earn interest for the client, net of bank charges or administrative fees, are placed in a pooled interest-bearing trust account. The interest from these accounts is remitted at least quarterly by the financial institutions to the Oregon Law Foundation, a charitable, tax-exempt entity.

### How does the Oregon Law Foundation use the interest?

Since the IOLTA program became mandatory in 1989, the Oregon Law Foundation has awarded over \$15,000,000 for charitable, law related purposes. The existence of IOLTA has allowed us to fund programs that provide civil legal services to people of lesser means helping to create greater access to justice in Oregon. The Oregon Law Foundation has also funded projects to promote diversity in the legal profession and to provide law-related education for the public.

### How do I select a bank?

Financial institutions play a significant role in the success of the IOLTA program. The amount of funding generated through IOLTA each year is dependent upon several factors, including interest rates and bank-imposed service fees. **You can help the Oregon Law Foundation by establishing your IOLTA account at (or moving your IOLTA account to) a bank that is committed to maximizing the rate of return on IOLTA accounts.** The Oregon Law Foundation's "Leadership Banks" have shown such a commitment. To see the Oregon Law Foundation's "Leadership Banks," visit the OLF web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org) and click on Leadership Banks.

### Where can I get more information?

Visit the OLF web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org) and click on Info for Lawyers.



# Unlimited FDIC Insurance for IOLTA Accounts Extended Two More Years

## From the ABA Commission on Interest on Lawyers' Trust Accounts

On December 22, 2010, the U.S. Senate passed legislation (H.R. 6398) that extends unlimited FDIC insurance for IOLTA accounts through December 31, 2012. The House passed this legislation on November 30, 2010. The bill awaits President Obama's signature, which is expected before the end of this year.

In praising the action of Congress, ABA President Stephen Zack stated: "The issue was serious and the hour was growing late: if Congress had not extended unlimited FDIC insurance on these accounts for two more years, lawyers and their clients faced complicated ethical and financial questions about handling money involved in legal transactions. The ultimate casualty of this confusion would have been poor people whose access to the justice system comes through assistance from IOLTA-funded programs."

Read the complete statement from ABA President Stephen Zack [here](#).

Background: The FDIC created the Transaction Account Guarantee (TAG) Program in November 2008 to "strengthen confidence and encourage liquidity in the banking system by guaranteeing newly issued senior unsecured debt of banks, thrifts, and certain holding companies, and by providing full coverage of non-interest bearing deposit transaction accounts, regardless of dollar amount." In response to advocacy by the American Bar Association, the National Association of IOLTA Programs and many other organizations and individuals, the category of non-interest bearing transaction accounts included IOLTA and functionally equivalent accounts, and provided for unlimited insurance for such accounts held in participating financial institutions through December 31, 2009. The TAG Program has been extended several times by the FDIC and most recently until December 31, 2010.

In July, President Obama signed the Dodd Frank Wall Street Reform and Consumer Protection Act into law. While that legislation continued unlimited FDIC insurance for non-interest bearing accounts until December 31, 2012, it inadvertently did not extend that coverage to IOLTA accounts. The legislation just passed by the Senate addresses this oversight.

## ACCEPTING CREDIT CARDS

**Q: Can I accept payments by credit card?**

**A:** Yes. However, carefully review OSB Legal Ethics Opinion No. 2005-172 which is attached to this Q & A. If the bank requires that you designate a *single* merchant account for *all* credit card transactions and you accept credit card payments for earned *and* unearned fees, your merchant account should be a trust account.

**Q. If credit card payments for earned fees are deposited into my trust account, how do I avoid commingling?**

**A:** Promptly transfer those funds into your business account (once the credit card transaction has cleared the bank).

**Q: Can I designate my business account as my merchant account if I accept credit card payments for *earned fees only*?**

**A:** Yes. This is a good approach if you want to spare yourself the extra bookkeeping involved in transferring funds and covering bank fees. See OSB Legal Ethics Opinion No. 2005-172.

**Q: Who is responsible for paying the credit card merchant fee?**

**A:** Merchant fees or other credit card charges deducted from the trust account *are the lawyer's responsibility*. The lawyer must ensure that sufficient funds are deposited or transferred into the trust account in a timely manner to cover these expenses. OSB Legal Ethics Opinion No. 2005-172.

Passing the merchant fee on to the client or crediting the client for the net amount of the transaction only, even if the client agrees, may implicate Regulation Z of the Truth in Lending Act, 12 CFR §226. As a result, you may be compelled to offer cash discounts to *all* clients and make specified disclosures to your clients who pay by credit card. See CONSUMER LAW IN OREGON ch 14 (Oregon CLE 1996 & Supp 2000).

**Q: What happens if a client disputes a fee paid by credit card?**

**A:** If a client disputes a fee paid by credit card, the credit card company will “charge back” the payment against the account to which it was originally credited. This means the disputed funds will be deducted from the your account and given back to the client. If the charge back is against the trust account and you have already withdrawn the credit card payment as an earned fee, other clients’ money may be at risk. You are ethically bound to ensure that any charge backs which jeopardize other client funds in trust are promptly covered with your own funds. OSB Legal Ethics Opinion No. 2005-172.

## FREQUENTLY ASKED TRUST ACCOUNT QUESTIONS

Q. How many days after a check has been deposited do I have to wait before disbursing any funds?

A. Wait a prudent amount of time for the funds to clear. A check is not deemed “cleared” until it is honored and collected by the issuing bank, even if your bank has a policy of making funds available in a shorter period of time.

For an ordinary transaction with an established client or known third party, wait three banking days for locally written checks, five banking days for checks written within Oregon, but outside your local area, and ten or more banking days for out-of-state checks.

To avoid the growing problem of check scams, wait at least ten banking days before disbursing funds in any of the following circumstances: (1) the transaction is with a new client or a client you are unsure about; (2) the amount of the check is very large; (especially compared with the extent of legal services provided, if the check is a retainer); (3) the check is from an unknown third party; or (4) any aspect of the transaction raises (or should raise) your suspicions. Keep in mind that drafts or other instruments may take longer than ten days to process. To verify that funds have cleared, ask your bank to contact the issuing bank.

For a thorough discussion of banking rules, check scams, and the amount of time that may be necessary for funds to clear, See Sylvia Stevens, “Waiting for ‘Go’ Dough: A primer on disbursing client funds,” Oregon State Bar Bulletin (June 2006), Leonard DuBoff and Christy O. King, “Lawyers Beware: Avoiding the Scams,” Oregon State Bar Bulletin (November 2008), Kimi Nam, “Check Scams Target Lawyers,” In Brief, no. 106 (November 2008), and Sheila Blackford, “Check Scams Becoming More Sophisticated,” In Brief, no. 108 (November 2010).

Q. My trust account has had an outstanding check for several years. What do I do about it?

A. If the money cannot be returned to the client, you must comply with ORS 98.302-98.436 (Uniform Disposition of Unclaimed Property Act). Effective January 1, 2010, unclaimed funds held in lawyer trust accounts must be reported to the Department of State Lands (DSL), but paid over to the OSB with a copy of the DSL reports. The reporting forms can be found on the DSL Web site at <http://www.oregon.gov/DSL/UP/upforms.shtml>. Forms 1a and 2a must be completed and sent to the DSL with copies of the reports and the unclaimed funds forwarded to the OSB. In no circumstance may you take unclaimed funds for your own purposes. OSB Legal Ethics Op No 2005-48.

Pursuant to ORS 98.332, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. Funds deemed abandoned as of June 30 of each year are to be reported to the DSL during the month of October of that same year, although earlier reporting may be allowed upon written request.

Q. Can I have more than one trust account?

A. Yes. Lawyers who represent clients in more than one jurisdiction may be required to set up multiple trust accounts. Also, client funds that can earn “net interest” must be deposited in a separate trust account in which interest accrues for the client’s benefit. ORPC 1.15-2(c).

Q. What is “net interest?”

A. ORPC 1.15-2(d) provides: “In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:

- (1) the amount of the funds to be deposited;
- (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
- (3) the rates of interest at financial institutions where the funds are to be deposited;
- (4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client’s benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm’s services, and the cost of preparing any tax-related documents to report or account for income accruing to the client’s benefit;
- (5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and
- (6) any other circumstances that affect the ability of the client’s funds to earn a net return for the client.”

Q. Can I set up a lawyer trust account for a client outside of Oregon?

A. In Oregon, trust funds must be deposited in a trust account in the jurisdiction in which the lawyer’s office is situated. See ORPC 1.15-1(a). Furthermore, lawyer trust accounts must conform to the rules in the jurisdictions in which the accounts are maintained. Any inconsistencies between the rules of the various jurisdictions will be resolved by ORPC 8.5(b).

Q. Can a client waive the right to interest?

A. Nothing in ORPC 1.15-2 prohibits a client from waiving the right to interest earned on funds held by the lawyer and authorizing payment of the interest to the Oregon Law Foundation (OLF). This is a departure from former DR 9-101(D)(1). Because there may be tax implications in the client’s waiver of interest income and corollary charitable contribution, the lawyer should inform the client of that possibility and recommend that the client seek independent tax advice before deciding how to proceed. If the lawyer chooses to advise the client on this point, the lawyer may have a self-interest conflict under ORPC 1.7(a)(2) in giving such advice and, if so, must obtain the client’s informed consent pursuant to ORPC 1.7(b). If those steps are followed, the lawyer may, with the client’s agreement, deposit the client’s funds into the lawyer’s IOLTA account. OSB Legal Ethics Op No. 2005-117.

Q. Which banks offer the best interest rates on IOLTA accounts?

A: The OLF monitors interest rates and can tell you which banks offer the best rate of return. For more information, visit the OLF Web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org).

Q. Do I have to notify the Oregon State Bar (OSB), the OLF, or Professional Liability Fund (PLF) when I set up a trust account?

A. The OSB annually; the OLF if you open a new trust account. Every lawyer must certify annually on a form and by a due date prescribed by the OSB that the lawyer is in compliance with ORPC 1.15-1 and ORPC 1.15-2. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the OLF in writing within 30 days of establishing the account, on

a form approved by the OLF. ORPC 1.15-2(m). Lawyers are currently subject to discipline for failure to comply with these requirements. At its February 19, 2010 meeting, the OSB Board of Governors unanimously approved proposed amendments to ORS Chapter 9, which would convert the sanction from disciplinary to administrative. The proposed amendments will be introduced as part of the OSB's 2011 legislative package. Lawyers are not required to notify the PLF about their trust accounts.

Q. Must I notify clients that I participate in the IOLTA program?

A. Yes. Inform your clients that you participate in the IOLTA program and have interest-bearing accounts available in appropriate cases. You can leave brochures in the office for clients to read, post a notice indicating that the office participates in these programs, or include a statement to this effect in an engagement letter or monthly billing.

Q. Am I required to place client funds in a federally insured account?

A. Yes. See ORPC 1.15-2(h)(2). As a result of action taken by the FDIC and Congress in 2008 and 2010, an individual client's funds deposited in IOLTA are fully insured regardless of the amount through December 31, 2012. Previously, if you were holding more than the insured limit in IOLTA for any one client, it was recommended that you allocate funds between multiple institutions and remind clients of the aggregate federal insurance limits to assure that each client's funds were fully protected. See Sylvia Stevens, "Trust Accounts and the FDIC," Oregon State Bar Bulletin (October 2008).

Separate or pooled interest-bearing accounts established for the benefit of clients who can earn net interest remain subject to FDIC insurance limits. Therefore, if you are holding more than the insured limit for any one client in such an account, it may be necessary to allocate funds among multiple institutions, as described above.

More information about FDIC insurance for IOLTA accounts can be found at <http://www.abanet.org/legalservices/iolta/>.

Q. Am I required to monitor my trust account?

A. Yes. You must review your IOLTA account at reasonable intervals to determine whether circumstances have changed such that a particular client did or can earn net interest. ORPC 1.15-2(e).

Q. What if I find that a client did or can earn net interest?

A. If a particular client's funds either did or can earn net interest, transfer the funds into an appropriate interest-bearing account and request a refund in writing for any interest that may have been remitted to the OLF. ORPC 1.15-2(f). Review ORPC 1.15-2(f) (1) and (2) for further details.

Q. Can I pay client costs directly out of the trust account?

A. Yes, as long as the client has money in the trust account to cover the costs. If funds have been deposited on behalf of a client but have not yet cleared, you must either wait until they clear or pay the costs out of your general account and reimburse the general account when the funds have cleared.



Q. Do I have to keep a minimum balance in my trust account?

A. Only if the bank requires a minimum balance. Most banks do not. If a minimum balance is required, deposit just enough money to meet the bank's requirement. See ORPC 1.15-1(b).

Q. What if the bank takes check-printing charges from the trust account?

A. You can deposit your own money into the trust account to cover the check-printing charges. ORPC 1.15-1(b) permits lawyers to deposit their own funds into the lawyer trust account to pay bank service charges or meet minimum balance requirements in amounts necessary for those purposes.

Q. What if I have an overdraft on the trust account?

A. ORPC 1.15-2(l) states, "Every lawyer who receives notification from a financial institution that any instrument presented against his or her lawyer trust account was presented against insufficient funds, whether or not the instrument was honored, shall promptly notify Disciplinary Counsel in writing .... The lawyer shall include a full explanation of the cause of the overdraft." See ORPC 1.15(2)(i) for further details.

Q. What happens when a sole signatory on the trust account dies?

A. ORS 9.705-ORS 9.755 provide that the court may take jurisdiction and appoint one or more lawyers in good standing in the OSB to act as custodian of the affected lawyer's law practice. This process is slow and can be expensive. A better practice is for sole practitioners to plan ahead for the unexpected by selecting an "assisting attorney." This process is described in the PLF handbook, Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death. If you would like assistance with this process, call the PLF for an appointment with a practice management advisor. To view or order Planning Ahead: A Guide to Protecting Your Clients' Interests in the Event of Your Disability or Death, go to [www.osbplf.org](http://www.osbplf.org) and click on the link, Books from the PLF under Loss Prevention.

Q. How long must I keep trust account records?

A. ORPC 1.15-1(a) states, "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation."

Q. What do I do when a client overpays a billing statement?

A. You must deposit the entire client payment to the trust account. Only the amount due the lawyer or law firm can be disbursed from trust in payment of the client's bill. Contact the client and get instructions on whether you should refund the overpayment or leave the money in the trust account for future costs.

Q. Can I charge "nonrefundable" flat fees?

A. Flat fees, earned on receipt, are allowed if the fee arrangement complies with ORPC 1.15-1(c) and ORPC 1.5(c)(3). However, there is no such thing as a "nonrefundable" fee. Fees are always subject to refund if the specified services are not performed. In re Thomas, 294 Or 505, 526, 659 P2d 960 (1983). Also see ORPC 1.5(c)(3)(ii) as amended, December 2010.

ORPC 1.15-1(c) and ORPC 1.5(c)(3) provide that a lawyer shall not enter into an arrangement for, charge, or collect a fee denominated as “earned on receipt” unless it is pursuant to a written agreement signed by the client which explains that: (a) the funds will not be deposited into the lawyer trust account, and (b) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed. (ORPC 1.5(c)(3), amended December 2010).

Whether, or to what extent, a lawyer must refund fees paid in advance when a client terminates the lawyer’s services in bad faith near the end of a matter is an open question. OSB Legal Ethics Op No 2005-151.

Practice Tip: Avoid using the term “nonrefundable” in your written agreement with the client. Such a designation may be misleading, if not false, in violation of ORPC 8.4(a)(3), which prohibits conduct involving “dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” OSB Legal Ethics Op No 2005-151.

Q. How long do I have to wait to withdraw funds from the trust account once I have done work for a client?

A. The general rule is that you may withdraw funds from a trust account when they are earned and invoiced, unless you expect the client to dispute the amount due. ORPC 1.15-1(e). However, until the bill is received, the client will be unaware of the amount of the bill. Accordingly, you may want to wait a reasonable period of time – such as 30 days – after invoicing the client before withdrawing earned funds. OSB Legal Ethics Op No 2005-149.

Q. Are there any other regulations or rules I should be aware of?

A. ORPC 1.15-2(a) provides that IOLTA accounts shall be operated in accordance with such “operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.” This provision is new and represents one of several amendments to ORPC 1.15-2 since its original adoption. In commentary appearing in the 2005 OSB House of Delegates Agenda, it is noted, “[This] language is added to require compliance with any regulations adopted by the Bar for the operation of trust accounts. In 1989, the Supreme Court issued regulations for the operation of trust accounts, but they do not appear to have been widely distributed and were largely unknown among practitioners. There was also no readily available means for enforcing the regulations. Making clear in the rule that such regulations may be adopted will help to ensure that they are publicized and that members are subject to discipline for noncompliance.” Lawyers would be well advised to carefully monitor developments in this area.

Q. Where can I get additional help with trust accounting or IOLTA requirements?

A. Visit the OLF Web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org) and click on the Info for Lawyer’s link or call the OLF Administrator, (503) 620-0222 or 1-800-452-8260. For assistance with setting up a system for trust accounting, call the practice management advisors of the Professional Liability Fund (PLF), (503) 639-6911 or 1-800-452-1639 or visit the PLF Web site, [www.osbplf.org](http://www.osbplf.org). For assistance with reconciling your trust account on an ongoing basis, contact a local bookkeeper or accountant.

# Rules for Washington Practitioners

## Washington Rules of Professional Conduct

On September 1, 2010 amendments to the Washington Rules of Professional Conduct (RPCs) went into effect. The new rules may be found here:

<http://www.wsba.org/lawyers/ethics/rpc20102column090110.pdf>. The Oregon Rules of Professional Conduct were amended on December 1, 2010 and are available here:  
<http://www.osbar.org/docs/rulesregs/orpc.pdf>.

If you practice in Oregon and Washington, learn and understand the differences between Oregon and Washington trust accounting rules, which include:

Requirements	Washington	Oregon
Random Audits of Lawyer Trust Accounts?	Yes	No
Nonlawyers Prohibited from Signing Trust Account Checks?	Yes	No
Trust Account Record Retention Requirements	7 Years	5 Years
Two Merchant Accounts Required if Accepting Credit Cards?	Yes	No
Special Restrictions on Flat or "Earned on Receipt" Fees?	Yes	Yes

### Merchant Accounts

Washington: If you decide to accept credit card payments for both earned fees and advance fees/costs, you must have two merchant accounts.

Oregon: If the bank requires that you designate a *single* merchant account for *all* credit card transactions and you accept credit card payments for earned *and* unearned fees, your merchant account should be a trust account. Commingling is avoided by promptly transferring those funds into your business account (once the credit card transaction has cleared the bank). OSB Formal Ethics Opinion No. 2005-172.

### Flat Fees

Washington RPC 1.5(f)(2):

- (2) A lawyer may charge a flat fee for specified legal services, which constitutes complete payment for those services and is paid in whole or in part in advance of the lawyer providing the services. If agreed to in advance in a writing signed by the client, a flat fee is the lawyer's property on receipt, in which case the fee shall not be deposited into a trust account under Rule 1.15A. The written fee agreement shall, in a manner that can easily be understood by the client, include the following:

- (i) the scope of the services to be provided;
- (ii) the total amount of the fee and the terms of payment;
- (iii) that the fee is the lawyer's property immediately on receipt and will not be placed into a trust account;
- (iv) that the fee agreement does not alter the client's right to terminate the client-lawyer relationship; and
- (v) that the client may be entitled to a refund of a portion of the fee if the agreed-upon legal services have not been completed. A statement in substantially the following form satisfies this requirement:

[Lawyer/law firm] agrees to provide, for a flat fee of \$ \_\_\_\_\_, the following services: \_\_\_\_\_. The flat fee shall be paid as follows: \_\_\_\_\_. Upon [lawyer's/law

firm's] receipt of all or any portion of the flat fee, the funds are the property of [lawyer/law firm] and will not be placed in a trust account. The fact that you have paid your fee in advance does not affect your right to terminate the client-lawyer relationship. In the event our relationship is terminated before the agreed-upon legal services have been completed, you may or may not have a right to a refund of a portion of the fee.

Oregon RPC 1.5(c)(3):

A lawyer shall not enter into an arrangement for, charge or collect:

- (3) a fee denominated as "earned on receipt," "nonrefundable" or in similar terms unless it is pursuant to a written agreement signed by the client which explains that:
  - (i) the funds will not be deposited into the lawyer trust account, and
  - (ii) the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed.

If you are an Oregon lawyer with Washington clients, any client funds related to your Washington matters should be deposited in your Washington trust account. WSBA Informal Opinion No. 959.

### **Questions? Looking for Help?**

If you are a Washington practitioner and have questions about the RPCs, contact the Washington State Bar Association (WSBA) Ethics Line, <http://www.wsba.org/lawyers/ethics/default.htm>. For a guide to managing your trust account, see WSBA's Managing Client Trust Accounts: Rules, Regulations, and Common Sense, <http://tinyurl.com/WSBA-Trust-Accounting>.

Printed, bound copies of the unofficial version of the RPCs are available for \$5.00 each. To purchase a copy send a note stating the address to which you would like it mailed with a check for \$5.00 to:

WSBA  
1325 4th Avenue, Suite 600  
Seattle, WA 98101

### **Practice Tips for Washington/Oregon Practices**

- Review your fee agreements to be sure they conform to the rules.
- Order or download a copy of *A Guide to Setting Up and Using Your Lawyer Trust Account* (2011). Available on the PLF Web site, [www.osbplf.org](http://www.osbplf.org). Select the link Books from the PLF.
- Access the WSBA's Managing Client Trust Accounts guide: <http://tinyurl.com/WSBA-Trust-Accounting>.

## TRUST ACCOUNTING

- ✓ Follow the Oregon Rules of Professional Conduct 1.15-1 and 1.15-2 in setting up your IOLTA account. (IOLTA refers to *Interest on Lawyers' Trust Accounts*.) Your financial institution should have the necessary forms to establish an IOLTA account. If you encounter a representative who does not understand what an IOLTA account is, find someone in the financial institution who does. If the financial institution doesn't understand what an IOLTA account is, find one that does. The Oregon Law Foundation (OLF) can provide assistance in setting up lawyer trust accounts. Visit the OLF Web site, [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org), or call the OLF Administrator, (503) 620-0222 or 1-800-452-8260.
- ✓ Exercise reasonable care in selecting the financial institution for your IOLTA account. ORPC 1.15-1(a). The financial institution you choose must be authorized by state or federal banking law to transact business in the jurisdiction where your account is located (which must be the jurisdiction where your office is situated). ORCP 1.15-2(h); ORPC 1.15-1(a).
- ✓ ORPC 1.15-2(h)(2) requires lawyers to place client funds in a federally insured account.

As a result of action taken by the FDIC and Congress in 2008 and 2010, an individual client's funds deposited in IOLTA are fully insured regardless of the amount through December 31, 2012. Previously, if you were holding more than the insured limit in IOLTA for any one client, it was recommended that you allocate funds between multiple institutions and remind clients of the aggregate federal insurance limits to assure that each client's funds were fully protected. See Sylvia Stevens, "Trust Accounts and the FDIC," Oregon State Bar Bulletin (October 2008).

Separate or pooled interest-bearing accounts established for the benefit of clients who can earn net interest remain subject to FDIC insurance limits. Therefore, if you are holding more than the insured limit for any one client in such an account, it may be necessary to allocate funds among multiple institutions, as described above.

More information about FDIC insurance for IOLTA accounts can be found at <http://www.abanet.org/legalservices/iolta/>.

- ✓ Notify clients that you participate in the IOLTA program and have interest-bearing accounts available in appropriate cases.
- ✓ Interest rates vary widely. Lawyers can help the OLF by establishing their IOLTA accounts at (or moving their IOLTA accounts to) a "Leadership Bank" that is committed to maximizing the rate of return on IOLTA accounts. To see the OLF's current list of "Leadership Banks," visit the OLF Web site at [www.oregonlawfoundation.org](http://www.oregonlawfoundation.org) and click on [Leadership Banks](#).
- ✓ Every lawyer must certify annually on a form and by a due date prescribed by the OSB that the lawyer is in compliance with ORPC 1.15-1 and ORPC 1.15-2. Between annual certifications, a lawyer establishing an IOLTA account shall so advise the OLF in writing within 30 days of establishing the account, on a form approved by the OLF. ORPC 1.15-2(m). Lawyers are currently subject to discipline for failure to comply with these requirements. At its February 19, 2010 meeting, the OSB Board of Governors unanimously approved proposed amendments to ORS Chapter 9, which would convert the sanction from disciplinary to administrative. The proposed amendments will be introduced as part of the OSB's 2011 legislative package. Lawyers are not required to notify the PLF about their trust accounts.
- ✓ All sums earned as interest on an IOLTA trust account must be transferred by the financial institution to the OLF or to the client. The OLF is responsible for customary check and deposit processing charges, defined as "monthly maintenance fees, per item check charges, items deposited charges and per deposit charges." ORPC 1.15-2(n). "Any other fees or transactions costs are not 'service charges' for purposes of [the rule] and must be paid by the lawyer or law

firm.” ORPC 1.15-2(n). For example, lawyers (and not the OLF) should bear the cost of wire transfer fees, overdraft notification charges, printing fees for checks or deposit slips, etc. The cost of printing IOLTA trust account checks should be charged to the lawyer’s office or general account.

- ✓ “Client funds that can earn net interest shall be deposited in an interest bearing trust account for the client’s benefit.” ORPC 1.15-2(c). The interest bearing account must be “a separate account for each particular client or client matter or a pooled lawyer trust account with subaccounting which will provide for computation of interest earned...” ORPC 1.15-2(c)(1) and (2).
- ✓ If a separate interest bearing account is established for a particular client or client matter, the account is designated “Lawyer Trust Account for ‘Client.’” The lawyer’s social security number or Federal ID number is used to set up the account, and the lawyer is the authorized signatory. Interest is reported under the lawyer’s name on a Form 1099-INT issued by the bank. The lawyer must then issue a Form 1099-INT to the client to reflect the pass-through of interest.
- ✓ “In determining whether client funds can or cannot earn net interest, the lawyer or law firm shall consider the following factors:
  - (1) the amount of the funds to be deposited;
  - (2) the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;
  - (3) the rates of interest at financial institutions where the funds are to be deposited;
  - (4) the cost of establishing and administering a separate interest bearing lawyer trust account for the client’s benefit, including service charges imposed by financial institutions, the cost of the lawyer or law firm’s services, and the cost of preparing any tax-related documents to report or account for income accruing to the client’s benefit;
  - (5) the capability of financial institutions, the lawyer or the law firm to calculate and pay income to individual clients; and
  - (6) any other circumstances that affect the ability of the client’s funds to earn a net return for the client.”
- ✓ Review the IOLTA account at reasonable intervals to determine whether circumstances have changed such that a particular client did or can earn net interest. ORPC 1.15-2(e).
- ✓ If a particular client’s funds in an IOLTA account either did or can earn net interest, transfer the funds into an appropriate interest bearing account for the benefit of the client and request a refund in writing for any interest which may have been remitted to the OLF. ORPC 1.15-2(f). Review ORPC 1.15-2(f)(1) and (2) for further details.
- ✓ Nothing in ORPC 1.15-2 prohibits a client from waiving the right to interest earned on funds held by the lawyer and authorizing payment of the interest to the OLF. This is a departure from former DR 9-101(D)(1). Because there may be tax implications in the client’s waiver of interest income and corollary charitable contribution, the lawyer should inform the client of that possibility and recommend that the client seek independent tax advice before deciding how to proceed. If the lawyer chooses to advise the client on this point, the lawyer may have a self-interest conflict under ORPC 1.7(a)(2) in giving such advice and, if so, must obtain the client’s informed consent pursuant to ORPC 1.7(b). If those steps are followed, the lawyer may, with the client’s agreement, deposit the client’s funds into the lawyer’s IOLTA account. OSB Legal Ethics Op No. 2005-117.
- ✓ Set up a receipt and disbursements journal or use a software program to keep a running total of every transaction pertaining to the trust account.
- ✓ Set up a separate ledger card or ledger page for each client or use a software program to track all receipts and disbursements for each client individually.

- ✓ Promptly deposit all funds to be held for a client or others in the trust account. Give the client a written receipt for any cash funds the client leaves with the lawyer for deposit into the trust account.
- ✓ Do not write checks against trust account sums unless that amount of money has actually cleared the bank and been credited to that particular client's account. *A check is not deemed "cleared" until it is honored and collected by the issuing bank, even if your bank has a policy of making funds available in a shorter period of time.*
- ✓ Writing checks before funds have been paid by the issuing bank means you are using another client's money, which is an ethics violation. To avoid this potential problem, wait a prudent amount of time for the funds to clear. For an ordinary transaction with an established client or known third party, wait 3 banking days for locally written checks, 5 banking days for checks written within Oregon, but outside your local area, and 10 or more banking days for out-of-state checks.

To avoid the growing problem of check scams, wait at least 10 banking days before disbursing funds in any of the following circumstances: (1) the transaction is with a new client or a client you are unsure about; (2) the amount of the check is very large; (especially compared with the extent of legal services provided, if the check is a retainer); (3) the check is from an unknown third party; or (4) any aspect of the transaction raises (or should raise) your suspicions. (To verify that funds have cleared, ask your bank to contact the *issuing bank*.) Keep in mind that drafts or other instruments may take longer than 10 days to process.

For a thorough discussion of banking rules, check scams, and the amount of time that may be necessary for funds to clear, See Sylvia Stevens, "Waiting for 'Go' Dough: A primer on disbursing client funds," Oregon State Bar Bulletin (June 2006), Leonard DuBoff and Christy O. King, "Lawyers Beware: Avoiding the Scams," Oregon State Bar Bulletin (November 2008), Kimi Nam, "Check Scams Target Lawyers," In Brief, no. 106 (November 2008), and Sheila Blackford, "Check Scams Becoming More Sophisticated," In Brief, no. 108 (November 2010).

- ✓ Account to the client for all sums coming into or going out of the trust account that belong or potentially belong to the client.
- ✓ When billing against a retainer or other prepaid fee, your billing statement should reflect withdrawals from trust for fees earned as well as the balance remaining in trust. Your fee agreement should inform clients that prepaid fees held in trust will be applied as earned and reflected on your billing statements.
- ✓ The general rule is that you may withdraw funds from a trust account when they are earned and invoiced, unless you expect the client to dispute the amount due. ORPC 1.15-1(e). However, until the bill is received, the client will be unaware of the amount of the bill. Accordingly, you may want to wait a reasonable period of time – such as 30 days – after invoicing the client before withdrawing earned funds. OSB Legal Ethics Op No 2005-149.
- ✓ Any sums owing to the lawyer on account of legal fees and/or costs advanced should be paid to the lawyer by a check drawn on the trust account and made payable to the lawyer. No funds owing to the lawyer from the trust account should be paid directly to others from the trust account.

(Example: Lawyer's quarterly PLF assessment is due. Client owes lawyer this same sum of money for services performed. Lawyer issues check from trust account to cover the legal services but makes the check payable to the PLF to pay the assessment. PLF will return check to lawyer. A check for funds due the lawyer should be made payable to lawyer, deposited in lawyer's office account, and then a check written from the office account to the PLF in payment of the assessment.)

- ✓ Reconcile the bank statement monthly. Any errors are more easily found if the bank statement is reconciled on a monthly basis against the cash receipt and disbursement journal. The trust account



balances on each client's ledger should also be added together to determine if the client ledgers balance to the receipt and disbursement journal.

- ✓ Use caution when making telephone, electronic, or wire transfers to and from the trust account. These transfers do not usually generate a contemporaneous paper trail of what occurred and may result in the lawyer losing control of what is occurring with the trust account.
- ✓ Take an active part in the maintenance and reconciling of the trust account. Lawyers who leave all of the handling of the trust account (as well as other office accounts) to staff people may find themselves in deep trouble should funds go missing. The bank statement should be delivered unopened to the lawyer's desk. Remember, the lawyer is ultimately responsible for the trust account.
- ✓ "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." ORPC 1.15-1(a).
- ✓ Money paid to a lawyer BEFORE services are rendered must be put in the trust account unless the lawyer and the client have a signed, written agreement which designates the money as earned on receipt. The written agreement must explain that the funds will not be deposited into the lawyer trust account and the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed. (ORPC 1.5(c)(3), amended December 2010). See OSB Legal Ethics Opinion No. 2005-151.
- ✓ A lawyer who receives a fixed fee in advance of performing services and who does not have a signed, written agreement with the client that the fee is earned on receipt, may transfer the funds from trust only upon completion of the agreed services. See OSB Legal Ethics Opinion No. 2005-151.
- ✓ Even a fee designated as a fixed fee, earned on receipt, or a "nonrefundable" fee is subject to refund if the specified services for which the fee was paid are not performed. This is true whether the money has been placed in the trust or general account. See OSB Legal Ethics Opinion No. 2005-151. Whether, or to what extent, a lawyer must refund fees paid in advance when a client terminates the lawyer's services in bad faith near the end of a matter is an open question. OSB Legal Ethics Op No. 2005-151.
- ✓ Use of the term "nonrefundable" should be avoided. Such a designation may be misleading, if not false, in violation of ORPC 8.4(a)(3), which prohibits conduct involving "dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer's fitness to practice law." OSB Legal Ethics Op No. 2005-151.
- ✓ If unclaimed funds remain in the trust account, the lawyer must comply with ORS 98.302-98.436 (Uniform Disposition of Unclaimed Property Act). Effective January 1, 2010, unclaimed funds held in lawyer trust accounts must be reported to the Department of State Lands (DSL), but paid over to the OSB with a copy of the DSL reports. The reporting forms can be found on the DSL Web site at <http://www.oregon.gov/DSL/UP/upforms.shtml>. Forms 1a and 2a must be completed and sent to the DSL with copies of the reports and the unclaimed funds forwarded to the OSB. In no circumstance may the lawyer take these unclaimed funds for his or her own purposes. OSB Legal Ethics Op No 2005-48.

When a check paid out of client funds is not cashed by the recipient, those funds revert to the client and should be reimbursed to the client. You must take reasonable steps to find the client and must maintain reasonable records sufficient to permit the client to make a claim for the return of the property for the period permitted by the Act. One way to avoid this problem is to carefully monitor canceled checks. If a check has not cleared the trust account for two months, track it down immediately. Another solution may be to print "void after 90 days" on the face of the check.



If you can't find the client after holding the sum for two years, you must report it to the DSL and deliver the funds to the OSB.

If a settlement check is made payable to both the lawyer and the client, the lawyer cannot sign the client's name on the endorsement without the client's authorization. In re Maroney, 324 Or 457 (1996) (lawyer disbarred, in part, for signing settlement check without client's knowledge or consent). If the lawyer has a signed fee agreement from the client authorizing the lawyer to take a certain percentage of the settlement for fees, plus costs advanced, the lawyer may return the check to the issuer and request that two checks be issued – one for the lawyer's fees and costs and one made payable to the client only. The lawyer must still comply with OSB Legal Ethics Op No 2005-48 and the Uniform Disposition of Unclaimed Property Act with respect to the client's portion of the settlement. See also OAR 141-045-0031 (3)(d). Instruct your clients to be certain to notify you if their address or phone number changes. If a client will be unavailable during critical periods of time, discuss whether the client should give you a power of attorney to negotiate, settle, and sign documents on the client's behalf.

Pursuant to ORS 98.332, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. Funds deemed abandoned as of June 30 of each year are to be reported to the DSL during the month of October of that same year, although earlier reporting may be allowed upon written request.

The money paid to the bar under the act will be appropriated to the Legal Services program, which funds legal services to the poor statewide. Questions about forwarding abandoned funds can be addressed to the Executive Director of the Oregon Law Foundation, <http://www.oregonlawfoundation.org/contact.html>.

- ✓ Lawyers who accept credit card payments from clients should carefully review OSB Legal Ethics Opinion No. 2005-172. If the bank requires that you designate a single merchant account for *all* credit card transactions and you accept credit card payments for earned *and* unearned fees, your merchant account should be a trust account.
- ✓ When credit card payments for earned fees are deposited into the lawyer trust account, the lawyer must promptly transfer those funds into the lawyer's business account to avoid the prohibition against commingling. *If you accept credit card payments for earned fees only*, designate your business account as the merchant account. This will spare you the extra bookkeeping involved in transferring funds and covering bank fees. OSB Legal Ethics Opinion No. 2005-172.
- ✓ Merchant fees or other credit card charges deducted from the trust account are the lawyer's responsibility. The lawyer must ensure that sufficient funds are deposited or transferred into the trust account in a timely manner to cover these expenses. OSB Legal Ethics Opinion No. 2005-172. Passing the merchant fee on to the client or crediting the client for the net amount of the transaction only, even if the client agrees, may implicate Regulation Z of the Truth in Lending Act, 12 CFR §226. As a result, you may be compelled to offer cash discounts to *all* clients and make specified disclosures to your clients who pay by credit card. See CONSUMER LAW IN OREGON ch 14 (Oregon CLE 1996 & Supp 2000).
- ✓ If a client disputes a fee paid by credit card, the credit card company will "charge back" the payment against the account to which it was originally credited. This means the disputed funds will be deducted from the lawyer's account and given back to the client. If the charge back is against the trust account and you have already withdrawn the credit card payment as an earned fee, other clients' money may be at risk. You are ethically bound to ensure that any charge backs which jeopardize other client funds in trust are promptly covered with your own funds. OSB Legal Ethics Opinion No. 2005-172.

- ✓ ORPC 1.15-2(a) provides that IOLTA accounts shall be operated in accordance with... “[such] operating regulations and procedures as may be established by the Oregon State Bar with the approval of the Oregon Supreme Court.” This provision is new and represents one of several amendments to ORPC 1.15 since its original adoption. In commentary appearing in the 2005 Oregon State Bar House of Delegates Agenda, it is noted “[This] language is added to require compliance with any regulations adopted by the Bar for the operation of trust accounts. In 1989, the Supreme Court issued regulations for the operation of trust accounts, but they do not appear to have been widely distributed and were largely unknown among practitioners. There was also no readily available means for enforcing the regulations. Making clear in the rule that such regulations may be adopted will help to ensure that they are publicized and that members are subject to discipline for noncompliance.” Lawyers would be well-advised to carefully monitor developments in this area.

A complete library of Oregon State Bar Formal Ethics Opinions is available at the Oregon State Bar's Web site, [www.osbar.org](http://www.osbar.org). Also, see the PLF publication, *A Guide to Setting Up and Using Your Lawyer Trust Account*.





# TRUST ACCOUNT RECONCILIATION

## Lawyer Trust Account Reconciliation Sheet

For the Month Ended \_\_\_\_\_

Amounts

Lawyer Individual Trust Account Ledger Balances<sup>1</sup>

Client _____	\$	_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____
Client _____		_____

Attorney Funds for Bank Charges, if any \_\_\_\_\_

1. Total Lawyer Individual Trust Account Ledger Balances \$ \_\_\_\_\_ \*

2. Lawyer Trust Account Journal (or Check Register) Balance \$ \_\_\_\_\_ \*

Bank Statement Balance \$ \_\_\_\_\_

Less Outstanding Checks - \_\_\_\_\_

Plus In-Transit Deposits + \_\_\_\_\_

3. Reconciled Bank Statement Balance \$ \_\_\_\_\_ \*

*\*These amounts (1, 2, and 3) must be identical to each other for the trust account to balance.*

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<sup>1</sup> Note: Need separate line for each person's account as shown on a separate ledger card/page.

## CLOSING YOUR IOLTA ACCOUNT

If you need to close your IOLTA account for any reason, here are some tips to keep in mind:

1. The account should be fully reconciled. Any funds remaining in the account should correspond to specific clients or nominal funds deposited by you to open the account or cover reasonably anticipated bank charges. See [ORPC 1.15-1\(b\)](#) and [OSB Formal Opinion No. 2005-145](#). For instructions on how to reconcile your IOLTA account, see *A Guide to Setting Up and Using Your Lawyer Trust Account*, available on the [PLF Web site](#). Select Books from the PLF under Loss Prevention.
2. Check with your bank to determine if there will be any charges associated with closing the account. If you learn that a closing fee will be assessed, deposit a sufficient amount of your own funds to cover the closing fee. (You are responsible for this bank charge – do not use client funds to cover this fee. See [ORPC 1.15-2\(n\)](#).)
3. Prepare and send final client bills, if necessary.
4. Disburse funds belonging to you (earned fees, reimbursement for costs advanced) and deposit into your business account.
5. Disburse funds belonging to clients. Send to clients with a duplicate copy of their final bill or prepare cover letters transmitting your checks. (Note: Steps 4 and 5 can be combined.)
6. Follow the procedures set forth in the Disposition of Unclaimed Property Act, ORS 98.302-98.436, if you have unclaimed funds in your lawyer trust account. If the unclaimed funds consist of an uncashed witness fee, or other payments not cashed by a third party, the funds revert to the client and should be reimbursed to the client.

Effective January 1, 2010, unclaimed funds held in lawyer trust accounts must be *reported* to the Division of State Lands (DSL), but *paid over* to the Oregon State Bar (OSB) with a copy of the DSL reports. The [reporting forms are available on the DSL Web site](#). Forms 1a and 2a must be completed and sent to the DSL with copies of the reports and the unclaimed funds forwarded to the OSB.

Pursuant to ORS 98.332, funds held by a fiduciary are deemed abandoned if the owner has not accepted payment of the funds, corresponded in writing about the funds or otherwise indicated interest in the funds within two years after the funds are payable or distributable to the owner. **Funds deemed abandoned as of June 30 of each year are to be reported to the DSL during the month of October of that same year**, although earlier reporting may be allowed upon written request.

Questions about forwarding abandoned funds can be addressed to Judith Baker at (503) 431-6326 or [jbaker@osbar.org](mailto:jbaker@osbar.org).

## CLOSING YOUR IOLTA ACCOUNT

(Originally posted at <http://www.osbar.org/IOLTA/info.html> May 2010.) See also [OSB Formal Opinion No. 2005-48](#).

7. Do not close the account until all outstanding checks have cleared.
8. Shred *unused* checks and deposit slips once the IOLTA account is closed. This will prevent fraud and protect you from mistakenly using checks and deposit slips from your closed account.
9. Keep your check register, client ledgers, bank statements, and other records for at least five years: "Complete records of [trust] account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation." ORPC 1.15-1(a).
10. If you are moving your trust account to a new financial institution, ensure that all funds moved from the old account are clearly identified by client and transferred fully to the new trust account.
11. If you open a new trust account, complete and submit the Oregon Law Foundation [Notice of Enrollment](#) within 30 days of establishing the account. [ORPC 1.15-2\(m\)](#).
12. Pursuant to [ORPC 1.15-2\(m\)](#), every lawyer shall certify annually on a form and by a due date prescribed by the OSB that the lawyer is in compliance with Rule 1.15-1 and this rule. (This certification is *in addition to* the Notice of Enrollment that must be filed when a new trust account is established.)

Although no rule specifically requires it, it is prudent to notify IOLTA Compliance when an account is closed between annual certifications. Send notice of the closure of your IOLTA account to:

Attn: IOLTA Compliance  
Oregon State Bar  
P.O. Box 231935  
Tigard, OR 97281-1935

Include your name and contact information, the name of the financial institution, city and state of the financial institution, bank routing number, and Oregon IOLTA trust account number.

13. Complete and submit the Annual Certification of Compliance with ORPC 1.15-2 Interest on Lawyers' Trust Accounts (IOLTA) program when due. The annual form can be found on the [OSB Web site](#) or members can complete the annual IOLTA certification online using the [Member Login](#).

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## Managing Your Practice

### To Catch a Thief:

#### *How a Partner or Employee Can Steal from Your Firm*

By Beverly Michaelis

At a hearing on April 20, 2009, Gene Cauley, a 41 year-old plaintiff's security lawyer from Arkansas, admitted that he misappropriated \$9.3 million in client settlement funds. Cauley told the judge, "I always made a good deal of money in my law practice. When I had some extra money coming in, I took a shortcut." Cauley allegedly used the funds to pay overhead and make business investments.

James Perdigao of New Orleans was more sophisticated in his approach. From 1991 through 2004, he stole \$30 million from his firm and his clients using a variety of methods: doing actual work for clients, but not reporting it to the firm; sending fictitious bills to clients with self-addressed envelopes directed to his attention; and creating phony vendor invoices issued by companies he set up and controlled. Ironically, he spent little, if any, of the money and was a top biller for his firm. Perdigao's scheme unraveled when he took a vacation day and a client's billing inquiry was transferred to the firm's accounting department. In December 2008, he pled guilty to 30 federal felony charges.

Oregon law firms may not have suffered losses in the millions, but they aren't impervious to theft. In the last four years alone, three prominent cases have drawn headlines. In each instance, the losses were the result of embezzlement by a trusted staff member who took \$100,000 (or more) from the employer/firm:

- In 2009, a receptionist/secretary of eight years was sentenced for embezzling more than \$109,000 from a law firm in the Columbia River Gorge.
- In 2007, a Hillsboro office manager/investigator of 15 years was charged with embezzling \$132,000 by using credit cards taken out in the lawyer's name to pay for groceries, haircuts, tanning, cosmetics and trips to Mexico and Las Vegas.
- In 2005, a "long-time, loyal, and trusted employee" of a two-partner firm in the Portland metro area embezzled approximately \$100,000. The firm had borrowed \$50,000 from its credit line to compensate for what the partners thought were uncollected accounts receivable before the embezzlement was uncovered.

Each year the Professional Liability Fund (PLF) receives calls about embezzlement, misappropriation of funds and office theft. Trusted law office staff, attorneys, janitorial help and even clients have been suspect in past incidents. What can you do to protect yourself? The truth is that nothing will stop a thief who is absolutely determined to steal. Although protection from outside risk is beyond the scope of this article, here are a number of precautions virtually every firm can take to minimize the risk of loss internally and to protect clients.



## 30 Ways to Prevent Financial Loss to You or Your Clients

### Checks/Cash

1. Lock up all checks and deposit slips. Store trust account checks and deposit slips separately from your operating account. Not only will this make the thief's job more difficult, it will lessen the chance of mistakenly writing a check on or making a deposit to the wrong account.
2. Limit the number of blank checks on hand at any one time. If your trust account activity is nominal, an order of several hundred checks is an unnecessary liability. The same is true for your operating account. Determine what is reasonable for your office and make the appropriate adjustment in your next check order. If you are concerned about the amount of checks you have on hand now, shred the excess.
3. Never allow checks to be written from your trust account to cash. Pay yourself by writing a check payable to your operating account. Pay costs on behalf of the client directly to the entity in question, i.e., the court, county recorder, sheriff, process server, etc.
4. Always require supporting documentation (invoices or detailed check request forms) when signing checks or authorizing transactions. Question check requests for any vendor whose name you don't recognize.
5. Follow check-writing procedures. Scrutinize everything, including requests for "rush" signatures to meet accounting or court deadlines. Never sign a blank check.
6. Cancel all invoices by writing the date paid, the amount paid, and check number on the bill. A legal secretary/assistant in Oregon successfully embezzled funds by double-paying vendors and cashing the refund checks. Because each invoice appeared legitimate, the lawyer faithfully signed the checks. Canceling invoices takes a bit more time but prevents the same invoice from being presented twice.
7. Limit the amount of petty cash on hand. Establish procedures for reimbursement, require original detailed receipts, and use standardized forms.
8. Start protecting client money the moment you receive it. Take steps to avoid misplacing or misfiling client funds. Immediately endorse and photocopy all incoming checks, money orders, drafts or other instruments using a "for deposit only" endorsement stamp. To protect yourself and your clients, *make deposits daily*. Remember, the sooner you deposit client funds in trust, the more quickly the funds will clear and be available for disbursement. If you have client money on the premises and cannot get to the bank, you must make other secure, appropriate arrangements to protect the funds.
9. If you receive a cash payment, issue a written receipt and deposit the cash immediately. Ideally, staff should not receive cash, but it may be unavoidable in some circumstances. If

possible, have a second person in the office witness the receipt. It is also a good idea to have the client sign the receipt acknowledging the amount paid. *Whatever you do, do not attempt to establish a better paper trail by pocketing the cash and substituting your own personal check for deposit into your account.*

10. If you need to move funds from one account to another, write a check payable to the specific account you wish to transfer funds to and not to your bank. Checks made payable to your bank can be deposited into a thief's personal account.

### **Credit Cards/ATM Cards**

11. If you accept Visa or MasterCard, protect your clients' credit card numbers from being used inappropriately or released inadvertently to unauthorized persons. Limit access to credit information, and retain transaction slips and related records in a secure location.

12. If you received an ATM card when you opened your trust account, cancel your PIN code immediately, cut up the ATM card, and do whatever else is necessary to prevent ATM access to your trust account. Consider doing the same for your operating account.

### **The Paper Trail: Bank Statements, Financial Statements, Audits and Protecting Confidentiality**

13. When the bank statement arrives, do the following:

- Reconcile the account. (The trust account bank statement should reconcile to the check register and client ledgers.)
- Examine transactions for any irregularities. Verify that deposits were made timely and that no deposits were reduced by cash returned to the person making the deposit.
- Examine canceled checks (including endorsements) for forgeries.
- Keep an eye out for counterfeit checks.
- Make note of any missing checks or breaks in check sequence and investigate.
- In a larger firm, an administrator may be responsible for some or all of these duties; however, some mechanism should exist for appropriate review and supervision by the managing partner.

14. Even small offices should have the capability to generate financial statements — an overall picture of the financial health of the firm. Review financial statements, or their equivalent, at least quarterly for any radical changes in expenditures. Look long and hard at categories such as payroll or office expense. In larger offices, embezzlers have been known to create fictitious employees or pay personal bills using the office expense account as a means of siphoning off money.

15. Conduct periodic audits. If you uncover missing or altered documents or "past due" notices for bills that should have been paid, investigate. Amounts credited to clients on billing

statements should match funds collected. Following the paper trail is often the only way to catch a thief.

16. If you destroy or recycle financial records, protect client confidentiality. Take appropriate precautions and dispose of materials securely. ORPC 1.15-1(a) requires that complete records of trust account funds and other property be kept for a period of five years after termination of the representation.

### **Electronic Protections: Online Banking, Accounting Programs, Security, Fraud Detection**

17. Some banks have stopped offering online access to lawyer trust accounts. If your bank offers online banking, think twice before proceeding. This is one more portal to your account you must protect. The convenience may not be worth the potential risk.

18. Know your accounting and check writing programs. Many a lawyer has been lulled into complacency thinking nothing will go wrong because a process is “computerized.” Anyone who has ever experienced data corruption, a virus or a computer crash understands the danger of this attitude. In some instances, computerization can make a firm more vulnerable to theft. If you don’t understand how your program works, you can’t supervise others who are performing accounting duties with it. A solo practitioner learned this lesson the hard way when an employee with a gambling problem successfully embezzled \$40,000 from his accounts. He didn’t understand how to use his accounting software.

19. Protect laptops and desktop computers. Use security measures such as mandatory logins, encryption, or biometrics, which require user authentication through use of fingerprints or other means. Pass phrases (“I like my Gleneden Beach bungalow”) or strong passwords (\$TeriTLawyer67#9) are best and should be changed periodically. Once your hardware is secure, take additional steps to specifically limit access to financial data. (For additional resources on data security, See Robert Ambrogi, “Do-it-Yourself Security: Help Keeping Your Data Safe, OSB *Bulletin* (February/March 2009).

20. Back up *all* data on your computer, especially financial information, on a regular basis and test the integrity of your backups. Always keep a copy of your backup off site. If a thief destroys electronic (or paper) records in an effort to cover his or her trail, data can be restored from the off-site backup. See the resources available on the PLF website, [www.osbplf.org](http://www.osbplf.org). Select Practice Aids and Forms, then Technology.

21. Consider using Positive Pay, an automated fraud detection tool offered by most banks. In its simplest form, Positive Pay matches the account number, check number and dollar amount of each check presented for payment against a list of checks previously authorized and issued by your firm. All three components of the check must match exactly or the check will not be paid.

## **The Human Factor: Check References, Establish Relationships and Policies, Separate Accounting Duties**

22. Know your people. Don't enter into a partnership or office share or hire a bookkeeping service or staff person on blind faith. Run background checks and call references. Once in practice, keep an eye out for unexplained changes in lifestyle, spending habits, or other behavior that might tip you off that something is wrong. Be wary of the partner who never seems to take a vacation, the paralegal who comes in early, stays late, and refuses to delegate anything, or the secretary who repeatedly asks for loans or pay advances. If staff report something unusual or out of the ordinary, listen. Re-read the embezzlement stories at the beginning of this article.

23. Know the people where you bank. Obviously, this won't stop all fraud, but it may help. Talk to the branch manager about your normal banking needs, as well as activity that would be unusual for your type of practice. Ask the bank to notify you of any suspicious teller transactions, such as withdrawing cash from the lawyer trust account or requesting a teller check payable to a mortgage company on a client's conservatorship account. (Both happened to Oregon firms.)

24. Make sure partners and associates are not paid directly by clients. Audit billing statements periodically to make sure they match the actual work done by the partner/associate.

25. Establish clear written policies for employee expense reimbursement. Use standardized reimbursement forms and require detailed original receipts.

26. Separate and rotate accounting duties (accounts receivable, accounts payable, billing, etc.) if staff size allows. Centralized accounting responsibilities make it more difficult to detect theft or other problems. Payroll in particular should be scrutinized by someone other than the person responsible for cutting the payroll checks. One option is to hire a reputable payroll or bookkeeping service. Consult a CPA firm for help with setting up proper controls and accounting procedures.

27. If accounting duties have been delegated to staff, it is critical that a partner take responsibility for reviewing all notices, correspondence or statements received from the firm's bank(s). Instruct staff to date-stamp and deliver bank mail *unopened* to the partner in charge of this review. If you are a sole practitioner with staff, have bank mail sent to your home address. Opening the mail may seem innocuous, but it gives a thief the chance to steal *and the opportunity to cover it up*. A legal secretary in Oregon successfully embezzled over \$20,000 from a conservatorship account partly because of her mail handling responsibilities. She opened the conservatorship bank statements, scanned them in, then hid her theft by editing the PDFs of the scanned statements — not easy to do, but clearly possible.

## **Other Tips**

28. During a three-year period in the 1990s, a legal assistant in North Carolina successfully used a lawyer's signature stamp (and other means) to misappropriate over \$250,000 in client funds. An Oregon paralegal used a signature stamp to file legal documents in court without the lawyer's knowledge. Lock up (or don't use) signature stamps. This convenience poses a substantial risk for you and your clients.

29. Beware of telephone transfers. The lack of a paper trail can cause major headaches at reconciliation time. If you transfer fees for work you have done but not yet billed, you may forget to post the transfer to your records. At the end of the month, it is easy to take the money again, mistakenly believing the fees are still owed to you. This can lead to a trust account overdraft and bar complaint. Authorizing telephone access to your accounts also makes it easier for thieves to steal from your firm and your clients.

30. Purchase adequate insurance coverage: money and securities; valuable papers; business interruption; liability; theft, disappearance, and destruction — for both on and off the premises to protect against third-party loss. Consider fidelity bonds for employees. (Available by name, position or on a blanket basis.) Find out whether your janitorial service is bonded. To cover partners or shareholders or protect against credit card forgeries, purchase separate endorsements. For the best possible protection, combine bonding with the other forms of insurance described above — bonds alone are insufficient unless you can prove the loss was sustained as a result of employee dishonesty.

Above all, use your common sense. The size of your firm will suggest what you can best do to protect yourself and your clients. Adapt the ideas that make sense for your particular setting.

### **ABOUT THE AUTHOR**

*The author is a lawyer and practice management adviser with the Professional Liability Fund.*

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