

**A PRACTICAL  
GUIDE TO  
LAWYER  
TRUST  
ACCOUNTS**

*Provided to you by the:*

**YOUNG LAWYERS SECTION of the  
WEST VIRGINIA STATE BAR**

**In cooperation with the  
WEST VIRGINIA BAR FOUNDATION**

**2008A Kanawha Blvd., East**

**Charleston, WV 25311**

**(304) 343-9823**

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The Young Lawyers Section of the West Virginia State Bar, in cooperation with the West Virginia Bar Foundation, has developed and is providing this brochure to all licensed West Virginia attorneys as an informational and educational tool that will provide direction and assistance in finding the applicable rules and standards for lawyer trust accounts. This brochure should not be a substitution for your own research.

The Young Lawyers Section and the Bar Foundation hope that you will find the brochure useful in establishing and updating your record keeping procedures as you handle your clients' funds.

The Young Lawyers Section and the Bar Foundation wish to express their appreciation to the Office of Disciplinary Counsel and the Lawyer Disciplinary Board for reviewing and making necessary recommendations to improve the brochure.

Feel free to reproduce this brochure in connection with any educational, law office or bar association activity.

Young Lawyers Section  
Catherine A. McGuire  
David S. Hart

West Virginia Bar Foundation  
Thomas R. Tinder  
Executive Director

(Last updated September, 2008)

## **What ethical obligations does a lawyer have with regard to a client's funds?**

When a lawyer is in possession of a client's funds, the lawyer owes the client a fiduciary duty to protect, safeguard and segregate this money from the lawyer's own personal business accounts. As every lawyer knows, a fiduciary is a trustee with scrupulous obligations of trust, good faith and candor.<sup>1</sup>

A lawyer is:

1. obligated to notify the client or a third party of receipt of the money.
2. provide complete accounting of the money to the client or a third party, and
3. disburse all funds to which the client or a third party is entitled.<sup>2</sup>

## **Does this fiduciary duty apply to only money?**

No. Property other than money must be clearly identified as trust property and secured in a safe or safe deposit box.<sup>3</sup>

## **Does this fiduciary duty apply only to clients?**

No. This fiduciary duty applies equally to money and property of non-clients coming into a lawyer's possession in the practice of law.

## **What is a lawyer trust account?**

A lawyer trust account is a checking account or its equivalent that is established by the lawyer to hold a client's money. A lawyer may have one single account to hold all the clients' money or several, according to the particular lawyer's needs. However, all such accounts must be maintained separately from the lawyer's own personal funds and other operating business accounts. Funds that are to be shared by the lawyer and the client should be placed into the trust account until earned. Thus, legal fees which are advanced (commonly referred to as retainers) should be deposited and kept in the trust account until the fee is earned. All payments, retainers and other client monies should go through the trust account to provide an accurate record keeping.

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<sup>1</sup>Rules of Professional Conduct, 1.15(a)

<sup>2</sup>Rules of Professional Conduct, 1.15(b)

<sup>3</sup>Rules of Professional Conduct, 1.15(a)

## **What is the purpose of a lawyer trust account?**

The purpose of a lawyer trust account is to safeguard the lawyer from the commingling of funds and to prevent the appearance of improper behavior of the lawyer.

The account also provides a record-keeping trail of all payments made from client funds. All payments must be made to a named payee. Thus, no checks should be made payable to "cash."

## **Where must this trust account be located?**

Lawyer trust accounts must be maintained in a federally insured financial institution located in the state where the lawyer's office is located or in a separate account elsewhere with the consent of the client or third person.<sup>4</sup>

## **Any special requirements for the account?**

Lawyers must designate these bank accounts as "Client Trust Accounts". Checks on the accounts should be pre-numbered and be imprinted with the title of the account.<sup>5</sup> The top line of the name of the account should be "West Virginia Bar Foundation" and the Bar Foundation's tax identification number --55-0690434-- should be used. The remaining lines on the account should state the lawyer's name and address.

## **Should interest bearing accounts be used?**

YES. All client funds must be kept in an interest bearing federally insured depository. If the lawyer receives client funds that are nominal in amount or are expected to be held for a brief time, these funds should be placed into a pooled account specifically designated for these type of funds which should be made available for withdrawal or transfer upon demand, subject only to any notice period which the financial institution is required to observe by law or regulation.<sup>6</sup>

If the client funds are not nominal in amount or are expected to be held for longer than a brief period of time, the lawyer must set up a separate interest bearing account in the client's name with the interest earned being directed to the client.

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<sup>4</sup>Rules of Professional Conduct, 1.15(a)

<sup>5</sup>Rules of Professional Conduct, 1.15(a)

<sup>6</sup>Rules of Professional Conduct, 1.15(d)

## **Where does the interest go?**

All interest from pooled trust accounts must be deposited with the Interest On Lawyer Trust Account (IOLTA) program. Rule 1.15(f) of the Rules of Professional Conduct sets forth how the money is utilized in providing free civil legal services to low income citizens in West Virginia.

## **What is IOLTA?**

The IOLTA program was established by the Supreme Court of Appeals of West Virginia by Rule 1.15 of the rules of Professional Conduct. The program is administered by the West Virginia Bar Foundation.

## **How does this interest get to IOLTA?**

You as the lawyer are required to direct the financial institution to remit interest, on at least a quarterly basis, net any customary service charges or fees in accordance with the financial institution's standard accounting practice, to the West Virginia Bar Foundation. Along with this transfer, the financial institution should further submit a statement showing the name of the lawyer or law firm on whose account the remittance is sent and the rate of interest applied with a copy of such statement to such lawyer or law firm. A form is attached to this guide for you to easily make this direction to your financial institution. Copies of this notice should be sent to the West Virginia Bar Foundation and the lawyer or law firm. The lawyer or law firm should retain the copy within their personal files.<sup>7</sup>

## **Any other requirements for setting up an IOLTA account?**

You are further required to send a Notice of Compliance with Rule 1.15 to the West Virginia Bar Foundation. A copy is attached to this guide for your use.

You should review your IOLTA account at reasonable intervals to determine whether circumstances warrant further action with respect to the funds of any client.

## **May a lawyer ever retain the interest on a lawyer trust account?**

NO. A lawyer's fiduciary duty prohibits the retaining of any interest on a client's funds.

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<sup>7</sup>Rules of Professional Conduct, 1.15(d)(4)(i) and (ii)

### **Are other financial institution accounts needed?**

YES. A business/operating account is needed in which to deposit the attorney's legal fees and from which to pay operating expenses. Additional accounts are needed when the lawyer serves other fiduciary roles in the representation of estates, trusts and guardianships.<sup>8</sup>

### **Why are fee letters important as it impacts upon record keeping?**

Fee Letters memorialize and serve as a permanent record of the understanding between the parties as to fees and whose property all advance payment of funds are until their use, thereby dictating whether a deposit into a lawyer trust account is mandated.

### **Where are advance legal fees deposited?**

The answer to this question depends upon the fee agreement with the client. If the money is due and owing to the lawyer at the time of the payment, the money should be deposited into the lawyer's operating account. However, if the money must still be earned, the money remains the client's and the money must be placed into the lawyer's trust account.

Pursuant to Rule 1.16(d) of the Rules of Professional Conduct, a lawyer has an obligation to refund unearned legal fees to a client whenever the lawyer's assignment is completed or when the lawyer withdraws or is discharged from employment.

### **What about advance fees and expenses for litigation?**

The answer to this question is the same as advance payment for legal fees. It depends upon the fee agreement between the lawyer and the client and whether the money is to remain the property of the client until payment is required for a specific litigation expense or court fee. If indeed the money is to remain the client's property, the money must be deposited into the lawyer trust account and segregated from the lawyer's personal funds.

### **What if there is a dispute about the distribution of the money by a client or another third party?**

If the lawyer is in possession of any property, monetary or otherwise, in which both the lawyer and client of the lawyer and a third party claim interests, the property must be kept separate and secure until a full accounting and severance of interest.<sup>9</sup>

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<sup>8</sup>Rules of Professional Conduct, 1.15(a)

<sup>9</sup>Rules of Professional Conduct, 1.15(c)

### **What about the undisputed portion?**

The undisputed portion of the money must be promptly delivered to the client or other third party.

### **What if the lawyer has a question about whether monies or property should be held in trust?**

The lawyer may contact the Office of Disciplinary Counsel for informal ethics advice about compliance with the applicable Rules of Professional Conduct.<sup>10</sup> The Office of Disciplinary Counsel can be reached at (304)-558-7999.

### **What accounting books are required?**

No court rule, law or statute requires a specific accounting system. However, a basic trust account system should include the following:

1. A trust receipt journal;
2. A trust disbursement journal;
3. A trust ledger book.

A trust ledger book should contain individual ledger accounts for recording each financial transaction affecting the client's funds. The client's ledger account should reflect the following:

1. The date;
2. Source;
3. Description of each item deposit;
4. Payee;
5. And purpose of each withdrawal.

Computer generated programs are helpful for compiling and recording the information. However, you should always maintain a back-up for emergencies and computer malfunctions.

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<sup>10</sup>Rules of Lawyer Disciplinary Procedure, 2.15



## **How long must I keep these records?**

A lawyer must keep trust account records for a period of five (5) years after the termination of the client's representation.<sup>11</sup>

## **What records should I keep?**

A lawyer should keep the following records:

1. All accounting books for Lawyer Trust Accounts and office operating accounts;
2. Checkbooks, stubs, bank statements and duplicate deposit slips;
3. Client retainer and fee agreements;
4. Statements sent to clients showing disbursement.

## **What is the Client Protection Fund?**

The Client Protection Fund is a fund that has been accumulated by the West Virginia State Bar which provides the opportunity for clients to be reimbursed funds when a lawyer has inappropriately and improperly used the client's money and the lawyer is no longer available. The Fund is available as a last resort and availability is solely at the discretion of the Fund's Board of Trustees.

## **ATTACHMENTS**

1. Notice of Compliance with Rule 1.15
2. Notice of Financial Institution of IOLTA Participation

**NOTE:** Please refer to the Rules of Professional Conduct in the West Virginia State Court Rules for the current version of Rule 1.15.

## **FOR MORE INFORMATION, PLEASE CONTACT:**

The West Virginia Bar Foundation  
2008A Kanawha Boulevard East  
Charleston, WV 25311  
(304) 343-9823  
[www.wvbarfoundation.org](http://www.wvbarfoundation.org)

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<sup>11</sup>Rules of Professional Conduct, Rule 1.15(a)

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**THE PHILANTHROPIC ORGANIZATION FOR WEST VIRGINIA'S  
LEGAL PROFESSION AND JUSTICE SYSTEM**

*Notice of Compliance with Rule 1.15*  
**Interest on Lawyers' Trust Accounts**  
**(IOLTA) Program**

**To:** West Virginia Bar Foundation, Inc.  
 2008A Kanawha Blvd. E.  
 Charleston, WV 25311-2204

Rule 1.15 of the Code of Professional Conduct establishes a comprehensive interest on Lawyers' Trust Accounts (IOLTA) program. The undersigned hereby declares compliance with the Rule by checking one of the following;

1.  I HAVE established the following interest bearing trust account for nominal or short-term client deposits, with interest payable to the West Virginia Bar Foundation, in compliance with Rule 1.15:

\_\_\_\_\_  
 Name of Account Account Number

\_\_\_\_\_  
 Name of Financial Institution

\_\_\_\_\_  
 Mailing Address of Financial Institution

\_\_\_\_\_  
 Telephone Number of Financial Institution:

I have attached a blank deposit slip, or facsimile thereof, for this account.

If this account will be used by more than one lawyer, I have attached a list of all such lawyers, and The West Virginia State Bar membership numbers and signatures of all such lawyers.

2.  I HAVE NOT established an interest bearing account in compliance with Rule 1.15, but deposit and maintain all client trust funds, no matter how nominal or short term, in interest bearing accounts with interest payable to clients.
3.  I HAVE NOT established an interest bearing client trust account as I do not receive, maintain, or disburse client funds in West Virginia.

\_\_\_\_\_  
 Name of Lawyer (please print)

\_\_\_\_\_  
 West Virginia State Bar ID Number

\_\_\_\_\_  
 Signature of Lawyer

\_\_\_\_\_  
 Date

**Please return this to:**

**WEST VIRGINIA BAR FOUNDATION, INC.**  
**2008A KANAWHA BLVD., E.**  
**CHARLESTON, WV 25311-2204**



# IOLTA Interest on Lawyer Trust Accounts

## WEST VIRGINIA BAR FOUNDATION, INC. NOTICE TO FINANCIAL INSTITUTION OF IOLTA PARTICIPATION

TO: \_\_\_\_\_  
Name of Financial Institution

FROM: \_\_\_\_\_  
Name of Lawyer/Law Firm

Address: \_\_\_\_\_  
\_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Date of Authorization: \_\_\_\_\_

Phone: \_\_\_\_\_

I/We have elected to participate in the Interest on Lawyer Trust Account Program (IOLTA) established by the West Virginia Supreme Court allowing a law firm or individual lawyer to deposit client funds in an interest bearing checking account with the interest payable to the West Virginia Bar Foundation, Inc., a qualified charitable organization.

\_\_\_\_\_ Existing Account: Account No. \_\_\_\_\_ I/We presently have a non-interest bearing client trust account which I/we request you convert to an interest-bearing IOLTA checking account bearing the same number, so I/we can continue to use our existing checks. No change is made in the authorized signatures on file with your institution.

\_\_\_\_\_ New Account: I/We do not have an existing account for our client trust funds with your institution and wish to establish an IOLTA account for those funds.

I/We understand that you may require the completion of new signature cards and other documentation. Please advise us what documentation you need in addition to our agreeing to the following terms and conditions governing our IOLTA account.

### Terms and Conditions

1. Interest earned (net of customary service fees or charges) will be remitted at least quarterly to the West Virginia Bar Foundation, Inc., by check mailed to the West Virginia Bar Foundation, Inc., 2008A Kanawha Boulevard, East, Charleston, West Virginia 25311, through a clearance account established at your financial institution, or in any other manner to which you and the Foundation agree.
2. Taxpayer Identification Number certifications (IRS Form W-9s and 1099 information returns), if required, will show the West Virginia Bar Foundation, Inc. Taxpayer I.D. No. 55-0690434, as the recipient of interest.
3. With each remittance of interest to the West Virginia Bar Foundation, Inc., a statement will be forwarded showing: a) the name of the law firm or individual lawyer's trust account on which the interest was earned, and, b) the rate of interest and the amount of interest earned. If your institution has IOLTA accounts for more than one participant in this program, you may find it more convenient to make a single remittance for all at the same time, but you must ensure that the statements applicable to all participants are forwarded at the same time so the Foundation can determine the exact allocation of the lump sum payment among the firms involved.
4. The law firm or individual lawyer in whose name this account is carried will continue to receive a regular monthly statement for this account. Any questions should be directed to the IOLTA Program, West Virginia Bar Foundation, Inc., 2008A Kanawha Boulevard East, Charleston West Virginia 25311, telephone 304-343-9823.

\_\_\_\_\_  
Signature of Authorized Party

\_\_\_\_\_  
Type/Print Name of Authorized Party