TRUST ACCOUNT MANAGEMENT FOR GEORGIA ATTORNEYS

LAW PRACTICE MANAGEMENT

A MEMBER SERVICE OF THE STATE BAR OF GEORGIA

DISCLAIMER

<u>NOTE:</u> THIS IS A GENERAL OVERVIEW DESIGNED TO ANSWER COMMONLY ASKED QUESTIONS. IT IS NOT EXHAUSTIVE AND IT DOES NOT ATTEMPT TO COVER EVERY SITUATION OR EVERY RULE RELATED TO ATTORNEYS' TRUST ACCOUNTS IN GEORGIA.

<u>PLEASE ALSO NOTE:</u> WHILE ALL SUGGESTIONS GIVEN IN THIS DOCUMENT CONSTITUTE CURRENTLY ACCEPTED PRACTICES, THE SECTIONS REGARDING NSF CHECKS AND THE REQUIREMENT THAT ACCOUNTS BE SET UP IN AN APPROVED BANK RELY ON THE GEORGIA RULES OF PROFESSIONAL CONDUCT WHICH TOOK EFFECT JANUARY 1, 2001.

This handbook contains legal information, not legal advice. While the State Bar will make every effort to update the manual as necessary, it is the responsibility of the lawyer to make sure that they are following the most current version of the Rules of Professional Conduct. Nothing contained in this handbook is intended to address any specific inquiry, nor is it a substitute for independent legal research to original sources or for obtaining the advice of legal counsel with respect to legal problems.

The State Bar's rules regulating trust accounts are attached to provide further guidance. If you have an ethical question to which you cannot find an answer after reading this information, please contact the Ethics Helpline at 404-527-8741, 800-682-9806 or log into the member portal to submit your question by email before taking any action.

If you have a question concerning the mechanics of trust account setup or bookkeeping, please contact the Law Practice Management Program at 404-527-8770 or 800-334-6865 ext. 8770.

If you have a question concerning the Georgia Bar Foundation's IOLTA program, please contact the Foundation at 404-588-2240.

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Selected portions of this handbook were adopted, adapted, and/or reprinted from the materials originally authored by the following jurisdictions with their permission:
The State Bar of Arizona, Client Trust Accounting for Arizona Attorneys, 2010 (For the current online version of the Arizona Handbook, please go to: https://www.azbar.org/for-lawyers/lawyer-regulation/resources/trust-account-manual/.

The North Carolina State Bar, *Lawyer's Trust Account Handbook*, (2017) in Section III, Pages 12-16, Section V, Pages 22-32, Appendix D Pages 73-76 and 82-91. (For the current online version of the North Carolina *State Bar Lawyer's Trust Account Handbook*, please go to: https://www.ncbar.gov/media/283997/trust-account-handbook.pdf.)

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INTRODUCTION

On a daily basis, a lawyer in private practice will receive, hold, and disburse money that belongs to clients and to third parties. Millions of dollars flow through the hands of lawyers while serving clients—making the handling of client funds one of the most significant fiduciary obligations of lawyers to their clients. To reduce the possibility of theft, misappropriation, or mishandling of client funds, the State Bar of Georgia established trust accounting standards in Rule 1.15 I, II, and III of the Rules of Professional Conduct and rule allowing Trust Account Overdraft Notification Program.

This handbook explains the requirements for segregating, safekeeping, and recordkeeping for client funds. The purpose of the handbook is to answer questions about establishing a trust account, deposits and disbursements from a trust account, and record keeping for a trust account. If the handbook fails to answer your specific question, please contact the State Bar Ethics Helpline for further assistance at 404-527-8741 or 800-334-6865 ext. 8741.

SECTION I: TRUST ACCOUNT BASICS

A. Trust Accounts: What Are They and How Many Do You Need?

What is a trust account (escrow account)?

A trust account is a bank account maintained incident to a lawyer's law practice in which the lawyer holds funds in a fiduciary capacity on behalf of or belonging to a client. *See* Rule 1.15(I)(a). Lawyers in Georgia tend to use both the terms "attorney trust account" and "attorney escrow account", but we feel "trust account" is a better term since "escrow account" has a specific meaning related to real estate practice and may be confused with other types of accounts that can legitimately be set up by real estate and other professionals. *See* Rule 1.15(III)(b).

What types of funds are placed in a trust account?

Typical funds placed in a trust account include earnest money or down payments on loan closings, settlement proceeds or damages payments that have not yet been disbursed to the client or creditors, and advances that the client has given you against future litigation costs.

Does it have to be an interest-bearing account?

Yes. The interest may be payable to the client or payable to the Georgia Bar Foundation, depending on the type of trust account (IOLTA or non-IOLTA) that has been set up.

Who defines "short term" or "nominal"?

You do, based on your own judgment of what would be best for your client. Remember that you or your client will be responsible for all account charges for a non-IOLTA account, and depending on if it's a low-interest rate, a deposit might have to be quite large to offset the cost of setting up and maintaining the account. You must take such things into consideration when deciding whether or not to set up a separate account. The lawyer's determination that these funds are nominal or short term is not a basis for discipline. See Rule 1.15(II)(c)(3).

Are there any situations where I or my firm can keep the interest earned on a trust account?

Absolutely not.

What about property that isn't money?

If you keep property in trust for a client or in any other fiduciary capacity, like potential exhibits in litigation, securities, or personal property as surety for payment of your fees, you

must also provide for its safekeeping. See Rule 1.15(II)(a). A safe deposit box is the best means of doing this.

Who must have a trust account?

Any lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts. *See* Rule 1.15(II)(a). Lawyers who do not receive funds belonging to or on behalf of clients are not required to have a trust account. If you never receive client or other fiduciary money or property that you must keep safe – if, for example, you are a government lawyer—then you may not need to set up a trust account. But if you ever have client or fiduciary funds, you must set up an account to hold them. You cannot argue you "rarely" receive money in trust, you have no need of a trust account.

How many trust accounts does a lawyer need?

Generally speaking, a lawyer needs only one trust account to handle monies received in trust which are either nominal in amount or held for a short period of time. Within this common account—an IOLTA account—the funds of many clients may be placed in the account so long as adequate records are kept to identify the funds of each client. *See* Rule 1.15(II)(b). If desired, a lawyer may have multiple trust accounts for administrative purposes. For example, lawyers often have trust accounts for real estate transactions which are distinct from the trust accounts used for other client matters.

Does each lawyer in a firm need a separate trust account?

No. Each lawyer in a firm may ethically use the firm's trust account so long as adequate records of the funds of each client are maintained. However, multiple accounts are permissible. A lawyer may personally maintain several trust accounts if he or she desires. See Rule 1.15(II)(a) and Rule 1.15(II)(b).

Is a lawyer ever required to establish a trust account for one client, one transaction, or a series of integrated transactions?

Yes. The size of the deposit or the length of time the deposited funds are to be held could be such that a prudent person acting in a fiduciary capacity would be expected to invest the funds on behalf of the beneficiary, and a lawyer receiving funds under such circumstances would have corresponding obligation to deposit the funds in a separate "interest-bearing or "dedicated trust account." Rule 1.15(II)(c)(1). Rule 1.15(II) Comment [3] contains a list of factors to be considered when determining whether there is a duty to deposit funds into a

separate interest-bearing dedicated trust account. Any interest generated is the property of the client. *See* Rule 1.15(II)(c).

What sort of bank account must be maintained?

Since a lawyer has an ethical obligation to pay or deliver client funds promptly as instructed by the client, trust accounts are generally demand accounts with check-writing privileges. Pursuant to an order of the Supreme Court of Georgia, beginning in 1983, every trust account must be an interest-bearing account, and the establishment of any such trust account must be reported to the Interest on Lawyer's Trust Accounts/Georgia Bar Foundation program. *See* Rule 1.15(II)(2)(iv) and Part XV-Georgia Bar Foundation, Rule 15-101 (Bank Accounts). The interest earned on such accounts is remitted by the depository bank directly to the Georgia Bar Foundation which subsequently distributes the funds in the form of grants to persons or entities for various public purposes in accordance with the rules of GA IOLTA.

B. Opening a Trust Account

How to Set Up a Trust Account

To set up your trust account, you will need to go to an "approved institution" and present them with one piece of paper—the Notice to Financial Institution form. The Bar publishes a list of institutions that have met these requirements on the website at https://www.gabar.org/attorneyresources/ioltaapprovedbanks.cfm. If no bank in your area meets the requirements, see Rule 1.15(III)(c)(1)(ii). Note: it's usually a good idea to go to a main office and not a small branch office to set up your account. In the main offices, you are more likely to find someone who is used to handling attorney trust accounts. If you are setting up an IOLTA account, we suggest you provide the bank with the Notice to Financial Institution *[Appendix D4]*; this will give them the correct tax I.D. number (580552594) to place on the account. If you are setting up a non-IOLTA trust account to benefit a particular client, you will want to provide the bank with your client's tax I.D. number.

If you have several accounts at the same bank, you may want to check your first statement to make sure that the IOLTA account has been set up properly, the account properly designated, and that the correct tax I.D. number is on the account. Make sure you understand the bank's policy for dealing with service charges on IOLTA accounts as well. Some banks will waive the fees or deduct them from interest paid to the Foundation; others charge fees to the attorney or charge the attorney for the difference between the earned interest and the amount of the fee. In addition, some banks will take the charges directly out of the trust account, while others assess the firm's operating account for the IOLTA charges so as not to affect the trust account balance.

If at all possible, try to arrange for your bank to withdraw any fees from an account other than the trust account. If the bank takes its charges out of your trust account, you will need

to (1) have a small cushion of your own funds in the account to cover expenses and (2) check the amount and reconcile on a monthly basis. See Rule 1.15(II)(b). Having sufficient personal funds in your trust account to cover service charges or extraordinary expenses is not considered a violation of the rules against commingling funds.

If you are closing one IOLTA account and opening a new account at another bank, then it is a good idea to inform the Foundation that the old account is being closed.

Choosing a Bank for Your Trust Account

There are several factors you will want to take into consideration here. First of all, if you are a real estate attorney and do a lot of closings on behalf of a bank, the bank will probably want you to place your IOLTA account there for the sake of convenience. (This can result in your having multiple IOLTA accounts—don't worry, that's OK.) You may also have a banking relationship of long standing with a particular institution and wish to keep all your business there.

That being said, there are still some practical reasons for not having your trust account and any personal or general business accounts at the same bank. The primary reason is the possibility of error. If you have multiple accounts, you, your staff, or the bank may occasionally confuse one for the other. You or your staff can also confuse a deposit slip for one account with a deposit slip for another, or a checkbook from the trust account for one from the office account. And last, many banks have a policy of automatically withdrawing funds from any account with your name on it to cover shortages in another. For example, you could overdraw your office account, and the bank, in an attempt to be helpful, might withdraw funds from your trust account to cover the overdraft. Usually, this is only a problem if you haven't labeled your trust account properly or if it's a non-IOLTA account, but you may want to discuss this with your bank if you have multiple accounts there.

Labeling a Trust Account

A trust account must be clearly labeled and designated as "Attorney Trust Account," "Attorney Escrow Account" "IOLTA Account" or "Attorney Fiduciary Account" and all deposit slips and checks drawn on the account must be so identified along with the name of the attorney or law firm responsible for the account. *See* Rule 1.15(III)(b).

For instance, an appropriate title for a general trust account might be "Attorney Trust Account of John Smith" or "Smith, Jones & Williams Attorney Escrow Account." *[For an example of a properly labeled general trust account check, see D6.]* Although the tax identification number of GA IOLTA will be assigned to all general trust accounts, the trust account checks should bear the name assigned by the firm to the account.

Each account in which funds are held by a lawyer pursuant to the lawyer's service as a trustee, guardian, personal representative, attorney-in-fact, or escrow agent must be appropriately labeled as a fiduciary account unless such funds are held in a general trust account. For example, an appropriate title for a fiduciary account might be "Attorney Fiduciary Account for the Estate of John Doe." Similarly, a dedicated trust account that holds the funds of one client must be properly labeled as a trust account (e.g., "Attorney Fiduciary Account for the Benefit of Jane Smith").

Trust Account Checks

All items drawn on the trust account should indicate client name, file number, or other identifying information of the client from whose balance the item is drawn. Therefore, any check written for the trust account must have client reference data on the check. The client's name or identification number may appear on the check stub, check register, journal, etc.; however, this information must also appear on the face of the check. If a trust account software program or check-writing program cannot record this reference data on the check, it should be manually recorded.

If a check drawn on the trust account includes payment of fees or cost reimbursement for more than one client, the check should be manually recorded. For example, a lawyer may send one check to a doctor who has treated multiple clients. Be sure you have clear records of the amount paid on behalf of each.

Is there a required format for trust account and fiduciary account checks?

No. When opening a general trust account, dedicated trust account, or fiduciary account the American Bar Association recommends that you use business-sized checks (longer than six inches) that contain a field called an "Auxiliary On-Us" field in the MICR (magnetic ink character recognition line of the check. The special check format prevents conversion of a check into an electronic transaction through the automated clearinghouse network for converting checks drawn on consumer accounts to which most financial institutions belong. If a check is converted, the paper check is destroyed, thereby possibly eliminating a lawyer's record of the transaction. [*For an example of a business-sized trust account check, see Appendix D5*].

Proper Signatories

Checks drawn on a trust account may be signed by lawyers and supervised nonlawyer employees. However, a nonlawyer employee should have signatory authority if he or she is responsible for performing monthly or quarterly reconciliations. Additionally, prior to exercising signature authority, it is recommended that a lawyer or supervised nonlawyer take a trust account management CLE course.

A lawyer can designate anyone they choose to be the signatory on their trust account. because of the weighty responsibility the lawyer has towards his or her client and that client's property, coupled with the likelihood of severe discipline if money is stolen from the account, it is not usually desirable to have anyone but the partner or managing partners sign the trust account checks. If you need to have an alternate signatory because you are frequently out of the office, then at least take the precaution of having all trust account statements delivered to your desk unopened each month.

Subject to what is noted above, a lawyer is still professionally responsible for the actions of those under his or her supervision.

C. Abandoned or Unclaimed Funds/Property

If a lawyer holds funds in a trust account and does not know either the identity or the location of the owner of those funds, what should be done with the money?

A lawyer should review FAO 98-2 to determine how to dispose of unclaimed escrow funds in Appendix B.

D. Closing a Trust Account

If you have an account that you no longer use, but funds remain in the account, then either transfer the funds from the old account into a new account or disburse the funds to the owners as shown on the client ledgers for the account. Any funds on deposit for a client who is no longer represented by the lawyer or the law firm should be disbursed to the client. If transfer to a new account is appropriate, you must document the transfer of the funds from the old account to the new account and accurately note the deposit of funds on the appropriate clients' ledgers. If any interest was credited to the dormant account, this money should be sent to the GA IOLTA Program. If there are unclaimed or unidentified funds in the account, see the discussion of abandoned funds in the preceding pages. *[To see how to properly close a trust account, see checklist in Appendix D15].*

Law Firm Dissolution and Withdrawal from Practice

The property of clients entrusted to the lawyer or law firm should be protected during the dissolution of a law firm. GRPC Rule 1.16(d) states:

> "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned."

For information on the wind down of a missing, incapacitated, deceased, or disciplined lawyer's sole practice, refer to Rule 4-228. Receiverships and the list of resources below on winding down a law practice:

- *I Never Saw It Coming…* by Paula Frederick (*Georgia Bar Journal,* August 2006, Vol. 12, No. 1, page 50)

- *This is Your Wake-Up Call* by Paula Frederick (*Georgia Bar Journal*, December 2014, Vol. 20, No. 4, page 35.)

- Planning for the Unexpected: Closing Your Law Practice in the Event of Your Absence, Disability or Death*,* Involuntary Closing, State Bar of Georgia, Law Practice Management Program (https://www.gabar.org/committeesprogramssections/programs/lpm/ClosingaLawPractice.cfm)

- *Sudden Health Crisis Succession Plan: What to Do if Your Lawyer Has a Sudden Health Crisis* and *Create a Sudden Health Crisis Succession Plan*, State Bar of Georgia, Senior Lawyer's Committee, https://www.gabar.org/attorneyresources/succession_designatedattorney.cfm

- *Notice of Designated Attorney Form* – Attorneys can nominate a State Bar of Georgia member(s) to assist with coordinating the return of client files and property in the event they become an "absent attorney" as defined under Rule 4-228(a) of the Georgia Rules of Professional Conduct. Members can visit the bar website at www.gabar.org to access form through their online member account under "Edit Personal Preferences".

SECTION II: FUNDS GO IN

A. What Goes Into a Trust Account?

Any money the lawyer receives from or on behalf of a client, or while serving as a professional fiduciary should be placed in the trust account. This includes funds received by the lawyer as an escrow agent. *Rule 1.15(I) Comment [1].*

What about funds received by a lawyer acting as a court-appointed fiduciary or pursuant to appointment in some specific trust item?

A lawyer serving in such a fiduciary role must segregate fiduciary property from his or her personal property, deposit such funds in a designated fiduciary account, maintain the minimum financial records required for a fiduciary account, and instruct any financial institution in which fiduciary property is held to notify the Office of the General Counsel of the State Bar of Georgia of any negotiable items drawn on the account which are presented for payment against insufficient funds. A fiduciary account maintained by the lawyer as executor, guardian, trustee, receiver, agent, or in any other fiduciary capacity requires that the lawyer shall follow GPRC 1.15 Rules(I-III) when maintaining a fiduciary and general trust account.

Must a lawyer deposit very small sums of money received from a client into a trust account?

Yes. A lawyer who receives from his or her client a small sum of money (for example, money which is to be used to pay the cost of recording a deed) must deposit that money in a trust account.

May a lawyer who receives a lump sum payment in advance, which includes the costs of litigation, deposit the payment in his operating account as fees?

No. Where a lawyer receives a lump sum payment in advance that includes the costs of litigation, the portion representing the costs must be deposited in the trust account. Some of the money collected by the firm as "fees" is actually entrusted funds intended to defray the costs of litigation. The rules require that funds received in the fiduciary capacity, however characterized, be directly deposited into a trust account. *FAO 91-2 [Appendix B].*

B. What Does Not Go in the Trust Account?

May a lawyer deposit his or her own funds in a trust account?

No funds belonging to the lawyer may be deposited in the trust account except such funds as are necessary to open or maintain the account, or pay service charges, or are funds belonging

in part to a client and in part presently or potentially to the lawyer, such as where a deposited item represents both the client's recovery and the lawyer's fee. In such a case, the portion of the funds belonging to the lawyer must be withdrawn from the trust account as soon as the lawyer becomes entitled to the funds unless the right of the lawyer to receive that portion is disputed by the client, in which event the disputed portion must remain in the trust account until the dispute is resolved. See Rule 1.15(I)(d).

Should retainers be deposited in the trust account?

See FAO 91-2 and refer to the article "Only in Georgia" (Paula Frederick, *Georgia Bar Journal*, Vol. 25, No. 6, pg. 58).

C. Depositing Funds into a Trust Account

Example: Depositing a Mix of Trust and Non-trust Funds

A lawyer advises a client that a domestic matter will involve a legal fee of $150.00, earned upon receipt, as agreed up front, a recording fee of $30.00, and a sheriff fee of $4.00, totaling $184.00.

Alternative (a): The client presents the lawyer with a check for $184.00. The check is deposited into the trust account. A check for $150.00 is then disbursed to the lawyer and the remaining fees are paid when required.

Alternative (b): The client pays with two checks, one for $150.00 and another for $34.00. The $34.00 check is deposited into the trust account. The $150.00 is deposited in the firm operation account or otherwise paid to the lawyer.

Alternative (c): The client pays in cash. $34.00 is deposited into the trust account. The remaining cash is deposited in the firm operating account or otherwise paid to the lawyer.

If the lawyer previously advanced the recording and sheriff fees, all funds received from the client would in each instance be deposited into the office account.

If, however, a check submitted by a client contains any funds that are to be used to pay client expenses in the future, the check must be deposited into the trust account intact. Some lawyers ask the bank to split a client's check at the time of deposit (the cost portion is deposited in the trust account and the fee portion is deposited in the office account). This violates Rule 1.15 (II)(b). *[For a Sample Deposit Slip, see Appendix D7 and D8.]*

Credit Card Payments from Clients

Lawyers may accept payment of legal fees by electronic transfer and credit card. Deposits to the trust account by credit card are permitted, while complying with all the legal and ethical requirements requiring them to separate client and third-party funds from the lawyer's operating funds. *[See Rule 1.5-Fees].*

Client funds cannot be deposited by credit card to the office operating account and then transferred to the trust account. A lawyer must arrange to have all credit card payments deposited into the trust account if the lawyer's bank cannot or will not distinguish between the operating account, into which earned fees are deposited, and the trust account, into which entrusted funds are deposited. However, there are several credit card processing solutions like Headnote, LawCharge, LawPay, LexCharge, etc., designed for attorneys and the legal industry to help keep them in compliance. Visit the online vendor directory for a list of credit card processing vendors that offer discounts to members under *Attorney Resources/ Discounts for Attorneys/Vendor Directory: Law-Related Products and Services* or https://www.gabar.org/attorneyresources/discountsforattorneys/index.cfm.

Cash Payments

If you have required payment of costs in advance costs are less, you must refund the overpayment to the client…no matter how small the amount. Rule 1.15(II)(b) requires client funds to be promptly deposited in a lawyer trust account and Rule 1.15(I)(a) requires a lawyer to maintain a complete record of all client funds received by the lawyer. Therefore, cash refunds must be recorded on the client's ledger card and deposited in the trust account. The receipt from the Register of Deeds should also be retained.

SECTION III: FUNDS GO OUT

A. What Disbursements are Inappropriate?

Immediate Disbursement

Disbursement should not be made until the funding check clears. The risk that a check will not clear may not be borne by other client funds in the trust account.

Bank Charges

Some lawyers inadvertently pay the bank service charges for check printing, wires, returned checks, etc., from client funds. This occurs when a bank debits the trust account for a service charge. Rule 1.15(II) Comment [1] permits a lawyer to deposit in advance sufficient personal funds in the trust account to pay for service charges, thereby avoiding the use of client funds. When this is done, a record (i.e., ledger card) should be maintained concerning the deposit and disbursement of these funds. Some lawyers direct their bank to bill the office operating account for service charges on the trust account if both accounts are maintained at the same bank. On occasion, the bank will incorrectly debit the trust account. If the trust account is incorrectly charged, the error may result in client funds being used to pay the charge and the trust account must be reimbursed promptly.

Outstanding Checks

In light of evolving banking practices and legal requirements, it is imperative for lawyers to stay abreast of the latest developments in managing trust account checks. This updated trust account booklet aims to provide comprehensive guidance on best practices for handling trust account checks, including addressing issues related to uncashed checks, stop payments, and escheat requirements.

- **Void After 90 Days Notation:** While the practice of printing "Void after 90 Days" on trust account checks remains a common strategy to encourage timely cashing, it's essential to recognize that this notation alone does not guarantee the bank's compliance. Lawyers should communicate with their banks in advance to understand their specific policies regarding post-dated checks and ensure clarity on expectations.

- **Communication with Recalcitrant Payees:** In instances where payees fail to negotiate trust account checks within a reasonable timeframe (typically six to nine months), proactive communication becomes paramount. Lawyers are advised to utilize certified mail when attempting to contact such payees, ensuring proper documentation of efforts made to facilitate check negotiation.

- **Stop Payments:** In situations where payees cannot be located or fail to respond within a reasonable period, lawyers may opt to place a stop payment order on the check. However, it's crucial to understand that stop payments do not guarantee non-honor of the check, as certain checks may still be cashed despite the request. Lawyers should familiarize themselves with their bank's procedures for stop payments and act accordingly.

- **Understanding Bank Procedures:** To navigate trust account management effectively, lawyers must have a comprehensive understanding of their bank's procedures and policies. This includes familiarity with protocols for stop payment orders, check negotiation, and any other relevant matters. Regular communication with the bank can facilitate a smoother resolution of trust account issues.

- **Recording Return of Funds:** After initiating a stop payment on a check, it's essential to accurately record the return of funds on the client ledger's card. This ensures transparency in accounting and helps maintain clear records of financial transactions.

- **Issuing Second Trust Account Checks:** There are no explicit restrictions on issuing a second trust account check if necessary, provided that proper documentation and accounting procedures are followed.

- **Escheat Requirements**: In cases where lawyers believe that funds have been abandoned, adherence to escheat requirements outlined in relevant regulations is paramount. Lawyers must follow established procedures to transfer unclaimed or abandoned funds to the appropriate state authorities, as outlined in FAO 98-2.

By implementing these guidelines and staying informed about evolving practices and legal requirements, lawyers can effectively address issues related to uncashed trust account checks while upholding fiduciary responsibilities and maintaining compliance with regulatory standards.

May a lawyer unilaterally decide to use funds held in trust to pay his or her legal fees or the claims of other creditors?

No. As the client's agent and fiduciary, the lawyer has an obligation to pay or deliver the funds in accordance with the client's most recent instructions. Unless the lawyer is authorized by the client to pay a particular charge or claim, the lawyer may not disburse trust funds for those purposes. See Rule 1.15(I)(b)(2)(iii) and Comments [2-3A].

What if the lawyer has an interest in funds received in settlement of a claim or in satisfaction of a judgment?

All funds received for a client or in a fiduciary capacity must be deposited into the trust account intact. If an item represents funds belonging in part to the client and in part to the lawyer, the portion belonging to the lawyer must be withdrawn when the lawyer becomes entitled to the funds unless the right of the lawyer to receive the portion of the funds is disputed by the client. In that case, the disputed portion must remain in the trust account until the dispute is resolved. *Rule 1.15(I)(d) and Comments [2-3A].*

What happens if a client directs a lawyer not to pay medical bills incident to the settlement of tort claim?

Rule governs *Rule 1.15(I)(b)(1)* says a lawyer can't disregard a third person's interest if the interest's by lawyer is based on 1) a statutory lien, 2) a trial judgment or 3) a written agreement. It does not have to be a statutory lien against the funds in the hands of the lawyer.

Is it improper for a lawyer to disburse settlement funds conditionally delivered by opposing counsel before satisfying the settlement conditions under which the lawyer received the settlement check?

Yes. When a lawyer accepts conditional delivery of settlement proceeds from opposing counsel, the lawyer implicitly agrees to abide by the prescribed conditions. While it may not be a violation of Rule 1.15, any deliberate failure to abide by those conditions, such as by disbursing the proceeds without first having obtained a signed release, would be dishonest and violative of Rule 8.4(a)(4), which prohibits "conduct involving dishonesty, fraud, deceit, or misrepresentation."

Is it ever proper for a lawyer to make disbursements from the trust account from provisionally credited but uncollected funds represented by a deposited item which has not yet cleared banking channels?

FAO 13-1 allows lawyers to disburse provisionally credited but uncollected funds from the trust account, but only in consequence of trust account deposits in the form of cash, wired funds, or certain types of negotiable items specified in the Good Funds Settlement Act (O.C.G.A. §44-14-13(a)(10)). Disbursements against provisionally credited funds should be made only where the lawyer reasonably believes that the underlying deposited items is virtually certain to be honored when presented for collection, and the lawyer has sufficient assets or credit to fund any outstanding trust account checks which may be dishonored. The

lawyer should use caution when disbursing against provisional credit due to the recent increase of counterfeit check scams.

What should a lawyer do if he or she properly disburses against a provisionally credited item which is ultimately dishonored?

Upon learning that a deposited item has been dishonored, the attorney must act immediately to protect the property of the lawyer's other clients by personally paying the amount of the failed deposit or by securing or arranging for payment from sources available to the lawyer other than the trust funds of other clients. A lawyer should take care not to disburse against uncollected funds in situations where the lawyer's assets or credit would be insufficient to fund the trust account checks in the event that a provisionally credited item is dishonored.

B. Overdrafts and Checks Presented Against Insufficient Funds

What should a lawyer do if his or her trust account check bounces?

Theoretically, of course, this should never happen. As a practical matter, however, mistakes do happen and bank errors or administrative snafus within the lawyer's own office can result in an item being returned for insufficient funds. If a trust account check is dishonored, the lawyer should immediately ascertain the nature of the problem and promptly correct it, even if this requires a deposit of the lawyer's own funds into the trust account. Under no circumstances should the lawyer allow the trust funds of another client to be used impermissibly. Reimbursement of the trust account should NOT be held in abeyance pending resolution of the error (e.g., by locating the party responsible for a bad check). Any delay in reimbursing the account may result in the use of other client funds to cover the shortage, or in unnecessary bounced check fees.

Finally, the lawyer should immediately document the problem and any corrective action taken in a memorandum for his or her own files.

Must a report be made to the State Bar?

No. The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional errors. The provision merely intends that the Office of the General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken. *See* Rule 1.15(III), Comment 3.

C. ACH Transactions

ACH transactions, as a direct payment from a trust account, may be demanded by clients or third parties (e.g., the registrar of deeds or clerk of court) to increase the

efficiency of the collection and return process. For this reason, the rules do not prohibit authorized ACH transactions initiated by the lawyer. However, it is important that the lawyer expand all authorizations to transfer or disburse funds from a trust account by retaining the following:

- all instructions or authorizations to transfer, disburse, or withdraw funds from the trust account (including electronic transfers or debits); or

- a written or electronic record of any such transfer, disbursement or withdrawal showing the amount, date, and recipient of the transfer or disbursement; and

- in the case of a general trust account, also show the name of the client or other person to whom the funds belong.

SECTION IV: RECORDKEEPING

A. How to Maintain Trust Account Records and Accountings

A lawyer maintaining a trust account or a fiduciary account at a bank must keep the following records:

1. A record of receipts. This can be a journal, file of receipts (including wire and electronic transfer confirmations), file of deposit slips, or a collection of checkbook stubs. The record of receipts must list the source, client, and date of the receipt of all deposited funds. *[For examples of properly composed deposit slips, see Appendix D7, D8)].*

2. All canceled checks or other items drawn on the account, or digital images. These items are furnished by the bank, showing the amount, date, and recipient of the disbursement, and, in the case of a general trust account, the client name, file number, or other identifying information of the client from whose balance each item is drawn, provided, that digital images be legible reproductions of the front and back of the original items. There should be no more than six images per page and no images smaller than 1-3/16 x 3 inches.

3. All instructions or authorizations to transfer, disburse, or withdraw funds from the account (including electronic transfers or debits) or a written or electronic record of any such transfer, disbursement, or withdrawal. The record will need to show the amount, date, recipient of the transfer or disbursement, and the client to whom the funds belonged.

4. All bank statements and other documents received from the bank with respect to the trust account, including, but not limited to notices of return or dishonor of any item drawn on the account against insufficient funds.

5. For a general trust account, a ledger containing a record for each person or entity from whom or for whom funds were received which shall accurately maintain the current balance of funds held for that person or entity. *[For examples of general trust account ledgers, see Appendix D2, D9.].*

6. All records pertaining to the quarterly and monthly reconciliations of the general trust account with the statements provided by the bank. Each reconciliation report shall show all of the following balances and verify that they are identical:

(A) The balance that appears in the general ledger as of the reporting date;

(B) The total of all subsidiary ledger balances in the general trust account, determined by listing and totaling the positive balances in the individual client ledgers and the administrative ledger maintained for servicing the account, as of the reporting date; and

(C) The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and subtracting outstanding checks and other deductions from the balance in the monthly statement.

7. All records that may be subject to audit for cause by the State Bar of Georgia; and such records shall be produced for inspection and copying in Georgia upon request by the State Bar.

8. Any other records required by law to be maintained for the trust account.

How long should you keep records?

A lawyer must retain trust account and fiduciary account records for the six-year period after termination of the representation. Rule 1.15(I)(a). *[Refer to "File Retention: What's the Ethical Thing to Do?", Georgia Bar Journal, October 2001, Vol. 7, No. 2, page 36.]*

May trust account and fiduciary account records be kept electronically?

Yes. The retention of electronic records may be created and updated where they can be printed on demand, regularly backed up by an appropriate storage device. Electronically created reconciliations and reviews that are not printed must be reviewed by the lawyer and electronically signed using a "digital signature" as defined in 21 CFR 11.3(b)(5). *See Rule 1.15(III)(e) and refer to ABA Model Rule 1.15* (*Model Rules for Client Trust Account Records*) *Rule 3 on the Availability of Records.*

How often should a lawyer provide an accounting to a client for the client's trust funds?

An accounting must be provided to the client upon the completion of the disbursement of the client's funds and at such other times as may be reasonably requested by the client. Rule 1.15(I)(c) and refer to ABA Model Rule 1.15 Rule 1 (d). If trust funds are retained for more than one year, it is best practice to provide annual accountings in writing of any funds or property received. See Rule 1.4. *[For an example of a written accounting, see Appendix B11, B12.]*

Do accountings for funds in a trust account have to be in a particular form?

No. It is often possible to satisfy the accounting requirement by providing copies of documents generated during the representation, such as a settlement statement describing disbursements incident to the resolution of a tort claim or a HUD-1 statement describing the

disbursement of the proceeds of sale in a real property transaction. In addition, the accounting requirement can generally be satisfied by providing the client with a copy of a properly maintained ledger card which describes all receipts and disbursements of the client's funds. *[Examples of a client ledger card and written accountings are found in Appendix D9-12].*

A copy of the client's ledger card may be provided to the client as a written accounting of the receipt and disbursement of funds. When this is done, the client should sign and date the original to show that the client was given a written accounting of his or her funds. If a copy of the ledger card is mailed, retain a copy of the transmittal letter.

B. Accounting Systems and Resources: Electronic vs. Manual Records

Manual Records

A bookkeeping system for a lawyer's trust account must do the following things:

- document deposits to and disbursements from the trust account
- document deposits to and disbursements from each client's funds on deposit in the trust account
- maintain a current balance for the funds of each client on deposit in the trust account
- provide a means of reconciling, on a monthly basis, the current bank statement balance for the trust account with the balance for the trust account shown on the lawyer's record
- provide a means of reconciling, on a quarterly basis, the current bank balance for the trust account with the total of the individual client balances
- provide a means of performing monthly and quarterly reviews of the trust account
- retain records of deposits and disbursements
- provide annual accountings to each client for funds on deposit in the trust account.

When properly maintained, the check register contains the record of each deposit to and disbursement from the trust account. It also provides a running balance for funds in the account. Individual ledger cards record deposits to and disbursements from the trust account for each client, and show a current balance for each client's funds. This information is necessary to reconcile the trust account.

When multiple deposits cannot be posted on a checkbook, the client's name and the amount of each deposit may be recorded on the backside of the preceding page of the stub. If this is done, only the date and total amount deposited must be indicated. Some firms, instead of recording the information on the back of the preceding checkbook stub page, staple a copy of the deposit slip behind the respective check stub.

Software

Automating your trust account recordkeeping process can reduce the amount of data entry and calculation errors. You can search and find trust account information quickly, and perhaps from remote locations. Automating can organize the routine process of maintaining your trust account. It can save you space, but ALWAYS print copies of your client ledgers, general ledger, and monthly and quarterly reconciliations.

In choosing a computer program, you should consider whether it will let you track all the information you need, and in the format in which you need it. For example, a program that did not provide a place for you to describe the transaction or input an identifying file number would not be adequate for your purposes. Also bear in mind that many general purpose accounting programs do not understand the concept of trust funds, especially accounts that may hold funds for many different clients. This can result in problems ranging from an inability to calculate an individual client balance within the trust account to a propensity to count trust account funds as firm income. Because of this, we recommend that attorneys use programs designed to handle law firm trust accounting, rather than off-the-shelf business accounting packages.

Below is a list of some programs to review:

Product	**Key Accounting Features**
AbacusLaw by CARET www.abacuslaw.com	bill & invoicing, full accounting, time tracking, trust accounting
Actionstep www.actionstep.com	billing & invoicing, basic bookkeeping, full accounting, time tracking, trust accounting
Bill4Time www.bill4time.com	billing & invoicing, expense tracking, time tracking, trust accounting
CARET Legal www.caretlegal.com	full accounting, basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting
CaseFleet www.casefleet.com	billing & invoicing, expense tracking, time tracking, trust accounting
CASEpeer www.casepeer.com	billing & invoicing, expense tracking, trust accounting
Clio www.clio.com	basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting
CosmoLex www.cosmolex.com	basic bookkeeping, billing & invoicing, expense tracking, full accounting, time tracking, trust accounting

Lawcus www.lawcus.com	basic bookkeeping, billing & invoicing, time tracking, trust accounting
LawPay Pro www.lawpay.com	billing & invoicing, expense tracking, time tracking, trust accounting
LEAP www.leap.us	billing & invoicing, time tracking, trust accounting
MerusCase www.meruscase.com	basic bookkeeping, billing & invoicing, expense tracking, full accounting, time tracking, trust accounting
MyCase www.mycase.com	basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting
PracticePanther www.practicepanther.com	basic bookkeeping, billing & invoicing, expense tracking, full accounting, time tracking, trust accounting
RocketMatter www.rocketmatter.com	basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting
Smokeball www.smokeball.com	basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting
Tabs3 Billing www.tabs3.com	billing & invoicing, expense tracking, time tracking, trust accounting
TimeSolv www.timesolv.com	basic bookkeeping, billing & invoicing, expense tracking, time tracking, trust accounting

SECTION V: RECONCILIATIONS AND REVIEWS

"Reconciliation," means checking the three basic records you are required to keep–the bank statements, the client ledgers, and the general ledger/checkbook register—against each other so you can find and correct any mistakes. The theory is that it is unlikely that the same mistakes will be made in three different records—the client ledgers, the general ledger/checkbook register, and the bank statement—so if those records are all checked against each other, any mistakes will show up.

Rule 1.15(III) requires you to reconcile your client trust account records because mistakes are bound to happen when people keep track of money. Even banks make mistakes when it comes to recording money transactions. That is because when you are working with numbers, mistakes are easy to make and difficult to notice. No amount of training can completely eliminate these mistakes. *See* Rule 1.15(III),Comment 7.

To make sure that you find and correct these mistakes, you must record every client trust account transaction twice (in your client ledger and your general ledger/checkbook register), and check these records against the bank's records. For example, let's say you deposit a check for $1,000 into your client trust account but mistakenly record it as "$10,000" in your client ledger and add $10,000 to your client's running balance. In your general ledger/checkbook register, you recorded the check correctly and added $1,000 to your client trust account's running balance. How will you find the mistake? The general ledger/checkbook register balance is right, so you won't find the mistake by bouncing a check. The numbers in the client ledger all add up so there is no way to tell you made a mistake. Unless, you compare your client ledger balance to your general ledger/checkbook register balance, you won't be able to find the recording error. And unless you compare your client ledger and general ledger/checkbook register against the bank statement, you won't know which entry was right - $10,000 or $1,000.

It is best practice to reconcile your trust account balance both monthly and quarterly to the current bank statement for a trust account. However, there is an important distinction between the basic reconciliation that must be done monthly and the more thorough reconciliations that can be done each quarter. *See* ABA Model Rule 1.15, Rule 1(i).

A. Monthly Reconciliation

You cannot do reconciliation for a month until you are sure you have correct balances in all your client ledgers and general ledger/checkbook register for the previous month. If you have not recently reconciled your books, or if you are worried that they are wrong, you may want to bring in a bookkeeper to straighten them out before you take on the monthly and quarterly reconciliation yourself.

Once you have correct balances for the previous month, you are ready to reconcile. The steps required for the type of reconciliation are not unlike those necessary to balance a personal checking account.

There are two main steps in reconciling monthly:

1. From the balance shown on the bank statement for the monthly reporting period, subtract all outstanding checks. To this amount, add all deposits that have not cleared the bank. This is the current bank balance.

2. Confirm that the current bank balance equals the total balance for the trust account as shown on the lawyer's records (if using manual accounting, this would include check stubs or the account register).

The cut-off date for the bank statement and the trust account balance must be the same or the two balances may not reconcile. Note that the "Reconciliation Summary" produced by accounting software will typically satisfy the monthly requirement to reconcile the current bank balance to the total trust account balance.

We recommend you hire a bookkeeper, accountant, or equivalent, but you are still personally responsible for accounting to your clients and to the State Bar for the money in your client trust accounts. Therefore, even if you never intend to do the reconciling, you should understand the process. Even if it is your bookkeeper's mistake, if you bound a client trust account check, you are the one your client or the State Bar is going to come to for an explanation. Remember a nonlawyer cannot be responsible for reconciling the trust account and be a trust account signatory.

A monthly reconciliation form is available in Appendix D13.

B. Example of Three-Way Reconciliation

The detailed example below illustrates a manual method that can be used to perform the three-way reconciliation on a general trust account each quarter. This is not the only method that can be used, as any method will be sufficient.

These are the client ledgers that will be used for the three-way reconciliation example (Note: the "R" box is a check-box for use during reconciliation):

Client:	Alpha, A.			Matter:	111111	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/1/2022	Deposit - fees		$250	$250
	1001	1/7/2022	Dee Fender, Esq. - Earned Fees	$260		($10)

Client:	Beta, B.			Matter:	222222	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/4/2022	Deposit - $1,500 fees and costs		$1,500	$1,500
	1002	1/8/2022	Superior Court - Nowhere County Filing Fee - Cost	$125		$1,375
	1003	1/11/2022	Vital Records - Birth Cert.	$75		$1,300
	1004	1/11/2022	Dee Fender, Esq. - earned fees	$600		$700
	1005	1/12/2022	Dee Fender, Esq. - earned fees	$400		$300

Client:	Gamma , G.			Matter:	333333	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/8/2022	Deposit - $1,200 fees and costs		$1,450	$1,450
	1006	1/13/2022	Record Round Up - costs	$150		$1,300
	1007	1/15/2022	Dee Fender, Esq., - earned fees	$1,200		$100

Client:	Delta, D.			Matter:	444444	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/25/2022	Deposit - $15,000 fees (unearned)		$15,000	$15,000
	1008	1/29/2022	Dee Fender, Esq. - earned fees 8 hrs. @ $250/hr.	$2,000		$13,000
	1009	1/30/2022	D. Delta - refund	$13,000		$0

Client:	Epsilon, E.			Matter:	555555	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/15/2022	Deposit - $2,000 fees (unearned)		$2,000	$2,000
	Returned Deposit	1/17/2022	Returned deposited check for insufficient funds	$2,000		$0
	Deposit	1/31/2022	Deposit - $2,000 fees (unearned)		$2,000	$2,000

Client:	Administrative Funds, Dee Fender, Esq.			Matter:	999999	
R	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
	Deposit	1/1/2022	Deposit to open account		$50	$50
	Bank Fee	1/17/2022	Client Epsilon Returned Deposit Fee	$5		$45
	Deposit	1/31/2022	Client Epsilon reimbursement for $5 returned deposit bank charge		$5	$50

This is the general ledger/checkbook register that will be used for the three-way reconciliation example:

General Ledger /Checkbook Register						
R	**Number**	**Date**	**Description of Transaction (Payor/Payee)**	**Payment**	**Deposit**	**Balance**
	Deposit	1/1/2022	Deposit to open account		$50	$50
	Deposit	1/1/2022	Deposit - Alpha fees		$250	$300
	1001	1/7/2022	Dee Fender, Esq. - Alpha earned fees	$260		$40
	Deposit	1/4/2022	Deposit - Beta		$1,500	$1,540
	1002	1/8/2022	Superior Court - Nowhere County Filing Fee - Beta	$125		$1,415
	Deposit	1/8/2022	Deposit - Gamma		$1,450	$2,865
	1003	1/10/2022	Nowhere Vital Records - Birth Cert. - Beta	$75		$2,790
	1004	1/11/2022	Dee Fender, Esq. - Beta earned fees	$600		$2,190
	1005	1/12/2022	Dee Fender, Esq. - Beta earned fees	$400		$1,790
	1006	1/13/2022	Record Round Up - Gamma costs	$150		$1,640
	Deposit	1/15/2022	Deposit - Epsilon		$2,000	$3,640
	1007	1/15/2022	Dee Fender, Esq. - Gamma earned fees	$1,200		$2,440
	Returned Deposit	1/17/2022	Epsilon - returned deposited check for insufficient funds	$2,000		$440
	Bank Fee	1/17/2022	Epsilon Returned Deposits Fee	$5		$435
	Deposit	1/25/2022	Deposit - Delta		$15,000	$15,435
	1008	1/29/2022	Dee Fender, Esq. - Delta earned fees	$2,000		$13,435
	1009	1/30/2022	Delta - refund of unused fee	$13,000		$435
	Deposit	1/31/2022	Deposit - Epsilon		$2,005	$2,440

This is the trust account bank statement that will be used for the three-way reconciliation example:

Bank of Wegottayourmoney

Dee Fender, Esq.
Dee Fender's IOLTA Trust Account 1201 E.
Easy Street, Suite #100
Atlanta, GA 30303

Account Number: 000200800888
Activity Through: 1/01/2022 - 1/31/2022

Beginning Balance: $50.00
Ending Balance: $510.00
1/31/2022

Deposits/Credits

Date	Dollar Amount	Type
1/1/22	$50.00	Deposit
1/1/22	$250.00	Deposit
1/4/22	$1,500.00	Deposit
1/8/22	$1,450.00	Deposit
1/15/22	$2,000.00	Deposit
1/25/22	$15,000.00	Deposit

Total Deposits/Credits $20,250.00

Withdrawals/Debits

Check #	Dollar Amount	Date
1001	$260.00	1/7/22
1002	$125.00	1/8/22
1004*	$600.00	1/11/22
1005	$400.00	1/12/22
1006	$150.00	1/13/22
1007	$1,200.00	1/15/22
1008	$2,000.00	1/29/22
1009	$13,000.00	1/30/22

***Indicates preceding check (or checks) is outstanding.**

Other Withdrawals/Debits

Type	Dollar	Date
Returned Deposit	$2,000.00	1/17/22
Returned Deposit Fee	$5.00	1/17/22

Total Withdrawals/Debits $19,740.00

State Bar of Georgia
Trust Account Reconciliation Sheet

REPORT DATE: 2/5 2022

General Information

- Complete one form for *each* trust account
- Attach the following: list of clients with corresponding balances, copy of general ledger/checkbook register, list of outstanding deposits, list of outstanding checks, corresponding bank statement

Reconciliation of Lawyer's Trust Account Records

1. **Total of positive client ledger balances** as of 01/31/2022 ..... $ 2,450
(Attach a list of clients with corresponding balances)

Do any clients show a negative balance? x *Yes* □ *No* If yes, attach explanation and corrective action.

2. **General ledger/checkbook register balance** as of 01/31/2022 ..... $ 2,440
(Attach copy of general ledger/checkbook register)

Bank Statement Reconciliation

3. **Account Balance** as of 01/31/2022 (per appended bank statement)..... $ 510

Plus: Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) ..... +$ 2,005

Number of deposits in transit 1
(attach list of outstanding deposits)

Less: Outstanding (uncleared) checks (checks issued through end of month not reflected in bank statement)..... - $ 75

Number of outstanding checks..... 1
(attach list of outstanding checks)

4. *Subtotal* $ 2,440

5. *Other Adjustments (describe and attach supporting documentation)*

_____

_____

6. *Adjusted Trust Account Bank Balance* (as of end of report month)..... $ 2,440

7. The balance on line #6 □ *agreed* X *did not agree* with the balances reflected in lines #1 and #2. If different, attach explanation and corrective action.

Reconciliation prepared by: Employee for Dee Fender _____
Name and Position Signature

Reconciliation reviewed by: Dee Fender, Esq _____
Lawyer Name Signature

Reconcile the General Ledger/Checkbook Register with the Client Ledgers

The first part of reconciliation is to reconcile the general ledger/checkbook register with the client ledgers. The purpose of this step is to make sure that the entries in your client ledgers agree with the entries in your general ledger/checkbook ledger.

Step 1: Enter the total of Positive client ledger balances as of the cut-off date on the bank statement (in this case, January 31, 2022). This includes any administrative funds ledger or firm funds ledger that you maintain to service the account. **Do not include balances that are negative.** If a client ledger shows a negative balance (as it does in this example), check the box. On another page, explain the reason for the negative balance and show your corrective action. Attach a list of clients and their respective balances to the worksheet.

Step 2: List the balance shown on your general ledger/checkbook register as of the cut-off date on the bank statement. Using the same cut-off date on all documents is imperative to avoid mismatched numbers. Notice that the "Total of Client Ledger Balances as of 01/31/2022" does not match the "General Ledger/Checkbook Register Balance." That means that your individual client ledger balance entries do not agree with your general ledger/checkbook register entries, and you must determine why before you move on to the next step of the reconciliation process.

When the "Total of Client Ledger Balances" *does not* exactly match the "General Ledger/Checkbook Register Balance," do not panic; you have found a mistake, and that is what reconciliation is for. You can call in a bookkeeper to help you, or make the correction yourself. Since you record every deposit and withdrawal twice, if you systematically compare each entry in the general ledger/checkbook register with the corresponding entry in the client ledger, and check the new balance you entered after each entry, you will always find the mistake.

When you have found and corrected any mistakes, attach a copy of your general ledger/checkbook register to the worksheet and move on to Step 3.

Reconcile the General Ledger/Checkbook Register with the Bank Statement

Step 3: List the ending balance as shown on the bank statement. On the next line list the deposits that have yet to appear on the bank statement (probably because they were made at the end of the month). You should provide a list of these outstanding deposits and note the number of these deposits in the provided line. Do the same for outstanding/ uncleared checks. Take this time to examine the list of outstanding checks and to investigate why those checks have not cleared.

The purpose of these steps is to make sure that the bank's records of the deposits and withdrawals you've made to your general trust account during the past month match your records. Since you've already reconciled the client ledgers with the general ledger/checkbook register, you know that the entries in the client ledgers agree with the ones in the general ledger/checkbook register. Therefore, unless you find a mistake during this stage of the reconciliation process you only have to compare the bank statement with the general ledger/checkbook register.

Deposits and withdrawals not posted on bank statement. Generally, the bank sends out statements one to three weeks after the end of the month. As a result, by the time you reconcile the account, you will usually have made deposits or withdrawals that are not shown on the bank statement. In addition, checks you wrote or deposits you made may not have cleared by the time the bank produced the statement, and therefore the amounts of those checks or deposits won't be reflected in the account balance shown on the bank statement. Thus, to compare the balance of the bank statement for the end of the month with the balance your general ledger/checkbook register shows for the end of the month, you have to adjust the general ledger/checkbook register balance by ***adding*** all uncredited deposits and ***subtracting*** all undebited withdrawals.

To find out which transactions have not been posted, you have to compare the entries on the bank statement with the entries in your general ledger/checkbook register.

Go through each entry on the bank statement and compare it to the corresponding entry in your general ledger/checkbook register. If the entry in the general ledger/checkbook register exactly matches the entry on the bank statement, mark off the entry in the general ledger/checkbook register to show that the money has cleared the banking process, and mark off the entry on the bank statement to show that you have verified it against the general ledger/checkbook register. The marks in the general ledger/checkbook register will help you keep track of items like checks that are never cashed, which otherwise can become those small, inactive balances that make your account harder to reconcile. The marks should be permanent (i.e., in ink) and clearly visible, but should not make it hard to read the entries. You should use the same mark consistently, to avoid confusion later.

When you are finished, all the entries on the bank statement should be checked off to show that you have verified them against the corresponding entries in the general ledger/checkbook register. Now go back through the general ledger/checkbook register to find any entries that are unmarked; these transactions haven't yet been debited or credited by the bank.

As you go through the bank statement, there are two kinds of mistakes you may find:

1. **A deposit or withdrawal listed on the bank statement that is not in your general ledger/checkbook register.** To correct this mistake, go through your canceled checks (if it is a withdrawal) or deposit slips (if it is a deposit) until you find the one that reflects the transaction on the bank statement. If you cannot find a canceled check or deposit slip that matches the entry on the bank statement, contact your banker and ask him or her to help you track down the transaction. DO NOT record the bank statement entry in your records until you verify that the transaction occurred; banks make mistakes, too.

2. **An entry in the bank statement is different from the corresponding entry in the general ledger/checkbook register.** You correct this mistake the same way you correct a transaction you forgot to record. First, find the canceled check or deposit slip that shows the transaction to figure out which record is correct—the general ledger/checkbook register or the bank statement. If you cannot find a canceled check or deposit slip for this transaction, contact your banker and ask him or her to help you track it down before you make any changes in your records.

If the canceled check or deposit slip shows that the bank statement is wrong, write a note on the bank statement that clearly describes the mistake, then contact your banker and tell him or her to correct their records. If it shows that your general ledger/checkbook register is wrong, record the correction in the general ledger/checkbook register and the appropriate client ledgers. These must be entered twice in both the general ledger/checkbook register and the client ledger for the client on whose behalf you deposited or paid out the money.

When you have found and corrected any mistakes, move on to Step 4.

Step 4: Add the outstanding deposits to the ending balance and subtract the outstanding checks to find your Subtotal.

Step 5: This section is provided for lawyers to explain any necessary adjustments to their reconciliation. Adjustments might be required if, for example, you identify bank errors in your review of the bank statement. Adjustments that are made to balances must be explained with documentation. Do not use this section to explain/correct negative balances.

Make sure that bank charges reflected on the bank statement are also reflected in your records. Since you may not know what these bank charges are until you receive the bank statement, you need to enter them into your records after you receive the bank statement.

All bank charges must be recorded in the general ledger/checkbook register. If a bank charge was incurred on behalf of a specific client (as for example, a charge for wiring money to a client), the charge must also be entered in that client's ledger. (This ensures that the general ledger/checkbook register balance will continue to match the total of the individual client

ledger balances.) If the charge was not for a specific client (for example, a charge for printing general trust account checks), the charge must also be entered in the Administrative Funds/Bank Charges ledger.

Calculate the Adjusted Balance

Step 6: Calculate the following to find your adjusted balance:

1. ending bank statement balance
2. plus all outstanding deposit amounts
3. minus all outstanding check amounts
4. plus or minus any necessary adjustments listed in Step 5.

Step 7: The balances listed in Step 1, 2, and 6 should all agree. If they are different, attach an explanation and show how this imbalance has been corrected. The person who completed the reconciliation (if not the lawyer) should sign the form, as well as the lawyer who reviewed the reconciliation and supporting documents. Lawyers are required to sign and date all reconciliations and reviews. Save this reconciliation for six years as required in Rule 1.15(I)(a).

Trust Account Reconciliation Sheet

The State Bar has created a Trust Account Reconciliation Sheet for lawyers when reconciling trust accounts. The completed sheet show on a previous page reflects the reconciliation completed above. A copy of this sheet can be found in *Appendix D13*.

Monthly Review

Lawyers will need to review check images and bank statements for all trust accounts and fiduciary accounts on a monthly basis. This review requirement cannot be delegated, so lawyers must make sure to look at bank statements and corresponding check images each month. Lawyers must certify monthly that they have reviewed these documents.

The reason for a monthly review of check images is so that the lawyer might see a check made out to an improper payee such as an employee. If the lawyer never reviews cancelled check images, then the lawyer may not know if someone has been stealing funds from the trust account by voiding legitimate checks and writing checks to themselves for the same amount.

C. Quarterly Review

It is best practice to review a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. The transactions must involve multiple disbursements unless no such transactions are processed through the account, in which case a single disbursement is considered a transaction for the purpose of this paragraph. A sample of three representative transactions shall suffice, but a larger sample may be advisable. *[To see sample quarterly review form, see in Appendix D14.]*

SECTION VI: SAFEGUARDING FUNDS FROM EMBEZZLEMENT

The security of a trust account is proportional to the interest and attention the lawyer devotes to the operation of the account. The following safeguards are suggested:

Trust Account Checks:

- Do not act in haste when signing checks to be disbursed from or deposited to a trust account. For example, an employee had a lawyer endorse checks for deposit when the lawyer was in a hurry to get out of the office. The lawyer failed to note that the office deposit stamp was not on the back of the check. The checks were deposited into the employee's personal accounts. This activity did not come to the attention of the lawyer until clients complained about their bills.
- Don’t sign blank checks, and do not make a check out to cash or bearer.
- Use pre-numbered checks and periodically examine the sequential order of blank, void, and canceled checks. Question any unexplained break in numbers. Voided checks should be retained. Keep blank checks under a responsible person's control during the day and secured at night. In addition, ensure that all checks are accounted for when an employee resigns or is terminated. After resigning, one employee with access to trust account checks negotiated forged checks for over $80,000.
- Examine signature(s) on trust account checks for forgery.
- Question any change or attempted change of a payee's name on a check.
- Compare the number of canceled checks received from the bank to the number returned as indicated on the monthly bank statement.
- Confirm that the amount on a check coincides with the check stub or disbursement journal.

Controls and Procedures:

- Legal fees paid in cash are difficult to control. Office policy should require that a receipt must be given to any client who pays in cash, and the lawyer should regularly ask clients who pay in cash if they received a receipt. The numbers for receipts in the receipt book should also be examined periodically to determine if any receipts were removed or voided.
- Reconcile the trust account promptly after receiving a bank statement.
- Resolve discrepancies in a trust account reconciliation as soon as possible.
- Ensure that deposit slips agree with deposits posted on the client's ledger, particularly when cash is involved.
- Ensure deposits are made in a timely manner, daily if possible.
- A client's file should contain documentation supporting disbursement. Several types of legal practice management software are available on the market that offer features specifically designed for managing client files, tracking expenses, and documenting disbursements. Some popular options include Clio, MyCase, PracticePanther, RocketMatter, and ProLaw.

- Bank statements and correspondence regarding the trust account should be opened and reviewed by a lawyer.
- Require supporting documentation (e.g., bank statements, canceled checks, deposit slips, correspondence, etc.) of accounting reports and reconciliations.
- Prohibit or restrict removal of trust account records from the office.
- Sloppy bookkeeping may be used to conceal embezzlement. If the responsible individual procrastinates in correcting the condition, an independent party should reconcile the account(s).
- Estate accounting should be verified. Old or inactive estates are prime targets for embezzlement. Regular verification of estate accounting helps to detect any discrepancies, errors, or potential signs of fraud. This verification process typically involves a thorough review of financial records, transactions, assets, and liabilities associated with the estate. It may also include reconciling bank statements, verifying asset values, and confirming the proper distribution of funds according to the estate plan or legal requirements. Accountings should be maintained and updated throughout the administration of the estate and trust, and the lawyer should review interim accountings on a monthly or quarterly basis to be sure any mistakes have not been made or client funds have been mishandled in any way.
- Personally investigate questionable activities pertaining to the trust account (e.g., lack of fee payments, missing correspondence, etc.).
- Check periodically with the post office to determine if anyone other than designated personnel has attempted to pick up the office mail. Embezzlers will pick up the mail to destroy or remove incriminating items.

Personnel:

- The tasks of posting, depositing, and disbursing trust account funds should be handled by different members of the staff. An employee should not be permitted to sign trust account checks if that employee is responsible for reconciling the trust account. (Note: an exception to this rule is if trust account checks require two signatures and one of them must be a lawyer. In this case, the nonlawyer could be the second signature because the signature already satisfied the requirements of the rule.)
- Question lifestyle changes (e.g., increased social activities or travel, new wardrobe, new car, etc.) of individuals with access to the trust account.
- Personal, professional, or financial problems (e.g., family illness, marital problems, drinking, bankruptcy, etc.) may be cause for embezzlement.
- Question a negative attitude or poor work performance of an employee maintaining the trust account especially if the employee was passed over for promotion.
- Beware of an employee who is overly possessive of the trust account. The absence of minimum internal controls and sound accounting practices creates a situation in which there is a strong potential for embezzlement to go undetected.

- Embezzlement occurs more frequently when an unsupervised person has total responsibility for the trust, office, and/or payroll accounts.
- Embezzlers tend to make draws on the office operating account first and later make draws on the trust account.

SECTION VII: SCAMS

The two major types of scams are 1) **Counterfeit Check Scams** and 2) **Email hacking/wire instruction fraud**. The following is a brief summary of each scam.

Counterfeit Check Scam

By now, all lawyers should know that criminals are using email to act like potential clients requesting representation (typically commercial debt collection or divorce settlement collection). Once the lawyer responds with a request for more information, the "client" provides the lawyer with documentation of the "debt," often including warehouse receipts, contracts, bills of lading, etc. Shortly after agreeing to pursue the claim and often before a demand letter is even drafted, the lawyer receives a letter and certified bank check from the supposed debtor who is paying the debt because they "don't want to deal with the law." The lawyer then deposits the certified bank into the trust account. Almost immediately the client begins demanding his payment via wire. Since the funds are available via provisional credit (due to the Good Funds Settlement Law), the lawyer wires out the money to the client minus the lawyer's share. The client is never heard from again. Three days later, the bank tells the lawyer that the check was counterfeit and removes the already wired amount from the trust account. Since the lawyer disbursed on provisional credit, the lawyer is responsible for replenishing any trust account deficit. This type of scam has cost lawyers hundreds of thousands of dollars and at least one law license. For tips on detecting and avoiding this scam, view fact sheets created by Canadian indemnity company, LawPro, on fraud and cybercrimes: https://www.practicepro.ca/practice-aids/cyber-dangers/.

Email Hacking/Wire Instructions Fraud

The most recent and most alarming type of scam is one where the criminal gains access to the email account of a party to a real estate transaction and initiates a fraudulent wire transfer. Once an account has been hacked, the criminal learns the details of the real estate transaction and, acting like the seller, emails the lawyer (or the seller) with wiring instructions for the seller's funds.

If the law firm does not have a procedure in place to authenticate the emailed wire instructions, they may unknowingly wire the seller's proceeds to the hacker's bank account. The bank will deny any liability because it merely followed the lawyer's instructions. In order to protect against this scam, lawyers should:

- Verify all emailed wired instructions via a second method of communication that the lawyer knows is authentic (such as a phone number listed in the client's file). Do not call a phone number provided via email, because that number could be the hacker's number.

- Look for small differences in email addresses (although hackers have also used the actual email accounts of real estate agents or sellers to conduct these scams).

- Notify clients of this scam so that they may be on the lookout for any suspicious activity or emails.

- Refuse to accept changes in wiring instructions via email (this is not a State Bar rule, but it is strongly recommended).

- Train employees to be on the lookout for this attempted scam and implement a policy that must be followed for every single wire.

- Use encrypted email and suggest that all parties to a transaction avoid sending any personally identifying information or financial information via unsecured email.

- Stay up to date with the ever-changing details of these scams. This handbook will never be able to stay current with emerging trends, so lawyers must seek current information and advice from the State Bar, the FBI, Lawyers Mutual, and other organizations.

Even law firms with two-level confirmation procedures for wire instructions have been defrauded because the criminal calls the firm as the seller and confirms the wiring instructions. To prevent this type of theft, law firms should initiate the phone call to confirm the emailed wire instructions, calling only the number listed in the client file regardless of whether a different number is provided in the email.

While these scams vary in sophistication, they all have the potential to cause significant harm, and lawyers must remain vigilant for any fraudulent trust account activity. If you or your firm have been subject to any attempted scams or if you have any questions regarding these scams, please contact the State Bar Ethics Helpline at (404) 527-8741.

SECTION VIII: INTEREST ON LAWYERS TRUST ACCOUNTS- IOLTA

A. What is IOLTA?

The Georgia Bar Foundation Interest On Lawyer Trust Accounts (IOLTA) program was created for charitable, religious and educational purposes in 1967. It is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive IOLTA funds to support legal services for the poor, to improve the administration of justice, to promote professionalism in law practice in order best to serve the public, to aid children involved in the justice system, and to advance the legal system through historical study. The Foundation has a 20-member Board of Trustees, 17 of whom are appointed directly by the Supreme Court of Georgia and three of whom are members by virtue of being officers of the State Bar of Georgia. All active Georgia lawyers maintaining general trust accounts in Georgia are required to establish all general client trust accounts as interest-bearing IOLTA accounts.

For more information about the Georgia Bar Foundation, call (404) 588-2239 or email rachel@gabarfoundation.com.

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APPENDIX A - TRUST ACCOUNT RULES
GEORGIA RULES OF PROFESSIONAL CONDUCT 1.15 I-III
PART XV – GEORGIA BAR FOUNDATION RULES

RULE 1.15(I) SAFEKEEPING PROPERTY – GENERAL

(a) A lawyer shall hold funds or other property of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own funds or other property. Funds shall be kept in one or more separate accounts maintained in an approved institution as defined by Rule 1.15 (III)(c)(1). Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation.

(b) For the purposes of this rule, a lawyer may not disregard a third person's interest in funds or other property in the lawyer's possession if:
(1) the interest is known to the lawyer, and

(2) the interest is based upon one of the following:

(i) A statutory lien;

(ii) A final judgment addressing disposition of those funds or property; or

(iii) A written agreement by the client or the lawyer on behalf of the client guaranteeing payment out of those funds or property.

The lawyer may disregard the third person's claimed interest if the lawyer reasonably concludes that there is a valid defense to such lien, judgment, or agreement.

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

(d) When in the course of representation a lawyer is in possession of funds or other property in which both the lawyer and a client or a third person claim interest, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

The maximum penalty for a violation of this rule is disbarment.

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration or interpleader. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party. The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[3A] In those cases where it is not possible to ascertain who is entitled to disputed funds or other property held by the lawyer, the lawyer may hold such disputed funds for a reasonable period of time while the interested parties attempt to resolve the dispute. If a resolution cannot be reached, it would be appropriate for a lawyer to interplead such disputed funds or property.

[4] A "clients' security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.

RULE 1.15(II) SAFEKEEPING PROPERTY- TRUST ACCOUNT AND IOLTA

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available one or more trust accounts as required by these rules. All funds held by a lawyer for a client and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from a trust account.

(b) No personal funds shall ever be deposited in a lawyer's trust account, except that unearned attorney's fees may be so held until the same are earned. Sufficient personal funds of the lawyer may be kept in the trust account to cover maintenance fees such as service charges on the account. Records on such trust accounts shall be kept and maintained as to reflect at all times the exact balance held for each client or third person. No funds shall be withdrawn from such trust accounts for the personal use of the lawyer maintaining the account except earned lawyer's fees debited against the account of a specific client and recorded as such.

(c) All client's funds shall be placed in either an interest-bearing account at an approved institution with the interest being paid to the client or an interest-bearing (IOLTA) account at an approved institution with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-bearing trust account in an approved institution as defined in Rule 1.15(III)(c)(1), with the interest to be paid to the client.

(i) No earnings from such an interest-bearing account shall be made available to a lawyer or law firm.

(ii) Funds in such an interest-bearing account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, such that there can be no reasonable expectation of a positive net return to the client or third person, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) at an approved institution as defined by Rule 1.15(III)(c)(1) in compliance with the following provisions:

(i) No earnings from such an IOLTA Account shall be made available to a lawyer or law firm.

(ii) Funds in each IOLTA Account shall be available for withdrawal upon request and without delay, subject only to any notice period which the institution is required to reserve by law or regulation.

(iii) As required by Bar Rule 15-103, the rate of interest payable on any IOLTA Account shall not be less than the highest or best rate paid by the depositor institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time periods or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm on some or all of the deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

(iv) Lawyers or law firms shall direct the depository institution:

(A) to remit to the Georgia Bar Foundation interest or dividends, net of any allowable reasonable fees as defined in Bar Rule 15-102 (c), on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of interest earned on that account for any month, and any charges or fees that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution;

(B) to transmit with each remittance to the Georgia Bar Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is being applied, the gross interest earned, the types and amounts of service charges of fees applied, if any, and the amount of the net interest remittance;

(C) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(3) No charge of ethical impropriety or other breach of professional conduct shall attend the determination that such funds are nominal in amount or to be held for a short period of time, or to the decision to invest clients' funds in a pooled interest-bearing account.

(4) Whether the funds are designated short-term or nominal or not, a lawyer or law firm may, at the request of the client, deposit funds into a separate interest-bearing account and remit all interest earned, or interest earned net of charges, to the client or clients.

The maximum penalty for a violation of Rule 1.15(II)(a) and Rule 1.15 (II)(b) is disbarment. The maximum penalty for a violation of Rule 1.15(II)(c) is a public reprimand.

Comment

[1] The personal money permitted to be kept in the lawyer's trust account by this rule shall not be used for any purpose other than to cover the bank fees and if used for any other purpose the lawyer shall have violated this rule. If the lawyer wishes to reduce the amount of personal money in the trust account, the change must be properly noted in the lawyer's financial records and the monies transferred to the lawyer's business account.

[2] Nothing in this rule shall prohibit a lawyer from removing from the trust account fees which have been earned on a regular basis which coincides with the lawyer's billing cycles rather than removing the fees earned on an hour-by-hour basis.

[3] In determining whether funds of a client or other beneficiary can earn income in excess of costs, the lawyer may consider the following factors:

(a) the amount of funds to be deposited;

(b) the expected duration of the deposit, including the likelihood of delay in the matter with respect to which the funds are held;

(c) the rates of interest or yield at financial institutions where the funds are to be deposited;

(d) the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or other beneficiary, including service charges, the costs of the lawyer’s services and the costs of preparing any tax reports that may be required;

(e) the capability of financial institutions, lawyers, or law firms to calculate and pay earnings to individual clients; and

(f) any other circumstances that affect the ability of the funds to earn a net return for the client or other beneficiary.

[4] The lawyer or law firm should review the IOLTA Account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

RULE 1.15(III) RECORD KEEPING; TRUST ACCOUNT OVERDRAFT NOTIFICATION; EXAMINATION OF RECORDS

(a) Required Bank Accounts: Every lawyer who practices law in Georgia and who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain, in an approved financial institution as defined by this rule, a trust account or accounts, separate from any business and personal accounts. Funds received by the lawyer on behalf of a client or in any other fiduciary capacity shall be deposited into this account. The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person.

(b) Description of Accounts:

(1) A lawyer shall designate all trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account" "IOLTA Account" or "Attorney Fiduciary Account." The name of the attorney or law firm responsible for the account shall also appear on all deposit slips and checks drawn thereon.

(2) A lawyer shall designate all business accounts, as well as all deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," "Operating Account" or a "Regular Account."

(3) Nothing in this rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account including fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, agent or in any other fiduciary capacity.

(c) Procedure:

(1) Approved Institutions:

(i) A lawyer shall maintain his or her trust account only in a financial institution approved by the State Bar of Georgia, which shall annually publish a list of approved institutions.

(A) Such institutions shall be located within the state of Georgia, within the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third-person. The institution shall be authorized by federal or state law to do business in

the jurisdiction where located and shall be federally insured. A financial institution shall be approved as a depository for lawyer trust accounts if it abides by an agreement to report to the Office of the General Counsel whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, and the instrument is not honored. The agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30-days notice in writing to the Office of the General Counsel. The agreement shall be filed with the Office of General Counsel on a form approved by the State Disciplinary Board. The agreement shall provide that all reports made by the financial institution shall be in writing and shall include the same information customarily forwarded to the depositor when an instrument is presented against insufficient funds. If the financial institution is located outside of the state of Georgia, it shall also agree in writing to honor any properly issued State Bar of Georgia subpoena.

(B) In addition to the requirements above, the financial institution must also be approved by the Georgia Bar Foundation and agree to offer IOLTA Accounts in compliance with the additional requirements set out in Part XV of the rules of the State Bar of Georgia.

(ii) The Georgia Bar Foundation may waive the provisions of this rule in whole or in part for good cause shown. A lawyer or law firm may appeal the decision of the Georgia Bar Foundation by application to the Supreme Court of Georgia.

(2) Timing of Reports:

(i) The financial institution shall file a report with the Office of the General Counsel of the State Bar of Georgia in every instance where a properly payable instrument is presented against a lawyer trust account containing insufficient funds.

(ii) The report shall be filed with the Office of the General Counsel within 15 days of the date of the presentation of the instrument, even if the instrument is subsequently honored.

(3) Nothing shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this rule.

(4) Every lawyer and law firm maintaining a trust account as provided by these rules is hereby and shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule and shall indemnify and hold harmless each financial institution for its compliance with the aforesaid reporting and production requirements.

(d) Effect on Financial Institution of Compliance: The agreement by a financial institution to offer accounts pursuant to this rule shall be a procedure to advise the State Disciplinary Board of conduct by lawyers and shall not be deemed to create a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of lawyers overdrawing lawyer trust accounts.

(e) Availability of Records: A lawyer shall not fail to produce any of the records required to be maintained by these rules at the request of the State Disciplinary Board or the Supreme Court of Georgia. This obligation shall be in addition to and not in lieu of the procedures contained in Part IV of these rules for the production of documents and evidence.

(f) Audit for Cause: A lawyer shall not fail to submit to an audit for cause conducted by the State Disciplinary Board pursuant to Bar Rule 4-111.

The maximum penalty for a violation of this rule is disbarment.

Comment

[1] Each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the Office of the General Counsel of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually.

[2] The overdraft agreement requires that all overdrafts be reported to the Office of the General Counsel of the State Bar of Georgia whether or not the instrument is honored. It is improper for a lawyer to accept "overdraft privileges" or any other arrangement for a personal loan on a client trust account, particularly in exchange for the institution's promise to delay or not to report an overdraft. The institution must notify the Office of the General Counsel of all overdrafts even where the institution is certain that its own error caused the overdraft or that the matter could have been resolved between the institution and the lawyer within a reasonable period of time.

[3] The overdraft notification provision is not intended to result in the discipline of every lawyer who overdraws a trust account. The lawyer or institution may explain occasional

errors. The provision merely intends that the Office of the General Counsel receive an early warning of improprieties so that corrective action, including audits for cause, may be taken.

Waiver

[4] A lawyer may seek to have the provisions of this rule waived if the lawyer or law firm has its principal office in a county where no bank, credit union, or savings and loan association will agree or has agreed to comply with the provisions of this rule. Other grounds for requesting a waiver may include significant financial or business harm to the lawyer or law firm, such as where the unapproved bank is a client of the lawyer or law firm or where the lawyer serves on the board of the unapproved bank.

[5] The request for a waiver should be in writing, sent to the Georgia Bar Foundation, and should include sufficient information to establish good cause for the requested waiver.

[6] The Georgia Bar Foundation may request additional information from the lawyer or law firm if necessary to determine good cause.

Audits

[7] Every lawyer's financial records and trust account records are required records and therefore are properly subject to audit for cause. The audit provisions are intended to uncover errors and omissions before the public is harmed, to deter those lawyers who may be tempted to misuse client's funds and to educate and instruct lawyers as to proper trust accounting methods. Although the auditors will be employed by the Office of the General Counsel of the State Bar of Georgia, it is intended that disciplinary proceedings will be brought only when the auditors have reasonable cause to believe discrepancies or irregularities exist. Otherwise, the auditors should only educate the lawyer and the lawyer's staff as to proper trust accounting methods.

[8] An audit for cause may be conducted at any time and without advance notice if the Office of the General Counsel receives sufficient evidence that a lawyer poses a threat of harm to clients or the public. The Office of the General Counsel must have the written approval of the Chairman of the State Disciplinary Board and the President-elect of the State Bar of Georgia to conduct an audit for cause.

Georgia Bar Foundation
(Part XV of State Bar Programs of the
Georgia Rules of Professional Conduct)

Preamble

The Georgia Bar Foundation ("the Foundation") is a 501(c)(3) organization named by the Supreme Court of Georgia in 1983 to receive and distribute Interest On Lawyer Trust Account ("IOLTA") funds to support legal services for the poor, to improve the administration of justice, to provide legal education to Georgia's children, to provide educational programs for adults in order to advance understanding of democracy and our system of government, to aid children involved in the justice system, and to promote professionalism in the practice of law.

CHAPTER 1 - IOLTA ACCOUNTS

Rule 15-101. BANK ACCOUNTS.

(a) Every lawyer who practices law in Georgia, whether as a sole practitioner or as a member of a firm, association or professional corporation, who receives money or other property on behalf of a client or in any other fiduciary capacity shall maintain or have available an interest-bearing trust account or accounts.

(b) An **"IOLTA Account"** is a trust account benefiting the Foundation. The interest generated by an IOLTA Account shall be paid to the Georgia Bar Foundation, Inc. as hereinafter provided.

Rule 15-102. DEFINITIONS.

(a) An **"IOLTA Account"** means a trust account benefiting the Foundation, established in an approved institution for the deposit of pooled nominal or short-term funds of clients or third persons, and meeting the requirements of the Foundation as further detailed below. The account product may be an interest-bearing checking account; a money market account with, or tied to, check writing; a sweep account, portions of which are regularly moved into a government money market fund or daily overnight financial institution repurchase agreement invested solely in, or fully collateralized by, United States government securities; or an open-end money market fund solely invested in, or fully collateralized by, United States government securities**.**

(1) **"Nominal or short-term"** describes funds of a client or third person that the lawyer has determined cannot provide a positive net return to the client or third person.

(2) **"Open-end money market fund"** is a fund that identifies itself as a money market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940 and, at the time of the investment, having total assets of at least $250,000,000.

(3) **"United States government securities"** are United States Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(b) An **"approved institution"** is a bank or savings and loan association which is an approved institution as defined in Rule 1.15(III)(c)(1) and which voluntarily chooses to offer IOLTA Accounts consistent with the additional requirements of this Rule, including:

(1) to remit to the Foundation interest or dividends, net of any allowable reasonable fees on the IOLTA Account, on the average monthly balance in that account, at least quarterly. Any allowable reasonable fees in excess of the interest earned on that account for any month, and any fees or charges that are not allowable reasonable fees, shall be charged to the lawyer or law firm in whose names such account appears, if not waived by the approved institution.

(2) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the applicable IOLTA Account number, the rate of interest applied, the average monthly account balance against which the interest rate is applied, the gross interest earned, the types and amounts of service charges or fees applied, and the amount of the net interest remittance.

(3) to transmit to the depositing lawyer or law firm periodic reports or statements in accordance with the approved institution's normal procedures for reporting to depositors.

(4) to pay comparable interest rates on IOLTA Accounts, as defined below at Rule 15-103.

(c) "**Allowable reasonable fees**" for IOLTA Accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, Federal deposit insurance fees, and sweep fees. ("Allowable reasonable fees" do not include check printing charges, NSF charges, overdraft interest charges, account reconciliation charges, stop payment charges, wire transfer fees, and courier fees. Such listing of excluded fees is not intended to be

all-inclusive.) All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Account. Fees or charges in excess of the earnings accrued on the account for any month or quarter shall not be taken from earnings accrued on other IOLTA Accounts. Approved financial institutions may elect to waive any or all fees on IOLTA Accounts.

Rule 15-103. IOLTA ACCOUNTS: INTEREST RATES.

On any IOLTA Account, the rate of interest payable shall be:

(a) not less than the highest interest rate or dividend generally available from the approved institution to its non-IOLTA customers for each IOLTA Account that meets the same minimum balance or other eligibility qualifications, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the institution may consider factors, in addition to the IOLTA Account balance, customarily considered by the institution when setting interest rates or dividends for its customers if such factors do not discriminate between IOLTA Accounts and accounts of non-IOLTA customers. The institution also shall consider all product option types that it offers to its non-IOLTA customers, as noted at Rule 15-102(a), for an IOLTA Account by either establishing the applicable product as an IOLTA Account or paying the comparable interest rate or dividend on the IOLTA Account in lieu of actually establishing the comparable highest interest rate or dividend product; or

(b) alternatively, if an approved institution so chooses a rate equal to the greater of (A) 0.65% per annum or (B) a benchmark interest rate, net of allowable reasonable fees, set by the Foundation, which shall be expressed as a percentage (an "index") of the federal funds target rate, as established from time to time by the Federal Reserve Board. In order to maintain an overall comparable rate, the Foundation will periodically, but not less than annually, publish its index. The index shall initially be 65% of the federal funds target rate.

(c) Approved institutions may choose to pay rates higher than comparable rates discussed above.

CHAPTER 2 - INTERNAL RULES

RULE 15-201. MANAGEMENT AND DISBURSEMENT OF IOLTA FUNDS; INTERNAL PROCEDURES OF FOUNDATION.

(a) Mandatory Grants. The Georgia Bar Foundation, Inc. (the "Foundation"), which is the charitable arm of the Supreme Court of Georgia, is the named recipient of IOLTA

funds. The Foundation shall pay to the Georgia Civil Justice Foundation ("GCJF") a grant of ten percent (10%) of all IOLTA revenues received, less administrative costs, during the immediately preceding calendar quarter. GCJF must maintain its tax-exempt charitable/educational status under Sections 115 and 170(c)

(1) or under Section 501(c)(3) of the Internal Revenue Code, and the purposes and activities of the organization must remain consistent with the exempt purposes of the Foundation. If GCJF is determined either by the Internal Revenue Service or by the Georgia Department of Revenue to be a taxable entity at any time, or its purposes and activities become inconsistent with the exempt purposes of the Foundation, then the Foundation shall retain all IOLTA funds which would have been granted to GCJF.

(b) Reporting by Organizations. As a condition to continued receipt of IOLTA funds, the Foundation and GCJF shall each present a report of its activities including an audit of its finances to the Supreme Court of Georgia annually. GCJF shall also send to the Foundation a copy of its annual report and audit.

(c) Discretionary Grants. The Foundation shall develop procedures for regularly soliciting, evaluating, and funding grant applications from worthy law-related organizations that seek to provide civil legal assistance to needful Georgians, to improve the working and the efficiency of the judicial system, to provide legal education to Georgia's children, to provide assistance to children who are involved with the legal system, to provide educational programs for adults intended to promote a better understanding of our democratic system of government, or to foster professionalism in the practice of law.

(d) IOLTA Account Confidentiality. The Foundation will protect the confidentiality of information regarding a lawyer's or law firm's trust account obtained in the course of managing IOLTA operations.

(e) Report to the Office of the General Counsel. The Foundation will provide the Office of the General Counsel with a list of approved financial institutions which have agreed to abide by the requirements of this Part XV of the Rules of the State Bar of Georgia. Such list will be updated with such additions and deletions as necessary to maintain its accuracy.

Appendix B - Reference Guide to Trust Account Ethics Opinions

Formal Advisory Opinion No. 91-2

State Bar of Georgia
Issued by the Supreme Court of
Georgia On September 20, 1991
Formal Advisory Opinion No. 91-2

For references to Standard of Conduct 31, please see Rule 1.5(a).

This opinion also relies on the Canons of Ethics, specifically Ethical Considerations EC 2-19 and 2-23, that bear upon matters directly addressed by Comments 2 and 9 of Rule 1.5.

ADVANCE FEE PAYMENTS

A lawyer need not place any fees into a trust account absent special circumstances necessary to protect the interest of the client. Such circumstances may be the agreement of the parties, the size and amount of the fee, and the length of time contemplated for the undertaking.

QUESTION PRESENTED:
Whether a lawyer may deposit into a general operating account a retainer that represents payment of fees yet to be earned.

OPINION:
The question posed by correspondent is not clear. "Fees yet to be earned" are prepaid fees. "Prepaid fees" also include "fixed" or "flat fees," which are not earned until the task is completed. The terms "retainer" and "prepaid fees" have different meanings. For purposes of clarity, the terms are defined as here used.

A retainer is "...the fee which the client pays when he retains the attorney to act for him, and thereby prevents him from acting for his adversary." Black's Law Dictionary (5th ed. 1979). Thus, retainer fees are earned by the attorney by agreeing to be "on call" for the client and by not accepting employment from the client's adversaries. McNulty, George & Hall v. Pruden, 62 Ga. 135, 141 (1878).

A "flat" or "fixed" fee is one charged by an attorney to perform a task to completion, for example, to draw a contract, prepare a will, or represent the client in court, as in an uncontested divorce or a criminal case. Such a fee may be paid before or after the task is completed.
A "prepaid fee" is a fee paid by the client with the understanding that the attorney will earn

the fee as he or she performs the task agreed upon.

Under these various definitions, one can reasonably take the position that "retainers" and "flat fees" may be placed in the general operating account when paid. Prepaid fees may be placed in a trust account until earned.

Terminology as to the various types of fee arrangements does not alter the fact that the lawyer is a fiduciary. Therefore, the lawyer's duties as to fees should be uniform and governed by the same rules regardless of the particular fee arrangement. Those duties are as follows:

1. To have a clear understanding with the client as to the details of the fee arrangement prior to undertaking the representation, preferably in writing.

2. To return to the client any unearned portion of a fee.

3. To accept the client's dismissal of him or her (with or without cause) without imposing any penalty on the client for the dismissal.

4. Comply with the provisions of Standard 31 as to reasonableness of the fee.

The law is well settled that a client can dismiss a lawyer for any reason or for no reason, and the lawyer has a duty to return any unearned portion of the fee. In the Matter of Collins, 246 Ga. 325, 271 S.E.2d 473 (1980).

> The exercise of the right to discharge an attorney with or without cause does not constitute a breach of contract because it is a basic term of the contract, implied by law into it by reason of the nature of the attorney-client relationship, that the client may terminate that contract at any time.

Henry, Walden & Davis v. Goodman, 294 Ark. 25, 741 S.W. 2d 233 (1987).

The client, of course, may not be penalized for exercising the right to dismiss the lawyer. Id. In view of these duties, a lawyer need not place any fees into a trust account absent special circumstances necessary to protect the interest of the client. Such circumstances may be the agreement of the parties, the size and amount of the fee, and the length of time contemplated for the undertaking.[1]

[1] A fee paid for retainer of the attorney, as narrowly defined in this opinion, illustrates the importance of an agreement or understanding in writing outlining, among other things: geographic area involved, duration, scope of proposed legal services, fees and expenses for legal services rendered, and due date of future retainer fees covered by the retainer agreement. The agreement should also contain specific terms as to refunds of any portion of the fee should the agreement be terminated prior to its expiration date. See Ethical Considerations 2-19 and 2-23.

Formal Advisory Opinion No. 98-2

State Bar of Georgia
Issued by the Supreme Court of Georgia
On June 1, 1998
Formal Advisory Opinion No. 98-2

This opinion relies on Standards of Conduct 61, 62, 63, and 65 that bear upon matters directly addressed by Rule 1.15(I).

For an explanation regarding the addition of headnotes to the opinion, see below:

The Standards of Conduct, Ethical Considerations (ECs) and Directory Rules (DRs) were superceded by the Georgia Rules of Professional Conduct on January 1, 2001. The original sixty-seven (67) Standards of Conduct adopted by the Supreme Court of Georgia in 1979 can be found at 238 Ga. 213. Subsequently adopted Standards and Amendments can be found in copies of the Georgia Reports. The ECs and DRs can be found in the July 8, 1971 minutes of the Supreme Court of Georgia. The Standards, ECs and DRs also appear on the State Bar of Georgia's website at gabar.org.

Following the issuance of the Georgia Rules of Professional Conduct by the Supreme Court of Georgia, the Office of the General Counsel for the State Bar of Georgia requested that the Formal Advisory Opinion Board review each Opinion issued by the Supreme Court of Georgia to determine the impact, if any, the Georgia Rules of Professional Conduct have on the Opinions.

For certain existing Formal Advisory Opinions that were issued by the Supreme Court of Georgia, it is the opinion of the Formal Advisory Opinion Board that the substance and conclusion reached under the Standards, ECs and/or DRs remains the same under the Georgia Rules of Professional Conduct. For those Opinions, a headnote has been added that references the Standards, ECs and/or DRs cited in the Opinion and the corresponding Georgia Rule(s) of Professional Conduct that now apply.

The use of the term "Rule(s)" in the headnotes, refers to the applicable Georgia Rule(s) of Professional Conduct.

QUESTION PRESENTED:

When a lawyer holding client funds and/or other funds in a fiduciary capacity is unable to locate the rightful recipient of such funds after exhausting all reasonable efforts, may that lawyer remove the unclaimed funds from the lawyer's escrow trust account and deliver the

funds to the custody of the State of Georgia in accordance with the Disposition of Unclaimed Property Act?

SUMMARY ANSWER:

A lawyer holding client funds and/or other funds in a fiduciary capacity may remove unclaimed funds from the lawyer's escrow trust account and deliver the funds to the custody of the State of Georgia in accordance with the Disposition of Unclaimed Property Act only if the lawyer, prior to delivery, has exhausted all reasonable efforts to locate the rightful recipient.

OPINION:

Many members of the Bar have contacted the State Bar of Georgia for guidance on how to manage client funds and/or other funds held in a fiduciary capacity in the lawyer's escrow trust account when the lawyer is unable to locate the rightful recipient of the funds and the rightful recipient fails to claim the funds. More specifically, the lawyers have asked whether they could ethically remove the unclaimed funds from the lawyer's escrow trust account and disburse the funds in accordance with O.C.G.A. §§44-12-190 et seq., the Disposition of Unclaimed Property Act.

In those cases where a lawyer is holding client funds and/or other funds in a fiduciary capacity, the lawyer must do so in compliance with Standards 61, 62, 63 and 65. When the funds become payable or distributable, Standard 61 speaks to the lawyer's duty to deliver funds: "A lawyer shall promptly notify a client of the receipt of his funds, securities or other properties and shall promptly deliver such funds, securities or other properties to the client." Implicit both in this Standard, and the lawyer's responsibility to zealously represent the client, is the lawyer's duty to exhaust all reasonable efforts to locate the rightful recipient in order to ensure delivery.

When a lawyer holding funds attempts to deliver those funds in compliance with Standard 61 but is unable to locate the rightful recipient, the lawyer has a duty to exhaust all reasonable efforts to locate the rightful recipient. After exhausting all reasonable efforts and the expiration of the five year period discussed in the Act, if the lawyer is still unable to locate the rightful recipient and the rightful recipient fails to claim the funds, the funds are no longer considered client funds or funds held in a fiduciary capacity, but rather, the funds are presumed to be abandoned as a matter of law, except as otherwise provided by the Act, and the lawyer may then deliver the unclaimed funds to the State of Georgia in accordance with O.C.G.A. §§ 44-12-190 et seq., the Disposition of Unclaimed Property Act. A lawyer who disburses the unclaimed funds as discussed above shall not be in violation of the Standards.

Formal Advisory Opinion No. 03-1

STATE BAR OF GEORGIA
ISSUED BY THE FORMAL ADVISORY OPINION BOARD
PURSUANT TO RULE 4-403 ON SEPTEMBER 11, 2003
FORMAL ADVISORY OPINION NO. 03-1

QUESTION PRESENTED:

May a Georgia attorney contract with a client for a non-refundable special retainer?

SUMMARY ANSWER:

A Georgia attorney may contract with a client for a non-refundable special retainer so long as: 1) the contract is not a contract to violate the attorney's obligation under Rule 1.16(d) to refund "any advance payment of fee that has not been earned" upon termination of the representation by the attorney or by the client; and 2) the contracted for fee, as well as any resulting fee upon termination, does not violate Rule 1.5(a)'s requirement of reasonableness.

OPINION:

This issue is governed primarily by Rule of Professional Conduct 1.16(d) which provides: "Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests such as . . . refunding any advance payment of fee that has not been earned."

A special retainer is a contract for representation obligating a client to pay fees in advance for specified services to be provided by an attorney. This definition applies regardless of the manner of determining the amount of the fee or the terminology used to designate the fee, e.g., hourly fee, percentage fee, flat fee, fixed fees, or minimum fees. Generally, fees paid in advance under a special retainer are earned as the specified services are provided. Some services, for example, the services of the attorney's commitment to the client's case and acceptance of potential disqualification from other representations, are provided as soon as the contract is signed [2]. The portion of the fee reasonably allocated to these services is, therefore, earned immediately. These fees, and any other fees that have been earned by providing specified services to the client, need not be refunded to the client. In this sense, a special retainer can be made non-refundable.

[2]The "likelihood that the acceptance of the particular employment will preclude other employment by the lawyer" is a factor the attorney must consider in determining the reasonableness of a fee under Rule 1.5. This preclusion, therefore, should be considered part of the service the attorney is providing to the client by agreeing to enter into the representation.

In Formal Advisory Opinion 91-2 (FAO 91-2), we said:

"Terminology as to the various types of fee arrangements does not alter the fact that the lawyer is a fiduciary. Therefore, the lawyer's duties as to fees should be uniform and governed by the same rules regardless of the particular fee arrangement. Those duties are . . . : 1) To have a clear understanding with the client as to the details of the fee arrangement prior to undertaking the representation, preferably in writing. 2) To return to the client any unearned portion of a fee. 3) To accept the client's dismissal of him or her (with or without cause) without imposing any penalty on the client for the dismissal. 4) To comply with the provisions of Standard 31 as to reasonableness of the fee."

The same Formal Advisory Opinion citing In the Matter of Collins, 246 Ga. 325 (1980), states:

"The law is well settled that a client can dismiss a lawyer for any reason or for no reason, and the lawyer has a duty to return any unearned portion of the fee." [3]

Contracts to violate the ethical requirements upon which FAO 91-2 was based are not permitted, because those requirements are now expressed in Rule 1.16(d) and Rule 1.5(a). Moreover, attorneys should take care to avoid misrepresentation concerning their obligation to return unearned fees upon termination.

The ethical obligation to refund unearned fees, however, does not prohibit an attorney from designating by contract points in a representation at which specific advance fees payments under a special retainer will have been earned, so long as this is done in good faith and not as an attempt to penalize a client for termination of the representation by refusing to refund unearned fees or otherwise avoid the requirements of Rule 1.16(d), and the resulting fee is reasonable. Nor does this obligation call in to question the use of flat fees, minimum fees, or any other form of advance fee payment so long as such fees when unearned are refunded to the client upon termination of the representation by the client or by the attorney. It also does not require that fees be determined on an hourly basis. Nor need an attorney place any fees into a trust account absent special circumstances necessary to protect the interest of the client. See Georgia Formal Advisory Opinion 91-2. Additionally, this obligation does not restrict the non-refundability of fees for any reason other than whether they have been earned upon termination. Finally, there is nothing in this obligation that prohibits an attorney from contracting for large fees for excellent work done quickly. When the contracted for work is done, however quickly it may have been done, the fees have been earned and there is no issue as to their non-refundability. Of course, such fees, like all fee agreements, are subject to Rule 1.5, which provides that the reasonableness of a fee shall be determined by the following factors:

[3] Georgia Formal Advisory Opinion 91-2.

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client.

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) Whether the fee is fixed or contingent.

The second publication of this opinion appeared in the August 2003 issue of the Georgia Bar Journal, which was mailed to the members of the State Bar of Georgia on August 7, 2003. The opinion was filed with the Supreme Court of Georgia on August 21, 2003. No review was requested within the 20-day review period, and the Supreme Court of Georgia has not ordered review on its own motion. In accordance with Rule 4-403(d), this opinion is binding only on the State Bar of Georgia and the person who requested the opinion, and not on the Supreme Court of Georgia, which shall treat the opinion as persuasive authority only.

Formal Advisory Opinion No. 04-1

FORMAL ADVISORY OPINION NO. 04-1
Approved And Issued On February 13, 2006 Pursuant To Bar Rule 4-403
By Order Of The Supreme Court Of Georgia With Comments
Supreme Court Docket No. S05U1720

COMPLETE TEXT FROM THE ORDER OF THE SUPREME COURT OF GEORGIA

We grant a petition for discretionary review brought by the State Bar of Georgia to consider the proposed opinion of the Formal Advisory Board[4] (hereinafter "Board") that, if an attorney supervises the closing of a real estate transaction conducted by a non-lawyer entity, the attorney is a fiduciary with respect to the closing proceeds and the closing proceeds must be handled in accordance with the trust account and IOLTA provisions of Rule 1.15(II) of Bar Rule 4-102(d) of the Georgia Rules of Professional Conduct. Formal Advisory Opinion No. 04-1 (August 6, 2004). See State Bar Rule 4-403(d) (authorizing this Court to grant a petition for discretionary review).[5] For the reasons set forth below, we agree with the Board that a lawyer directing the closing of a real estate transaction holds money which belongs to another (either a client or a third-party) as an incident to that practice, and must keep that money in an IOLTA account. We further add that if the proceeds are not subject to the rules of IOLTA subsection (c)(2), then the funds must be deposited in an interest-bearing account for the client's benefit. Rule 1.15(II)(c)(1). Under no circumstances may the closing proceeds be commingled with funds belonging to the lawyer, the law office, or any entity other than as explicitly provided in the Rule.

The matter came before the Board pursuant to a request for an advisory opinion on the following question:

May a lawyer participate in a non-lawyer entity created by the lawyer for the purpose of conducting residential real estate closings where the closing proceeds received by the entity are deposited in a non-IOLTA interest bearing bank trust account rather than an IOLTA account?

The opinion first appeared in the June 2004 issue of the Georgia Bar Journal. In response, the Board received comments both in support of and in opposition to the opinion.

[4] State Bar Rule 4-403(a) authorizes the Formal Advisory Opinion Board to draft proposed Formal Advisory Opinions concerning the proper interpretation of the Rules of Professional Conduct.

[5] Formal Advisory Opinion Board opinions, which are approved or modified by this Court, are "binding on all members of the State Bar." State Bar Rule 4-403(e).

The modified opinion appeared in the October 2004 Georgia Bar Journal, and the State Bar thereafter sought discretionary review.

The closing of a real estate transaction in this State constitutes the practice of law, and, if performed by someone other than a duly-licensed Georgia attorney, results in the prohibited unlicensed practice of law. In re UPL Advisory Opinion 2003-2, 277 Ga. 472 (588 SE2d 741) (2003). The attorney participating in the closing is a fiduciary with respect to the closing proceeds, which must be handled in accordance with the trust account and IOLTA provisions in Rule 1.15(II).[6] Specifically, when a lawyer holds client funds in trust, the lawyer must make an initial determination whether the funds are eligible for the IOLTA program. Closing proceeds from a real estate transaction which are nominal in amount or are to be held for a short period of time (i.e., funds that cannot otherwise generate net earnings for the client) must be deposited into an Interest on Lawyer's Trust Account (IOLTA Account). Funds that are not nominal in amount or funds, no matter what amount, that are not to be held for a short period of time, are ineligible for placement in an IOLTA account and must be placed in an interest-bearing account, with the net interest generated paid to the client. Rule 1.15(II)(c). See also Brown v. Legal Foundation of Washington, 538 U.S. 216 (155 LE2d 376, 123 SC 1406) (2003). Under either circumstance, Rule 1.15(II) instructs that a lawyer involved in a closing has a strict fiduciary duty to deposit a client's real estate closing proceeds in a separate IOLTA or non-IOLTA interest bearing trust account.

Formal Advisory Opinion approved, as modified. All the Justices concur.

FORMAL ADVISORY OPINION NO. 04-1

QUESTION PRESENTED:

May a lawyer participate in a non-lawyer entity created by the lawyer for the purpose of conducting residential real estate closings where the closing proceeds received by the entity are deposited in a non-IOLTA interest bearing bank trust account rather than an IOLTA account?

SUMMARY ANSWER:

The closing of a real estate transaction constitutes the practice of law. If an attorney supervises the closing conducted by the non-lawyer entity, then the attorney is a fiduciary with respect to the closing proceeds and closing proceeds must be handled in accordance with Rule 1.15 (II). If the attorney does not supervise the closings, then, under

[6]The sole issue addressed in the proposed opinion is whether an attorney may participate in a non-lawyer entity which the attorney created for the purpose of conducting residential real estate closings without depositing the closing proceeds in an IOLTA account.

the facts set forth above, the lawyer is assisting a non-lawyer in the unauthorized practice of law.

OPINION:

The closing of a real estate transaction in the state of Georgia constitutes the practice of law. See, In re UPL Advisory Opinion 2003-2, 277 Ga. 472, 588 S.E. 2d 741 (Nov. 10, 2003), O.C.G.A. §15-19-50 and Formal Advisory Opinions Nos. 86-5 and 00-3. Thus, to the extent that a non-lawyer entity is conducting residential real estate closings not under the supervision of a lawyer, the non-lawyer entity is engaged in the practice of law. If an attorney supervises the residential closing[7] then that attorney is a fiduciary with respects to the closing proceeds. If the attorney participates in but does not supervise the closings, then the non-lawyer entity is engaged in the unauthorized practice of law. In such event, the attorney assisting the non-lawyer entity would be doing so in violation of Rule 5.5 of the Georgia Rules of Professional Conduct[8]

When a lawyer is supervising a real estate closing, the lawyer is professionally responsible for such closings. Any closing funds received by the lawyer or by persons or entities supervised by the lawyer are held by the lawyer as a fiduciary. The lawyer's responsibility with regard to such funds is addressed by Rule 1.15 (II) of the Georgia Rules of Professional Conduct which states in relevant part:

SAFEKEEPING PROPERTY – GENERAL

(a) Every lawyer who practices law in Georgia, whether said lawyer practices as a sole practitioner, or as a member of a firm, association, or professional corporation, and who receives money or property on behalf of a client or in any other fiduciary capacity, shall maintain or have available a trust account as required by these Rules. All funds held by a lawyer for a client

[7] Adequate supervision would require the lawyer to be present at the closing. See FAO . . . .etc.

[8] Rule 5.5 states in relevant part that:

UNAUTHORIZED PRACTICE OF LAW
A lawyer shall not:

* * * * * *

(b) assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

The maximum penalty for a violation of this Rule is disbarment.

and all funds held by a lawyer in any other fiduciary capacity shall be deposited in and administered from such account.

* * * * *

(c) All client's funds shall be placed in either an interest-bearing account with the interest being paid to the client or an interest-bearing (IOLTA) account with the interest being paid to the Georgia Bar Foundation as hereinafter provided.

(1) With respect to funds which are not nominal in amount, or are not to be held for a short period of time, a lawyer shall, with notice to the clients, create and maintain an interest-bearing trust account in an approved institution as defined by Rule 1.15(III)(c)(1), with the interest to be paid to the client. No earnings from such an account shall be made available to a lawyer or law firm.

(2) With respect to funds which are nominal in amount or are to be held for a short period of time, a lawyer shall, with or without notice to the client, create and maintain an interest-bearing, government insured trust account (IOLTA) in compliance with the following provisions:

* * * * *

As set out in Subsection (c)(2) above, this Rule applies to all client funds which are nominal or are to be held for a short period of time. As closing proceeds are not nominal in amount, but are to be held for only a short period of time, they are subject to the IOLTA provisions. Therefore, the funds received in connection with the real estate closing conducted by the lawyer or the non-lawyer entity in the circumstances described above must be deposited into an IOLTA compliant account.

FORMAL ADVISORY OPINION NO. 13-1
Approved And Issued On September 22, 2014
Pursuant To Bar Rule 4-403
By Order of The Supreme Court Of Georgia
Supreme Court Docket No. S14U0705

QUESTIONS PRESENTED:

1. Does a Lawyer[9] violate the Georgia Rules of Professional Conduct when he/she conducts a "witness only" real estate closing?

2. Can a Lawyer who is closing a real estate transaction meet his/her obligations under the Georgia Rules of Professional Conduct by reviewing, revising as necessary, and adopting documents sent from a lender or from other sources?

3. Must all funds received by a Lawyer in a real estate closing be deposited into and disbursed from the Lawyer's trust account?

SUMMARY ANSWER:

1. A Lawyer may not ethically conduct a "witness only" closing. Unless parties to a transaction are handling it pursuant to Georgia's pro se exemption, Georgia law requires that a Lawyer handle a real estate closing (see O.C.G.A § 15-19-50, UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 86-5)[10]. When handling a real estate closing in Georgia a Lawyer does not absolve himself/herself from violations of the Georgia Rules of Professional Conduct by claiming that he/she has acted only as a witness and not as an attorney. (See UPL Advisory Opinion No. 2003-2 and Formal Advisory Opinion No. 04-1).

2. The closing Lawyer must review all documents to be used in the transaction, resolve any errors in the paperwork, detect and resolve ambiguities in title or title defects, and otherwise act with competence. A Lawyer conducting a real estate closing may use documents prepared by others after ensuring their accuracy, making necessary revisions, and adopting the work.

[9] Bar Rule 1.0(j) provides that "Lawyer" denotes a person authorized by the Supreme Court of Georgia or its Rules to practice law in the State of Georgia, including persons admitted to practice in this state pro hac vice.

[10] The result is to exclude Nonlawyers as defined by Bar Rule 1.0(k), Domestic Lawyers as defined by Bar Rule 1.0(d), and Foreign Lawyers as defined by Bar Rule 1.0(f), from the real estate closing process.

3. A Lawyer who receives funds in connection with a real estate closing must deposit them into and disburse them from his/her trust account or the trust account of another Lawyer. (See Georgia Rule of Professional Conduct 1.15(II) and Formal Advisory Opinion No. 04-1).

OPINION:

A "witness only" closing occurs when an individual presides over the execution of deeds of conveyance and other closing documents but purports to do so merely as a witness and notary, not as someone who is practicing law. (UPL Advisory Opinion No. 2003-2). In order to protect the public from those not properly trained or qualified to render these services, Lawyers are required to "be in control of the closing process from beginning to end." (Formal Advisory Opinion No. 00-3). A Lawyer who purports to handle a closing in the limited role of a witness violates the Georgia Rules of Professional Conduct.

In recent years many out-of-state lenders, including some of the largest banking institutions in the country, have changed the way they manage the real estate transactions they fund. The following practices of these lenders have been reported. These national lenders hire attorneys who agree to serve the limited role of presiding over the execution of the documents (i.e., "witness only" closings). In advance of a "witness only" closing an attorney typically receives "signing instructions" and a packet of documents prepared by the lender or at the lender's direction. The instructions specifically warn the attorney NOT to review the documents or give legal advice to any of the parties to the transaction. The "witness only" attorney obtains the appropriate signatures on the documents, notarizes them, and returns them by mail to the lender or to a third party entity.

The Lawyer's failure to review closing documents can facilitate foreclosure fraud, problems with title, and other errors that may not be detected until years later when the owner of a property attempts to refinance, sell or convey it.

A Lawyer must provide competent representation and must exercise independent professional judgment in rendering advice. (Rules 1.1 and 2.1, Georgia Rules of Professional Conduct). When a Lawyer agrees to serve as a mere figurehead, so that it appears there is a Lawyer "handling" a closing, the Lawyer violates his/her obligations under the Georgia Rules of Professional Conduct (Rule 8.4). The Lawyer's acceptance of the closing documents or signature on the closing statement is the imprimatur of a successful transaction. Because UPL Advisory Opinion No. 2003-2 and the Supreme Court Order adopting it require (subject to the pro se exception) that only a Lawyer can close a real estate transaction, the Lawyer signing the closing statement or accepting the closing documents would be found to be doing so in his or her capacity as a Lawyer. Therefore, when a closing Lawyer purports to act merely as a

witness, this is a misrepresentation of the Lawyer's role in the transaction. Georgia Rule of Professional Conduct 8.4(a)(4) provides that it is professional misconduct for an attorney to engage in "conduct involving . . . misrepresentation."

The Georgia Rules of Professional Conduct allow Lawyers to outsource both legal and nonlegal work. (See ABA Formal Advisory Opinion 08-451.) A Lawyer does not violate the Georgia Rules of Professional Conduct by receiving documents from the client or elsewhere for use in a closing transaction, even though the Lawyer has not supervised the preparation of the documents. However, the Lawyer is responsible for utilizing these documents in compliance with the Georgia Rules of Professional Conduct, and must review and adopt work used in a closing. Georgia law allows a title insurance company or other persons to examine records of title to real property, prepare abstracts of title, and issue related insurance. (O.C.G.A. § 15-19-53). Other persons may provide attorneys with paralegal and clerical services, so long as "at all times the attorney receiving the information or services shall maintain full professional and direct responsibility to his clients for the information and services received." (O.C.G.A. § 15-19-54; also see UPL Advisory Opinion No. 2003-2 and Rules 5.3 and 5.5, Georgia Rules of Professional Conduct).

The obligation to review, revise, approve and adopt documents used in a real estate closing applies to the entire series of events that comprise a closing. (Formal Advisory Opinions No. 86-5 and 00-3, and UPL Advisory Opinion No. 2003-2). While the Supreme Court has not explicitly enumerated what all of those events are, they may include, but not be limited to: (i) rendering an opinion as to title and the resolution of any defects in marketable title; (ii) preparation of deeds of conveyance, including warranty deeds, quitclaim deeds, deeds to secure debt, and mortgage deeds; (iii) overseeing and participating in the execution of instruments conveying title; (iv) supervising the recordation of documents conveying title; and (v) in those situations where the Lawyer receives funds, depositing and disbursing those funds in accordance with Rule 1.15(II). Even if some of these steps are performed elsewhere, the Lawyer maintains full professional and direct responsibility for the entire transaction and for the services rendered to the client.

Finally, as in any transaction in which a Lawyer receives client funds, a Lawyer must comply with Georgia Rule of Professional Conduct 1.15(II) when handling a real estate closing. If the Lawyer receives funds on behalf of a client or in any other fiduciary capacity he/she must deposit the funds into, and administer them from, a trust account in accordance with Rule 1.15(II). (Formal Advisory Opinion No. 04-1). It should be noted that Georgia law also allows the lender to disburse funds. (O.C.G.A. § 44-14-13(a)(10)). A Lawyer violates the Georgia Rules of Professional Conduct when he/she delivers closing proceeds to a title company or to a third party settlement company for disbursement instead of depositing them into and disbursing them from an attorney escrow account.

APPENDIX C – TIPS FOR MANAGING YOUR TRUST ACCOUNT

The following seven key concepts provide the background you need to understand your client trust accounting responsibilities.

Key Concept 1: Separate Clients are Separate Accounts

Client A's money has nothing to do with Client B's money. Even when you keep them in a pooled trust account (also known as an IOLTA account), each client's funds are completely separate from those of all your other clients. In other words, you are **NEVER** allowed to use one client's money to pay another client's or your own obligations.

In a trust account, the way to distinguish one client's money from another's is to keep a client ledger of each individual client's funds. A client ledger tells you how much money you've received on behalf of a client, how much money you've paid out on behalf of that client, and how much money that client has left in your trust account. If you are holding money in your trust account for ten clients, you have to maintain ten separate client ledgers. If you keep each client's ledger properly, you will always know exactly how much of the money each client has, and but if you make payments out of your trust account without maintaining separate client ledgers, you won't know which client's money you are using.

Also note, if your client's money can earn income because the funds are large enough in amount or are held for a long period of time, then you cannot place the funds in a trust account. The funds must be deposited in an account dedicated to that client or transaction. *[For more information on dedicated trust accounts, see Section I, Trust Account Basics.] See also Rule 1.15(II)(c).*

Key Concept 2: You Can't Spend What You Don't Have

Each client has only their own funds available to cover expenses, no matter how much money belongs to other clients is in your trust account. Your trust account might have a balance of $100,000, but if you only hold $10 for a certain client, you can't write a check for $10.50 on behalf of that client without using some other client's money.

The following example graphically illustrates this concept. Assume you are holding a total of $5,000 for four clients in your trust account as follows:

Client A	$1,000
Client B	$2,000
Client C	$1,500
Client D	$500
Total	$5,000

If you write a check for $1,500 from the trust account for Client D, $1,000 of that check is going to be paid for by Clients A, B, C. The funds you are holding in trust for them are being used for Client D's expenses. You should have a total of $4,500 for Clients A, B, and C, but you only have $3,500 left in the trust account. In State Bar disciplinary matters, the failure to maintain a sufficient client trust account balance will support a finding of misappropriation.

Key Concept 3: There's No Such Thing as a "Negative Balance"

It's not uncommon in personal checkbooks for people to write checks against money they haven't deposited yet or a check that has not cleared yet, and show this as a "negative balance." In client trust accounting, there's no such thing as a negative balance. A "negative balance" is at best a sign of negligence and, at worst, a sign of theft.

In client trust accounting, there are only three possibilities:

- You have a **positive** balance (while you are holding money for a client);
- You have a **zero** balance (when all the client's money has been paid out); or
- YOU HAVE A PROBLEM because the balance is **less than zero** (a so-called "negative balance").

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- YOU HAVE A PROBLEM because the balance is **less than zero** (a so-called "negative balance").

Key Concept 4: Timing is Everything

It takes time from a day to several weeks after you make a deposit before the money becomes "available for use." A client's funds aren't "available" for you to use on the client's behalf until they have cleared the banking process and been credited by the bank to your trust account. (This is especially true when you receive an insurance company's settlement draft—which cannot clear until the company actually receives the draft at its home office during the bank collection process and honors the draft. Thus, insurance company settlement

drafts will take longer to clear your account.) If you write a check for a client at any time *before* that client's funds clear the banking process and are credited to your trust account, ordinarily either the check will bounce or you will be using other clients' money to cover the check.

The time it takes for trust account funds to become available after deposit depends on the form in which you deposit them. Every bank has different procedures, so when you open your trust account, get the bank's schedule of when funds are available for withdrawal. Depending on the instrument, you may have to wait as many as 15 working days before you can be reasonably confident that the funds are available. For example, even if you make a cash deposit, the money may not be available for use until the next following day. If you deposit a personal check from an out-of-state bank, the money will take longer to be available. Either way, until the bank has credited a deposit to your trust account, you can't pay out any portion of that money for that client.

You also need to know what time your bank has set as the deadline for posting deposits to that day's business and for paying checks presented to it. Otherwise, even when you have deposited cash, you may end up drawing on uncollected funds. For example, let's say your bank credits any deposit made after 3 PM on the following day, but stays open for business until 5 PM. Your client arrives at 3:30 and gives you $5,000 in cash, which you immediately deposit. At 4 PM you write a trust account check against that money to pay an investigator. If the investigator presents the check for payment at the bank before it closes at 5 PM, the check will either bounce or be covered by other clients' money.

Some banks offer an "instant credit" arrangement where the bank agrees to immediately credit accounts for deposits while the bank waits for the funds from another financial institution. For more information on "Instant Credit," *see Section III "Funds Go Out*."

Key Concept 5: You Can't Play the Game Unless You Know the Score

In client trust accounting, there are two kinds of balances: the "running balance" of the money you are holding for each *client*, and the "running balance" of the trust account as a whole.

A "running balance" is the amount you have in an account after you add in all the deposits (including interest earned, etc.) and subtract all the money paid out (including bank charges for items like wire transfers, etc.). In other words, the running balance is what's in the account at any given time. The running balance for each *client* is kept on the client ledger, and the running balance for each trust account is kept on the account journal. *[A sample client ledger is shown in Appendix D2.]*

Maintaining a running balance for a client is simple. Every time you make a deposit on behalf of a client, you write the amount of the deposit in the client ledger and *add* it to the previous balance. Every time you make a payment on behalf of the client, you write the amount in the client ledger and *subtract* it from the previous balance. The result is the running balance. That's how much money is in the account.

Since "you can't spend what you don't have," you should check the running balance in each client's ledger before you write any trust account checks for that client. That way, if your records are accurate and up to date, it's almost impossible to pay out more money than the client has in the account.

Key Concept 6: The Final Score is Always Zero

The goal in client trust accounting is to make sure that every dollar you receive on behalf of a client is ultimately paid out to the client at the conclusion of the representation or to third parties on the client's behalf. What comes in for each client must equal what goes out for that client; no more, no less.

It's crucial for lawyers to maintain accurate records of their trust accounts, including promptly addressing any small, inactive balances. These balances can arise from various reasons such as mathematical errors, overlooked fees, or uncashed checks. Despite the cause, lawyers are accountable for all funds in their trust accounts. Delaying action on these balances can complicate accounting processes over time.

According to Rule 1.15(II)(b), some personal money may be permitted within the trust account. However, this allowance must be carefully managed to ensure compliance with ethical and legal standards regarding client funds. It's essential for lawyers to regularly review their trust accounts, reconcile balances, and follow up on any discrepancies or outstanding items. This proactive approach helps maintain the integrity of the trust account and ensures compliance with professional standards and regulations.

If you take steps to address these small balances and are still unable to pay out the funds, you should consider whether the unclaimed monies must be escheated to the state. For detailed guidance on handling abandoned or unclaimed funds and the escheatment process, lawyers should refer to FAO 98-2.

Key Concept 7: Always Maintain an Audit Trail

An "audit trail" is the series of bank-created records, like cancelled checks, bank statements, etc., that make it possible to trace what happened to the money you handled. An audit trail should start whenever you receive funds on behalf of a client and should continue through

the final check you issue against them. Without an audit trail, you have no way to show that you have taken proper care of your clients' money, or to explain what you did with the money if any questions come up. The audit trail is also an important tool for tracking down accounting errors. If you don't maintain an audit trail, you will find it hard to correct the small mistakes, like errors in addition or subtraction, and the big mistakes, like miscredited deposits, that are inevitable when you handle money.

The key to making a good audit trail is being descriptive. Let's say you are filling out a deposit slip for five checks relating to three separate clients. All the bank requires you to do is write down the bank identification code for each check and the check amounts. This doesn't identify which client the money belongs to. If you include the name of the client and keep a copy or make a duplicate, you will know which client the check was for, which is the purpose of an audit trail. That will make it easy to answer any questions that come up, even years later.

By the same token, every check you write from your trust account should identify on the face of the check the client on whose behalf it is written, so that it is easy to match up the money with the client. That means you should **NEVER** make out an account check to cash, because there is no way to know later who actually cashed the check. If you are handling more than one case for the client, indicate which matter the payments and receipts relate to on your checks and deposit slips.

APPENDIX D: EXAMPLES/ FORMS

D1. Key Concepts Infographic

QUICK TIPS ON TRUST ACCOUNTING

BANK RECORD AUDIT TRAIL

Identify a client on every item that transfers funds into and out of the trust account.

RECONCILE & REVIEW

Promptly perform monthly and quarterly reconciliations and quarterly transaction reviews.

USE ONLY FUNDS AVAILABLE FOR EACH CLIENT

Using Client A's funds for benefit of Client B is stealing from Client A.

NO TRUST FUNDS IN OPERATING ACCOUNT

Entrusted funds should never touch an operating account by the lawyer.

OVERSIGHT OF EMPLOYEES IS ESSENTIAL

Employees with access to the trust account must be properly supervised by lawyers.

D2. Sample Client Ledger

Client: _____

Matter: _____

Rec (√)	Number	Date	Description of Transaction Payor/Payee	Debit (-)	Credit (+)	Balance

D3. Opening a Trust Account—A Checklist

When opening a trust account, the lawyer must ensure that the following requirements are completed (check each box when complete):

	Requirements:
☐	A lawyer shall hold funds or the property of clients and third persons in an approved financial institution in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the client's or third person's request. Refer to GRPC Rule 1.15(III)(a).
☐	The lawyer must use a bank from the *Office of General Counsel's List of Financial Institutions Approved as Depositories for Attorney Trust Accounts (Appendix D3)* as they have met the requirements of Rule 1.15(II) of the Georgia Rules of Professional Conduct (GRPC) to hold client funds or property. Visit https://www.gabar.org/attorneyresources/ioltaapprovedbanks.cfm for more details.
☐	If your bank is not on the Georgia-approved institution list, please contact the bank and ask them to complete the required paperwork with both the Office of the General Counsel of the State Bar of Georgia and the Georgia Bar Foundation. Refer to Rule 1.15 (III)(c) for requirements and procedures to be an approved financial institution.
☐	The lawyer or law firm must complete the Georgia Bar Foundation *Notice to Financial Institution (Appendix D4)* to give to the approved financial institution Visit https://www.gabar.org/aboutthebar/lawrelatedorganizations/iolta/iolta.cfm to download form.
☐	The Georgia Bar Foundation Tax I.D. number (58-0552594) on the account should be that of GBF included on the *Notice to Financial Institution* form, not the law firm. If you or the bank have any questions, please call 404-588-2239.
☐	Designate all trust account(s), whether general or specific, as well as all deposit slips and checks drawn thereon, as an "Attorney Trust Account," "Attorney Escrow Account", "IOLTA Account" or "Attorney Fiduciary IOLTA Account," on deposit slips. The name of the attorney or law firm responsible for the account shall also appear on all deposit slips and checks. Refer to GRPC 1.15(III)(b)(1).
☐	Lawyer must use business-size checks.
☐	Th bank must provide legible check images, front/back, are to be provided with the bank statement.
☐	Overdraft protection must be disabled on the trust account.
☐	No Debit Cards are to be issued for the trust account.

Recommendations	
☐	The lawyer should request that all bank fees and charges be drawn from the lawyer's operating account to limit the risk of using client funds for this purpose.
☐	If lawyer maintains other accounts at bank, he or she should request different colored trust account checks.
☐	Safeguards to protect inadvertent wires and ACHs should be discussed with banker.
☐	If lawyer wants to use online banking to transfer funds from the trust account to different account, the bank must have a text/memo box on the transfer page that allows lawyer to properly attribute all transactions to particular clients.
☐	Lawyer should learn the bank's deposit deadlines and when provisional credit is made available, and inquire about typical length of time for checks to clear.
☐	Lawyer should develop an office policy regarding trust account procedures (reconciliations, deposits, disbursements, etc.).

Note: It is the lawyer's responsibility to ensure compliance with Rule 1.15, not the bank's.

List of Financial Institutions Approved as Depositories for Attorney Trust Accounts

(as of March 2024)

The following list of financial institutions approved as depositories for attorney trust accounts (as of March 2024) are the only financial institutions that have met the requirements of Rule 1.15(II) of the Georgia Rules of Professional Conduct, as amended. These are the banks where you can hold client funds and fiduciary funds pursuant to the Rule. If your bank is not on the list, please contact the bank and ask an authorized bank officer to complete a Certificate of Agreement with the State Bar of Georgia Office of the General Counsel and required rate comparability paperwork with the Georgia Bar Foundation.

State Bar of Georgia Office of the General Counsel
Regina Putman, Trust Account Overdraft Notification Coordinator | 404-527-8737

Georgia Bar Foundation
Rachel Barnhard, Executive Director | 404-588-2239
Lisa Smith, Operations Director | 404-588-2240

Please be advised that some financial institutions are geographically limited. The Office of the General Counsel has specifically identified those bank listings pursuant to the financial institution's request.

- AB&T
- Affinity Bank (purchased Newton Federal Bank)
- Altamaha Bank & Trust
- American Pride Bank
- Ameris Bank (ALL U.S. branches)
- Atlantic South Bank (a/k/a Wheeler County State Bank)
- Bank of America Corp.
- Bank of Camilla
- Bank of Dawson
- Bank of Dudley
- Bank of Edison (Edison, Georgia ONLY)
- Bank of Hancock County (Sparta, Georgia ONLY)
- Bank of Hazlehurst
- Bank of Hope
- The Bank of Lafayette
- Bank of Lumber City
- Bank of Madison
- Bank of Monticello (Monticello, Georgia ONLY)
- Bank of Newington
- Bank of Texas d/b/a BOKF, N.A. (Texas branches ONLY)
- Bank OZK
- Bank South
- BankUnited (Florida ONLY)
- Bank of Wrightsville (Wrightsville, Georgia ONLY)
- Barwick Banking Company
- Builtwell Bank (Georgia ONLY)
- Bulloch First, a division of The Citizens Bank of Swainsboro (Statesboro, Georgia ONLY)
- Cadence Bank

- Capital Bank, N.A. (Rockville, Maryland ONLY)
- Capital City Bank
- Carrollton Bank (Illinois ONLY)
- Carver State Bank
- Century Bank & Trust
- Chain Bridge Bank (Virginia ONLY)
- Citibank, N.A. (New York ONLY)
- Citizens Bank of Americus
- The Citizens Bank of Cochran (Cochran, Georgia ONLY)
- The Citizens Bank of Georgia
- Citizens Bank of the South
- Citizens Bank & Trust, Inc.
- Citizens Trust Bank
- City National Bank
- Classic City Bank (Athens, Georgia ONLY)
- The Claxton Bank
- Coastal Carolina National Bank (Aiken, South Carolina ONLY)
- Coastal States Bank
- Colony Bank
- CommerceOne Bank (Alabama ONLY)
- The Commercial Bank
- Commercial Banking Company
- Community Bank of Dublin—Laurens County (Cochran, Georgia ONLY)
- Community Bank of Pickens County
- Community Banking Company of Fitzgerald
- Craft Bank
- DFCU Financial (Florida ONLY)
- Douglas National Bank (Douglas, Georgia ONLY)
- Durden Banking Company, Inc. (Twin City, Georgia ONLY)
- East West Bank
- Embassy National Bank (Lawrenceville, Georgia ONLY)
- Esquire Bank, N.A. (New York ONLY)
- Exchange Bank
- F&M Bank and Trust Company (Manchester, Georgia ONLY)
- Family Bank
- Farmers & Merchants Bank
- Farmers State Bank (Dublin, Georgia ONLY)
- Fifth Third Bank
- First American Bank & Trust Company
- First American Trust, FSB (ALL U.S. branches)
- The First Bank (Florida, Georgia, Louisiana and Mississippi ONLY)
- First Bank of Pike
- FirstBank
- First Carolina Bank
- First Chatham Bank
- First Citizens Bank—Raleigh, North Carolina
- First Citizens National Bank (Tennessee ONLY)
- First Community Bank
- First Federal Bank (ALL U.S. branches)
- First Federal S & L Association of Valdosta
- First Horizon Bank
- First IC Bank (ALL U.S. branches)
- First National Bank (First National Bank of Decatur County)
- First National Bank of Coffee County
- First National Bank of Griffin
- First National Community Bank (ALL U.S. branches)
- First Peoples Bank
- First Port City Bank
- First Southern Bank (FSB)
- First State Bank
- First State Bank of Blakely
- Flint Community Bank (Albany, Georgia ONLY)
- Forbright Bank (Maryland ONLY)
- The Four County Bank (Allentown, Georgia ONLY)
- The GEO. D. Warthen Bank (Sandersville, Georgia ONLY)
- Georgia Banking Company
- Georgia Community Bank
- Georgia First Bank
- Georgia Primary Bank
- Georgia's Own Credit Union

- Glennville Bank
- Great Oaks Bank
- Guardian Bank
- Heritage Southeast Bank (ALL U.S. branches)
- HomeTrust Bank (Georgia ONLY)
- HomeTrust Bank (formerly Quantum National Bank)
- Hyperion Bank (Philadelphia, Pennsylvania ONLY)
- iThink Financial Credit Union
- J.P. Morgan Chase Bank, N.A.
- Kinetic Credit Union (ALL U.S. branches)
- Legacy State Bank
- LGE Community Credit Union
- Loyal Trust Bank
- Magnolia State Bank
- Metro City Bank
- Metropolitan Commercial Bank, NY (Georgia ONLY)
- Morris Bank
- Moultrie Bank & Trust
- Mount Vernon Bank
- MVB Bank (Virginia ONLY)
- New Millennium Bank (Duluth, Georgia ONLY)
- North Georgia National Bank
- Northeast Georgia Bank
- The Northern Trust Company (ALL U.S. branches)
- Oconee Federal Savings & Loan Association (ALL U.S. branches)
- Oconee State Bank
- OneSouth Bank
- The Peoples Bank
- Peoples Bank & Trust (Buford, Georgia ONLY)
- Peoples Bank of East Tennessee
- The Peoples Bank of Georgia
- Peoples South Bank
- The Piedmont Bank
- Pineland Bank
- Pinnacle Bank
- Pinnacle Bank—Tennessee entity (Georgia branches ONLY)
- Planters & Citizens Bank (P&C Bank)
- Planters First Bank
- PNC Bank, N.A.
- Prime Meridian Bank (Florida ONLY)
- PrimeSouth Bank
- PromiseOne Bank
- Queensborough National Bank & Trust Company
- Rabun County Bank
- Regions Bank (ALL U.S. branches)
- Renasant Bank
- River City Bank
- Robins Financial Credit Union (formerly Persons Banking Company) ***BANK NOT CURRENTLY OPENING NEW IOLTA ACCOUNTS***
- RockPoint Bank, N.A. (Chattanooga, Tennessee ONLY)
- Sandy Spring Bank (Maryland, Virginia and Washington, D.C. ONLY)
- Security Federal Bank
- Service 1st Bank
- Simply Bank
- Smart Bank (ALL U.S. branches)
- South Coast Bank
- Southeastern Bank
- Southeastern Credit Union
- South Georgia Bank
- South Georgia Banking Company
- South East Bank (Tennessee ONLY)
- South State Bank, N.A.
- Southern Bank
- Southern First Bank
- Southern States Bank
- State Bank of Cochran
- Stellar Bank (Texas ONLY)
- SunMark Community Bank
- Synovus Bank (ALL U.S. branches)
- Talbot State Bank
- Tandem Bank

- TC Federal Bank (formerly Thomas County Federal Sav & Loan Association)
- Tennessee Valley Federal Credit Union (Georgia and Tennessee ONLY)
- Thomasville National Bank
- Touchmark National Bank (Alpharetta, Georgia ONLY)
- Truist Bank (f/k/a SunTrust Bank and BB&T Bank)
- United Bank—Woodstock, Virginia (Georgia branches ONLY)
- United Bank—Zebulon, Georgia
- United Community Bank
- United National Bank (Cairo, Georgia ONLY)
- Unity National Bank
- Vinings Bank
- Vystar Credit Union (ALL U.S. branches)
- Waycross Bank & Trust
- Wells Fargo Bank, N.A.
- West Central Georgia Bank
- West Town Bank & Trust (North Carolina ONLY)
- Wilcox County State Bank

Get the latest approved banks list on the State Bar website at https://www.gabar.org/attorneyresources/ioltaapprovedbanks.cfm.

NOTICE TO FINANCIAL INSTITUTION ENROLLMENT FORM

Complete and present Notice to Financial Institution Form on the following page to your bank to Establish an Interest on Lawyer Trust Account ("IOLTA").

Notice to Financial Institution

TO: _____ FROM: _____

_____ _____

_____ _____

(Depository Institution) (Attorney/Law Firm)

Re: **The Georgia IOLTA Program**
Remitting interest to the Georgia Bar Foundation

The undersigned attorney(s) is (are) required by order of the Supreme Court of Georgia to keep certain client funds in interest on lawyer trust account (IOLTA) accounts. Under this program, the account whose name and number are set forth below should be made interest-bearing subject to negotiable orders of withdrawal (NOW) accounts or other interest-bearing accounts authorized by the Supreme Court of Georgia and permitted by Federal law.

Interest on the average monthly balance in the account, or as otherwise computed in accordance with your standard accounting procedure (net of approved charges), should be remitted at least quarterly by check mailed to the Georgia Bar Foundation, P.O. Box 101528, Atlanta, Ga. 30392-1528; call 404-588-2240 if you prefer remitting via ACH. The tax I.D. number (580552594) on the account should, however, be that of the Georgia Bar Foundation, not of the law firm. No Form 1099 needs to be filed with the I.R.S.

Please send to the Foundation and to me a statement showing the name on the account, the account number, the interest rate, the average balance against which the interest rate is applied, the gross interest, any charges not waived, and the net interest remitted for each IOLTA account.

If your institution provides IOLTA accounts for more than one attorney or law firm, you may find it convenient to make a single remittance for all accounts. With that remittance, send a paper or electronic spreadsheet showing individual law firm data in one row, with multiple law firm information on one page. Please note that, by order of the Supreme Court of Georgia, a loss (gross interest minus service charge is less than zero) on one IOLTA account cannot reduce the interest remitted to the Foundation from any other IOLTA account at your bank.

Inquiries concerning IOLTA in Georgia may be directed to Lisa Smith at the Georgia Bar Foundation, 104 Marietta Street, Suite 610, Atlanta, GA 30303; 404-588-2240; Lisa@GaBarFoundation.org.

The use by law firms, including professional associations, of NOW accounts as IOLTA trust accounts has been approved by the Federal Reserve System and the Federal Home Loan Bank Board. Copies of the opinions are available from the Georgia Bar Foundation. With the Foundation's tax number on each IOLTA account, the account has non-profit status and can be a NOW account since the charitable Foundation has a beneficial interest in the account.

Thank you for your prompt attention to this request. Your cooperation and support for this important charitable program benefiting the citizens of Georgia are much appreciated.

Account Name: _____

Account No.: _____

Date: _____

Authorized Signatures for the Trust Account:

_____ _____

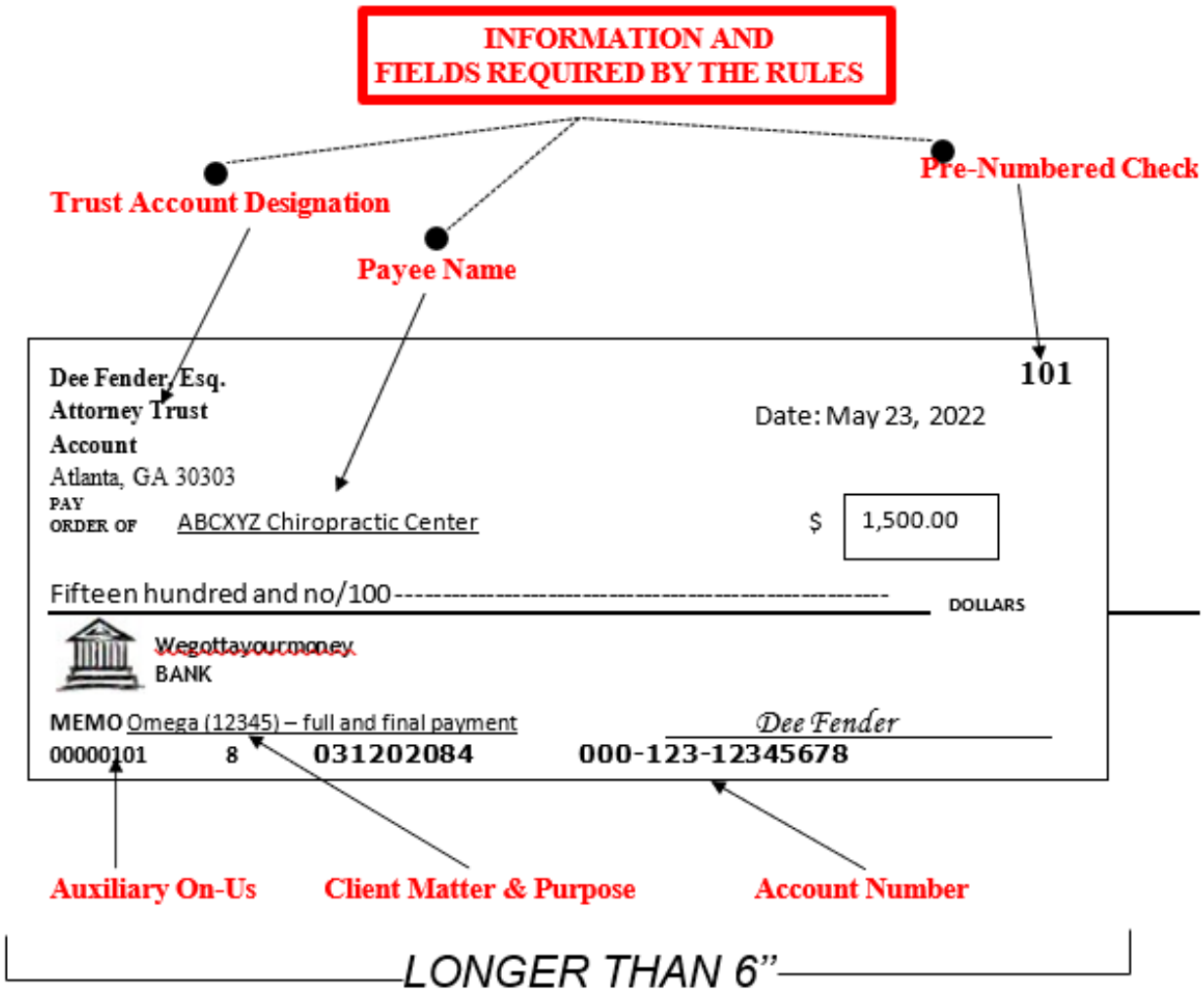
_____ _____

cc: Georgia Bar Foundation, Inc.

1/17/2024

D5. Trust Account Check

D6. Trust Account Check Detail



D7. Deposit Slip for One Client

BB&T

ABC LAW FIRM

TRUST ACCOUNT

:053101121: Acct. #: 123456789

PLEASE ENDORSE ALL CHECKS		
DATE 05/01/2022		
CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE RULES AND REGULATIONS OF THIS INSTITUTION.		
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.		
PLEASE LIST EACH CHECK SEPARATELY.		
	DOLLARS	**CENTS**
CURRENCY		
COIN		
1 Alpha	$5,000	00
2		
3		
4		
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
FRONT SIDE TOTAL	$5,000	00
REVERSE SIDE TOTAL	0	00
TOTAL DEPOSIT	$5,000	00

! ! ! ! ! ! ! ! !

Deposit slips should always be printed with the name of the lawyer or law firm, IOLTA or Trust Account Designation, account number, and routing number.

! ! ! ! ! ! ! ! !

D8. Deposit Slip for Multiple Clients

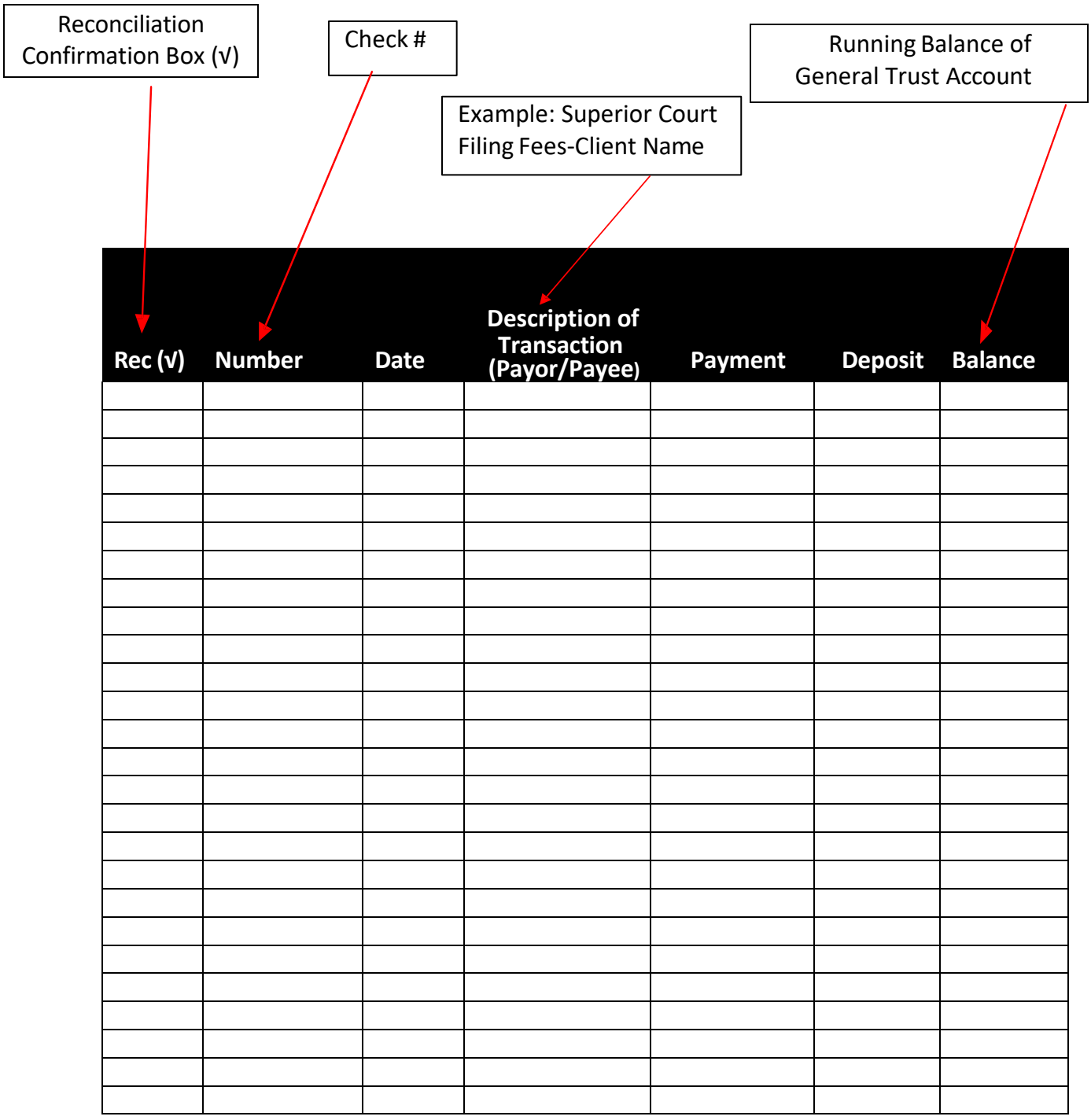
ABC Law Firm
TRUST ACCOUNT
Acct. #: 123456789

List client names instead of check routing numbers.

PLEASE ENDORSE ALL CHECKS		
DATE 05/15/2022		
CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE RULES AND REGULATIONS OF THIS INSTITUTION.		
DEPOSITS MAY NOT BE AVAILABLE FOR IMMEDIATE WITHDRAWAL.		
PLEASE LIST EACH CHECK SEPARATELY.		
	DOLLARS	**CENTS**
CURRENCY		
COIN		
1 Beta (Source: BB&T)	$1,500	00
2 Gamma	$1,450	00
3 Delta	$5,100	00
4 Epsilon	$2,000	00
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
FRONT SIDE TOTAL	$10,500	00
REVERSE SIDE TOTAL	0	00
TOTAL DEPOSIT	$10,500	00

! ! ! ! ! ! ! ! !
Deposit slips should always be printed with the name of the lawyer or law firm, IOLTA or Trust Account Designation, account number, and routing number.
! ! ! ! ! ! ! ! !

D9. General Ledger



Rec (√)	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance

D10. Administrative Funds Ledger

Rec	Number	Date	Description of Transaction	Payment	Deposit	Balance
	Dep.	3/1	Funds to open Acct.		100.00	100.00
	Wire #123	4/15	Wire fee — Jones	15.00		85.00
	112	9/10	TA Checks Order	50.00		35.00
	Dep.	10/1	Firm funds back to $100		65.00	100.00

D11. Zero Balance Written Accounting

Attorney/Firms Name
Address
Accounting for Funds in Trust
1/10/2022

Client: Joe Accident Victim

Receipts:

Date	Source	Amount
1/3/2022	All State Ins.	$21,712.00

Total Receipts: $21,712.00

Disbursements:

Date	Recipient	Purpose	Amount
1/6/2022	Heal Me Hospital	Medical Expenses	$13,252.00
1/6/2022	Hi Motors	Car Repair	$1,200.00
1/6/2022	What's His Name, MD	Medical Expenses	$4,803.26
1/6/2022	Joe Accident Victim	Payment	$2,456.74

Total Disbursements: **$21,712.00**
Balance: **$0.00**

This accounting of the receipt and disbursement of your funds in the trust account is provided as required by the rules of the State Bar of Georgia.

(Lawyer)

Note: A copy of the client's ledger may be included with a letter or memo stating: A copy of your trust account ledger is being provided indicating the receipt and disbursement of your funds in the trust account.

D12. Annual Written Accounting
(When There Has Been No Activity in the Account)

Lawyer/Firm Letterhead

Mr./Mrs./Ms.
Address
City, State, Zip

Re: Annual Accounting of Funds in Trust Account

Dear

I am writing to advise you that this office holds in trust the sum $_____ on your behalf. This information is being furnished to you as required by the Rules of the State Bar of Georgia.

This is periodic accounting, and no action is required on your part. However, if this report is incorrect, please contact this office immediately.

An accounting of your trust account record is available at any time.

Very truly yours,

Note: This accounting is for client funds on which there has been no activity since the last accounting. If there are receipts or disbursements on a client ledger during a 12-month period, an accounting for the receipts and disbursements or a copy of the client's ledger must be included with the letter.

If a lawyer is holding substantial funds for a client for a period of time, those funds should be placed in a dedicated trust account in order that they may earn interest for the client.

D13. Reconciliation Report

Reconciliation Report

REPORT DATE: _____20____

ACCOUNT #: _____

Instructions

- Complete steps 2-7 monthly for **each** general trust, dedicated trust, and fiduciary account. Attach: 1) a copy of the general ledger/checkbook register, 2) a list of outstanding deposits, 3) a list of outstanding checks, 4) the corresponding bank statements and cancelled checks (or images thereof).
- Complete entire form at least quarterly for **each** general trust account. Attach: 1) items 1-4 above and 2) a list of subsidiary ledgers[1] with corresponding balances.

Reconciliation of Lawyer's Trust Account Records

1. **Total of *positive* subsidiary ledger balances** as of _____ $_____
   (as of ending date shown on the corresponding bank statement)

   Does any subsidiary ledger have a negative balance? □ *Yes*[2] □ *No*

2. **General ledger/checkbook register balance** as of _____ $_____
   (as of ending date shown on the corresponding bank statement)

Bank Statement Reconciliation

3. **Statement Ending Date** _____ **and Balance** $_____

4. ***Plus:*** Outstanding deposits made to the account through end of month but not reflected on bank statement

Number of outstanding deposits _____ Amount of outstanding deposits + _____

5. Minus: Outstanding disbursements made through end of month but not reflected on bank statement

Number of outstanding disbursements _____ Amount of outstanding disbursements - _____

6. ***Adjusted Bank Balance*** $_____

7. The balance on line #6 □ *agrees* □ *does not agree* with the balances on lines #1 and #2. If the balances do not agree, attach explanation and corrective action taken.

Report prepared by: _____ _____
Print Name and Position Signature

Report prepared by a non-lawyer? □ *Yes* □ *No* If yes, does he/she have check signing authority for this trust account? □ *Yes* □ *No*

I certify that, for this account, I personally reviewed the above report, bank statement, and cancelled checks, and that all discrepancies shall be investigated, identified, and resolved within ten days of this report.

Report reviewed by: _____ _____ _____
Print Lawyer Name Signature Date

[1] Subsidiary ledgers = 1) all individual client ledgers and 2) the administrative ledger on which all transactions involving administrative funds maintained in the account pursuant to Rule of Professional Conduct 1.15(II) Comment 1 are recorded.

[2] If yes, attach explanation and corrective action taken.

D14. Quarterly Review Report

Random Transaction Review

REPORT DATE: _____ 20_____

Account Name: _____

Account #: _____

GENERAL INFORMATION

- Complete one form for *each* general trust account, dedicated trust account, and fiduciary account.
- Attach the following for each transaction: statement of costs and receipts, client ledger, cancelled checks or images thereof, any other documentation necessary to complete review, and any required explanations.

Transaction #1

1. Client Name/Matter: _____/_____ Date Range of Disbursement(s) _____:_____
2. Does client ledger show a negative balance? □ Yes □ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following: *(Attach to Report)*
   - Statement of Costs and Receipts □ Yes □ No
   - Client Ledger □ Yes □ No
   - Cancelled Checks (or images thereof) □ Yes □ No
   - Other _____ □ Yes □ No
4. Did the transaction involve multiple disbursements? □ Yes □ No Number of disbursements _____
5. Are any disbursements outstanding? □ Yes □ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? □ Yes □ No If yes, attach explanation and corrective action.

Transaction #2

1. Client Name/Matter: _____/_____ Date Range of Disbursement(s) _____:_____
2. Does client ledger show a negative balance? □ Yes □ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following: *(Attach to Report)*
   - Statement of Costs and Receipts □ Yes □ No
   - Client Ledger □ Yes □ No
   - Cancelled Checks (or images thereof) □ Yes □ No
   - Other _____ □ Yes □ No
4. Did the transaction involve multiple disbursements? □ Yes □ No Number of disbursements _____
5. Are any disbursements outstanding? □ Yes □ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? □ Yes □ No If yes, attach explanation and corrective action.

Transaction #3

1. Client Name/Matter: _____/_____ Date Range of Disbursement(s) _____:_____
2. Does client ledger show a negative balance? □ Yes □ No If yes, attach explanation and corrective action.
3. Lawyer reviewed the following: *(Attach to Report)*
   - Statement of Costs and Receipts □ Yes □ No
   - Client Ledger □ Yes □ No
   - Cancelled Checks (or images thereof) □ Yes □ No
   - Other _____ □ Yes □ No
4. Did the transaction involve multiple disbursements? □ Yes □ No Number of disbursements _____
5. Are any disbursements outstanding? □ Yes □ No If yes, attach explanation and corrective action.
6. Were any disbursements improperly made? □ Yes □ No If yes, attach explanation and corrective action.

Lawyer Certification

I certify that I personally randomly selected the above transactions, that I personally conducted the review, and that all discrepancies shall be investigated, identified, and resolved within ten days of this review.

Lawyer Name	Signature	Date	Firm Name

D15. Closing a Trust Account—A Checklist

☐ 1. Fully reconcile your trust account. Any funds remaining in the account should belong to specific clients or nominal funds used to open the account or should cover reasonably anticipated bank charges.

☐ 2. Determine whether your bank will assess any fee for closing your trust account. If the bank will impose a fee for closing the trust account, arrange for this fee to be taken from your general operating account, or you will need to deposit sufficient funds to cover this closing fee. You are responsible for this bank fee; therefore, you must not allow client funds to cover it.

☐ 3. Prepare and send any final client bills, if necessary.

☐ 4. Disburse any funds belonging to your law firm, such as earned fees and reimbursements for any client costs advanced.

☐ 5. Disburse funds belonging to clients by sending a check from the trust account to the client with the final bill, or if the client directs this, send the balance to the client's new law firm with a cover letter, with a copy to your client.

☐ 6. If you have been unable to reach your client to return any funds owed to your client, refer to Georgia Formal Advisory Opinion 98-2 to comply with rules regarding unclaimed property.

   a. The formal advisory opinion requires a lawyer to exhaust all reasonable efforts to locate the client. At the very least, the lawyer should attempt to reach the client by telephone, regular and certified mail, and contact with family members or friends of the client (if known to the lawyer, and if this can be done without revealing confidential or secret information). If those efforts fail, the lawyer may dispose of the funds pursuant to Georgia's Disposition of Unclaimed Property Act. The Act can be found at O.C.G.A. § 44-12-190. It deems abandoned funds that have been unclaimed for over five years, and provides that such funds may be delivered to the Georgia Department of Revenue for payment into the general fund of the State of Georgia. (Refer to Unclaimed Property Holder Reporting Forms).

   b. A lawyer may never appropriate unclaimed funds for his or her personal benefit, and the funds must remain in the lawyer's trust account until delivered to the state pursuant to the act.

c. If your client reappears and wants the money, contact the IOLTA/Georgia Bar Foundation at 404-588-2240.

☐ 7. Disburse funds belonging to you (earned fees, reimbursement for costs advanced) and deposit into your business account.

☐ 8. There are no requirements for you to notify the IOLTA/Georgia Bar Foundation that your IOLTA account has been closed. Your bank will notify the IOLTA/Georgia Bar Foundation when your IOLTA account is closed.

☐ 9. Do not close your trust account at the bank until all outstanding checks have cleared.

☐ 10. Be sure to shred any unused checks and deposit slips to prevent fraud and to protect you from accidentally using any checks and deposit slips from this closed account.

☐ 11. Keep the IOLTA check register, client ledgers, bank statements, and other records for at least six years: "Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation." (GRPC Rule 1.15(I)(a)-Safekeeping Property—General).

a. If you do not preserve these records for the required time, you will be violating your ethics rules and could incur disciplinary action.

APPENDIX E - ADDITIONAL RESOURCES

Georgia Bar Journal Trust Account Management Ethics Articles

Below are articles written in the *Georgia Bar Journal* on trust account management for Georgia lawyers. You can get access to articles on the State Bar of Georgia website at https://www.gabar.org/newsandpublications/georgiabarjournal/index.cfm.

Ethics Question	**Refer to:**
When a lawyer holding client funds and/or other funds in a fiduciary capacity is unable to locate the rightful recipient of such funds after exhausting all reasonable efforts, may that lawyer remove the unclaimed funds from the lawyer's escrow trust account and deliver the funds to the custody of the State of Georgia in accordance with the Disposition of Unclaimed Property Act?	*The Good Kind of Escrow Problem: What to Do When There's Too Much Money in Your Trust Account*, Office of the General Counsel, Paula Frederick, *Georgia Bar Journal*, April 2005, Vol. 10:5, pg. 60.
What does a lawyer do when she has disbursed against apparently legitimate funds that later turn out to be fraudulent?	*If It Sounds Too Good To Be True…*, Office of the General Counsel, Paula Frederick, *Georgia Bar Journal*, August 2008, Vol. 14:1, p. 74.
How can a lawyer reduce the likelihood that she will be used in a fraudulent scheme?	*Money for Nothing*, Office of the General Counsel, Paula Frederick, *Georgia Bar Journal*, August 2012, Vol. 18:1, p. 50.
Does a lawyer have to put fees paid in advance into her escrow account?	*Only in Georgia*, Paula Frederick, *Georgia Bar Journal*, June 2023, Vol. 28:6, p. 48.
In a time of bank turmoil, what should lawyers do to ensure the safety of client funds held in a trust account?	*You Can Bank on This*, Paula Frederick, *Georgia Bar Journal*, April 2023, Vol. 28:5, p. 34.
Why would you want your trust account to be exempt? What does the Georgia Bar Foundation do with the money?	*Painless Way to Give Still Is – If You Know a Few Tricks*, Len Horton, *Georgia Bar Journal*, August 2001, Vol. 7:1, p. 50.

What do the ethics rules say about file retention of trust account records?	*File Retention: What is the Ethical Thing to Do?* Office of General Counsel, *Georgia Bar Journal*, October 2001, Vol. 7:2, p. 36.
What are the most common questions about managing an IOLTA account?	*A Few Tricks You Should Know Managing Your IOLTA Account*, Len Horton, February 2004, *Georgia Bar Journal*, Vol. 9:4, p. 43.
Do the rules require a lawyer to "promptly notify" a third person upon receipt of funds in which that person has an interest, and to "promptly deliver" to the third person any funds they are entitled to receive?	*To Pay or Not to Pay*, Paula Frederick, *October 2005, Georgia Bar Journal,* Vol. 11:2, p. 60

LPM Resource Library Materials Available for Checkout

- The ABA Guide to Lawyer Trust Accounts by Jay G. Foonberg with annotations by Ellen Peck (1996)
- Attorney and Law Firm Guide to the Business of Law, Third Edition: Planning and Operating for Survival and Growth by Edward Poll (2002-2014 Editions)
- The Business Guide to Law : Creating and Operating a Successful Law Firm by Kerry M. Lavelle (2015)
  2005
- Flying Solo: A Survival Guide for the Solo and Small Firm Lawyer edited by K. William Gibson (2001-2005 Editions)
- How to Start and Build a Law Practice by Jay Foonberg (2004)
- Law Firm Accounting Demystified : A Guide to Handling Everyday Legal, Trust, and Business Transactions by Rick Kabra and Pamela Roza (2016)
- Law Practice Accounting Using QuickBooks, Sixth Edition : Attorney's Guide to Using QuickBooks in a Law Practice by Lynette Benton (2010)
- QuickBooks in One Hour for Lawyers by Lynette Benton (2013)
- Risk Management, Third Edition: Survival Tools for Law Firms by Anthony E. Davis and Katie M. Lachter (2015)
- Trust Accounting in One Hour for Lawyers by Sheila M. Blackford (2017)

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ACCESSIBLE, *MY ACCOUNT*

Access information about your account from any page in the library catalog by selecting the *My Account* link. You can check the status of your account, update your contact information, place holds and renew materials, and more.

SAMPLE LPM FORMS

LPM provides free downloadable and printable practice management forms that you can either fill in or revise to your own situation.

INFORMATION DESK

Kim Henry
Phone: 404-526-8621
Email: kimh@gabar.org

LPM Resource Online Checkout Library Catalog:
https://statebarga.library.site

Library Hours:
Monday – Friday
8:30 a.m. – 5 p.m.

Pick Up/Mailing Address:
State Bar of Georgia
Law Practice
Management Program
104 Marietta St., Suite 100
Atlanta, GA 30303
www.gabar.org

State Bar of Georgia

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1. Materials may be checked out by all Bar members, Bar members' staff and law students. The law firm will be responsible for postage and replacement costs of materials checked out by their staff.

2. Only three (3) items (books and/or media) may be checked out at a time so that everyone has an opportunity to use our resources. This rule may be waived at the discretion of the librarian. We will ship materials upon receipt of a request.

3. You may pick up your materials at no charge at the State Bar. If delivered by mail, there is a shipping fee of $5 for the first item and $2.50 for each additional item. You may remit payment for postage through the State Bar's web Store at www.gabar.org under Law Practice Management products. We accept Mastercard, Visa or American Express and will ship materials upon receipt of request. Please allow at least five days to receive your material via mail.

4. All checked-out materials must be returned to the library in two (2) weeks so that others may take advantage of the same services you have received. Should you need a renewal, click on the *My Account* link through the online library catalog to extend checkout (max. 2) or contact the Information Desk for assistance.

5. First-time patrons are required to fill out the first-time patron registration form. The link to the form can be found on LPM's Resource Library web page at www.gabar.org or located under *Library News* on the library site at https://statebarga.library.site.

6. You must provide a telephone number and email address where you can be reached in the unlikely event that we need to contact you concerning the status of the resource item.

7. Because we realize how long it might take for materials to be returned to us via mail, we always extend a five (5) day grace period in the return of all resource materials.

8. Disclaimer: These materials are intended to be general education resources. While they are from reputable sources, they have not been reviewed for compliance with all applicable Georgia Rules of Professional Responsibility. Please call the State Bar's Ethics Hotline at 800-682-9806 if you need additional information.

Scan this code on your smartphone or mobile device for quick access to library registration.

As always, we are pleased to assist you with your law practice management needs.

LIBRARY INFORMATION

LPM Resource Online Checkout Library Catalog:
https://statebarga.library.site/

Library Hours:
Monday – Friday, 8:30 a.m. – 5 p.m.

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