

# Wyoming State Bar Trust Account Handbook



## Table of Contents

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Introduction.....	1
Equal Justice Wyoming Foundation.....	1
Getting Started.....	2
Do I need a trust account? .....	2
I am an out of state practitioner. Do I need a Wyoming trust account?.....	2
What are the Wyoming State Bar’s criteria for approval of a trust account depository institution?.....	2
What are the reporting requirements for my trust account? .....	2
What are some examples of client funds? .....	3
What does <u>not</u> go into a trust account? .....	4
Which type of trust account should I use? .....	8
Who may be a signer on a trust account? .....	9
How do I open an IOLTA account? .....	9
What about bank fees for IOLTA accounts? .....	11
How do I open a non-IOLTA account? .....	11
Deposits, Disbursements and Related Recordkeeping.....	13
What do I deposit into the trust account? .....	13
What about credit card payments? .....	13
How do I keep proper deposit records? .....	13
How do I disburse funds from a client trust account? .....	14
Required trust account records.....	16
Sample trust account reconciliation.....	19
Reporting to clients and third persons.....	20
Disbursement of settlement proceeds .....	20
Third party interests in funds held in trust.....	21
Non-Cash Property Belonging to Clients and Third Persons.....	22
Frequently Asked Questions .....	22
WRPC 1.15: Safeguarding Property.....	25

This handbook has been prepared by the Wyoming State Bar Office of Bar Counsel as a guide for both new and experienced lawyers with trust account questions. Our purpose is to provide you with the basic rules and highlight areas that may require your best professional judgment. Questions? Please do not hesitate to contact us at (307) 632-9061.

The Wyoming State Bar gratefully acknowledges the pioneering work done in this area by the staff auditors in the Office of Disciplinary Counsel of the Washington State Bar Association, and the Washington State Bar Association’s generous permission to use its publication, *Managing Client Trust Accounts*, as the basis for this handbook.

## **Introduction**

The trust account rule currently in effect for members of the Wyoming State Bar is Rule 1.15 of the Wyoming Rules of Professional Conduct (WRPC). This publication reflects amendments to that rule through November 1, 2016. The full text of WRPC 1.15 appears on pages 25-32.

WRPC 1.15 imposes a strict fiduciary standard that all funds received by a lawyer which belong wholly or in part to a client or third person must be maintained in an interest-bearing trust account while in the lawyer's possession. The trust account must be segregated from any lawyer funds. It must be with a regulated financial institution that is located or has a branch located in Wyoming, the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts. A list of all financial institutions meeting these requirements is available on the Bar's website, [www.wyomingbar.org](http://www.wyomingbar.org). Finally, the trust account must generate interest for the benefit of either the client or the Equal Justice Wyoming Foundation (EJWF). The client trust account that generates interest for the benefit of EJWF is frequently referred to as an IOLTA (Interest on Lawyers' Trust Accounts) account. WRPC 1.15(g) imposes a clear standard as to what records are required when maintaining a trust account.

The Wyoming Supreme Court has adopted comments to WRPC 1.15. The responsibility for compliance cannot be delegated to others. Violations of the rule may result in disciplinary action, including possible disbarment.

WRPC 1.15 has been implemented in an attempt to protect both clients and lawyers. When entrusting money to his or her lawyer, the client must feel confident that the funds will be maintained in a safe place, fully accounted for, and promptly remitted. The lawyer who conscientiously follows these rules is less likely to face false claims of financial improprieties with client funds. This creates a "win-win" situation for both parties.

## **Equal Justice Wyoming Foundation**

EJWF, Wyoming's IOLTA program beneficiary, is a tax-exempt, nonprofit organization as defined by section 501(c)(3) of the Internal Revenue Code. EJWF is separate and distinct from the Wyoming State Bar and the Judicial Branch entity, Equal Justice Wyoming. EJWF began administering Wyoming's IOLTA program in 2015 after taking on the functions of the former Wyoming State Bar Foundation. EJWF is governed by a Board of Directors.

The Foundation's mission is to strengthen and defend access to justice and civil legal services in Wyoming through fundraising and other supportive activities. The Foundation's guiding principle is that every individual should have full and equal access to justice, regardless of his or her financial means.

EJWF distributes the funds received from the IOLTA Program for the purposes of providing legal services to low-income persons in Wyoming, who would otherwise be unable to obtain legal assistance; providing public education projects which promote a knowledge and awareness of the law; and providing projects which improve the administration of justice. For more information about EJWF, visit [www.equaljusticewyomingfoundation.org](http://www.equaljusticewyomingfoundation.org).

## Getting Started

### **Do I need a trust account?**

The purpose of a trust account is to protect your clients' funds. WRPC 1.15(a) requires a lawyer to deposit and hold in a trust account any funds belonging to a client or third person, that are in the lawyer's possession, in connection with a representation. This requirement protects client funds from lawyers' creditors or personal financial problems. Therefore, any lawyer who expects to handle client funds should open a trust account. If you are not in private practice, or if you do not expect to receive client funds, there is no need to open a trust account. A law firm may open one account for all lawyers in the firm.

### **I am an out of state practitioner. Do I need a Wyoming trust account?**

A trust account complying with WRPC 1.15 is required for funds of clients or third persons coming into a lawyer's possession in the course of legal representation for which membership in the Wyoming State Bar is required. (Members of the Wyoming State Bar who, because of the nature of their practice, do not, in the course of providing legal representation requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this rule.) The account must be with a regulated financial institution that is located or has a branch located in Wyoming which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts. The Wyoming State Bar maintains a list of approved trust account depository institutions on its website at [www.wyomingbar.org](http://www.wyomingbar.org).

### **What are the Wyoming State Bar's criteria for approval of a trust account depository institution?**

In order to be approved as a trust account depository institution, the financial institution must be insured by an agency of the federal government and must have a Trust Account Overdraft Notification Agreement on file with the Wyoming State Bar. See WRPC 1.15(b). The Wyoming State Bar maintains a list of approved trust account depository institutions on its website at [www.wyomingbar.org](http://www.wyomingbar.org).

**Note:** In order to qualify as a depository institution for an IOLTA account, the financial institution must also be approved by the Equal Justice Wyoming Foundation (EJWF). EJWF maintains a list of IOLTA Eligible Institutions on its website at [www.equaljusticewyomingfoundation.org](http://www.equaljusticewyomingfoundation.org). See page 10.

### **What are the reporting requirements for my Wyoming trust account?**

On or shortly after October 1st each year, you will receive an email notification from the Wyoming State Bar that your Annual License Fee Statement is due by November 30<sup>th</sup>. The statement

contains the following trust account certification section regarding your compliance with WRPC 1.15, which you must complete and return:

## 8 Trust Account Certification

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

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

Wyoming Financial Institution: \_\_\_\_\_  
Wyoming Branch Location: \_\_\_\_\_  
Account Number: \_\_\_\_\_  
Wyoming IOLTA:  Yes  No  
Name of Account: \_\_\_\_\_  
  
Attach additional sheets as necessary

**Section 8 MUST be completed by ALL members.**

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

Signature \_\_\_\_\_

Date \_\_\_\_\_

## What are some examples of client funds which are required to be placed in a trust account?

### Advance fee and cost deposits

Advance fee and cost deposits are funds given to you by clients to pay for future fees and costs; these are fees you have not yet earned or costs you have not yet paid. Advance fee and cost deposits are considered client funds and must be deposited into the trust account because the client expects that the funds will be safeguarded until needed. If you handle advance fee deposits, you need a trust account. Advance fee deposits should be distinguished from "retainers" and "flat fees" (see the discussion of retainers and flat fees on pages 5-8).

### Settlement payments

Settlement proceeds are considered client funds and must be handled in accordance with WRPC 1.15. WRPC 1.15(e) provides that upon receipt of settlement funds, a lawyer must promptly notify the client and any third parties who have an interest in the settlement. The rule requires the lawyer to promptly deliver to the client or third party the portion of the settlement that the client or third party is entitled to receive and, upon request, to promptly render a full accounting regarding the settlement. Complete records of such accountings must be preserved for a period of five years after termination of the representation. (Remember that all contingent fee arrangements must be in writing and signed by the client. See the Rules Governing Contingent Fees for Members of the Wyoming State Bar.)

## **Overpayments**

Overpayments are considered to be partially earned (the part covering the outstanding balance) and partially unearned (the overpaid portion). WRPC 1.15(d) states that a lawyer “shall deposit into a client trust account legal fees that have been paid but not yet earned and expenses that are anticipated but have not yet been incurred. The lawyer may withdraw such advance payments only as fees are earned or expenses incurred.” Therefore, overpayments must initially be deposited into the trust account. The earned portion must be withdrawn once the funds have been collected. (See the section on disbursing funds at pages 14-16 for more information about collected funds.) The unearned portion may be refunded to the client, or if the client so chooses, held in the trust account to apply to future services. Under no circumstances is it permissible to deposit client overpayments to the general business account.

If you would rather not deposit the overpayment into the trust account, you can send the payment back to the client and ask that the check be reissued for the proper amount.

**Note:** If client overpayments occur frequently, you may want to review your billing statement to determine if its format is confusing. Some billing programs do not clearly differentiate between the current billing amount and the total client balance to date; this may be the cause of overpayment.

## **Funds held in other fiduciary capacities**

If you are holding funds in connection with a representation in which you are also acting as a trustee, agent, escrow agent, guardian, personal representative, or executor, those funds must be deposited and held in a trust account. If you are simply acting as the executor of an estate, trustee of a trust, etc., and not serving as a lawyer for the entity, WRPC 1.15 does not apply. In those situations, funds would generally be held in accounts with the tax identification number of the estate or trust, not in the lawyer’s trust account.

## **What does not go into a trust account?**

Knowing what must not go into the trust account is just as important as knowing what does go into the trust account. Depositing earned fees or personal funds into a trust account is regarded as “commingling,” which can change the nature of the account and allow it to be subject to a lawyer’s creditors. The following are some types of funds that must not be deposited into the trust account.

### **Fully earned fees (i.e., payments of bills)**

This is money you receive from your client that is already earned. If your client is paying the exact amount shown on your invoice (or less), that payment does not go into the trust account.

### **Reimbursements for litigation expenses that have been advanced by a lawyer**

WRPC 1.8(e)(1) authorizes lawyers to advance the expenses of litigation. Any such advances by the lawyer should be paid out of the general business account, not the trust account.

These advances are usually paid by the lawyer when there are no client funds on deposit and, therefore, using the trust account would not be appropriate (i.e., you may not fund the costs for one client from monies held in trust for other clients). When you bill the client for these costs and the client makes a full or partial payment, you should deposit the funds into your general business account.

Sometimes the reimbursements for costs advanced will be paid from a settlement when it is received. Because part of the settlement belongs to the client, the settlement must be deposited into the trust account. The lawyer's portion to cover costs and fees is then withdrawn after the settlement check clears the bank and a settlement statement has been provided to the client (see WRPC 1.15(e)).

### **Retainers**

The term retainer has been widely misused and confused with advance fee deposits and flat fees, and some lawyers have used the term to describe nearly any type of fee paid in advance. Although not addressed in Wyoming's rules, case law generally holds that a retainer is a fee that a client pays to a lawyer to ensure the lawyer's availability during a specific period of time or on a specific matter, in addition to, and apart from any legal services to be performed. A retainer is not a deposit for fees for legal services that are to be performed in the future. Any payment made that is later applied to a client's account as the lawyer renders services is not a retainer.

A retainer agreement should be in writing and signed by the client. The written retainer agreement should clearly specify the time period or purpose of the lawyer's availability, that the client will be separately charged for any services provided, and that the lawyer will treat the payment as the lawyer's property immediately on receipt and will not deposit the fee into a trust account. If these steps are followed, retainers become the lawyer's property on receipt and do not go into a trust account.

### **Flat fees**

Flat fees, sometimes referred to as fixed fees, offer considerable utility for client and lawyer alike. From the client's perspective, the flat fee provides predictability and control over the cost of hiring a lawyer. For lawyers, flat fees are particularly handy for routine, one-time tasks – preparation of a simple will; transactional documents such as deeds, purchase agreements and other contracts; or documents to create a corporation or limited liability company. However, as the fees charged under this arrangement become larger or relate to more complex situations, the need to be mindful of ethical considerations is heightened.

It is important to remember that the relationship between lawyer and client, although contract-based, implicates additional duties not typically found in a contract. For instance, although parties are generally free to choose the terms of their contracts so long as public policy is not violated, special considerations apply to fee arrangements between lawyers and clients:

Contractual clauses for payment of attorneys' fees are "generally a matter of agreement between the lawyer and client." *In re Hellerud*, 714 N.W.2d at 41. However, "[t]he reasonableness of a fee is not measured solely by examining its value at the outset of the representation; indeed an otherwise-reasonable fee can become unreasonable if the lawyer fails to earn it." *Attorney Grievance Comm'n of Maryland v. Garrett*, 427 Md. 209, 46 A.3d 1169, 1178 (2012). Attorneys' duties to clients can exceed the duties of parties under contract law. This is because the attorney-client relationship is a fiduciary relationship of trust and confidence. *Lee v. LPP Mortg. Ltd.*, 2003 WY 92, ¶ 21, 74 P.3d 152, 160 (Wyo. 2003); *Bevan v. Fix*, 2002 WY 43, ¶ 53, 42 P.3d 1013, 1029 (Wyo. 2002).

*Bd. of Prof'l Resp. v. Casper*, 318 P.3d 790, 795-96 (Wyo. 2014).

Flat fee arrangements, like all billing for legal services, must comply with WRPC 1.5. WRPC 1.5(a) provides, "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses." The rule lists the factors to be considered in determining the reasonableness of a fee:

- (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, if apparent to the client, 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.

WRPC 1.5(b) carries forward the principles of WRPC 1.2 (scope of representation) and WRPC 1.4 (communication) and reiterates the importance of reaching an understanding with the client regarding fees:

The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. \* \* \* Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

Comment 4 to WRPC 1.5 states, "A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Rule 1.16(d)." The referenced WRPC 1.16(d) provides in pertinent part, "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 or expense that has not been earned or incurred."

To summarize, (1) even fees paid in advance must be earned; and (2) clients are free to discharge their lawyers at any time. Whether the decision to terminate the representation is the lawyer's or the client's, lawyers are obligated to return any unearned fees.

### ***What is a reasonable flat fee?***

In recent years, the Wyoming Supreme Court has repeatedly emphasized that "[a] reasonable fee can only be fixed by the exercise of judgment." *Dishman v. First Interstate Bank*, 362 P.3d 360, 366 (Wyo. 2015) (quoting *Tolin v. State (In re NRF)*, 294 P.3d 879, 883 (Wyo. 2013)); see also *Bd. of Prof'l Resp. v. Casper*, *supra*, 318 P.3d at 796. This tenet applies with particular force to setting a flat fee, for which, if challenged, the lawyer has the burden of proving reasonableness. See Rule 5(o), Wyoming Rules for Fee Arbitration.

Although case law in Wyoming with respect to flat fees is sparse, Professor John M. Burman has suggested some broad guidelines:

A fixed fee may be based on an estimate of the time which will be involved, or it may be set lower or higher to generate future business or reflect the reality that lawyers become more efficient in producing work which is, nevertheless, of significant value to the client. Also, a lawyer may have invested substantial time in ensuring that the documents comply with applicable laws—it would be unfair and unreasonable to bill one client for all that time; it would also be unethical to bill every client for the time it took to prepare the initial document.

Burman, J.M., PROFESSIONAL RESPONSIBILITY IN WYOMING §5.5.3.3.3, pp. 157-58 (Wyo. State Bar 2008).

### ***Is a flat fee ever nonrefundable?***

Though Wyoming has never spoken to this issue, the answer is probably not. An agreement providing that no portion of the fee will be refunded is viewed in most jurisdictions as an unenforceable interference with the client's right to discharge the lawyer.

Lawyers should not avoid flat fee arrangements in situations in which they make sense. However, in fixed fee arrangements as in all matters of billing for legal services, certain considerations should be kept in mind:

- You must have an understanding with your client as to the scope of your representation and the fee arrangement on the front end.
- Although written fee agreements are mandatory only in contingent fee matters, you should utilize a written engagement agreement to include fee provisions in all engagements.

- Be prepared to defend your fee for reasonability and to show that you utilized professional billing judgment in setting the fee.
- Remember that if the fee is challenged, the burden will be on you to prove reasonableness.
- Be careful about non-refundability provisions. The better practice is to advise your client in writing that if representation is terminated before you have provided all legal services described in the agreement, the client may be entitled to a refund of all or part of the fee based on the value of legal services performed prior to termination.
- Keep your time, even in flat fee arrangements. If you have to defend a challenge to your fee, the tribunal will naturally want to know how much work you actually performed.
- If you are going to treat an advance payment as non-refundable, be ready to defend it as a retainer (see page 5, supra).
- As a matter of course, deposit flat fees into your trust account and withdraw them only as/after the fee is earned. Stay away from “earned upon receipt” provisions in your fee agreement.

Flat fee arrangements work best when the lawyer can predict with confidence how much work will need to be done on a particular matter. The more complex the matter – and the less sophisticated the client – the higher the risk that flat fee arrangements may become problematic.

### **Lawyers’ personal or business transactions**

Deposits related to a lawyer’s personal or business transactions must not be placed in the trust account. The trust account is designed to hold client funds, not funds relating to employees, stockholders, outside counsel, friends, businesses of the lawyer, and/or personal real estate transactions. Make sure trust account deposits are for your clients and connected with a representation before depositing the funds into the trust account.

### **Which type of trust account should I use?**

You’ve determined that you handle client money and therefore need to open a trust account. Which type of trust account should you use?

#### **1. IOLTA (Interest on Lawyers’ Trust Accounts) Account**

As discussed above, interest on IOLTA accounts goes to the Equal Justice Wyoming Foundation (EJWF). These types of accounts should be used if you will handle client money for a short period of time, or if the funds are nominal. WRPC 1.5(a)(1) provides, “An IOLTA Account is a pooled interest-bearing account that shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a Non-IOLTA Account.” WRPC 1.15(a)(3) provides, “A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non-IOLTA Account.”

For a list of the factors that you must consider in determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, see WRPC 1.15(a)(1)(i). For lawyers, IOLTA accounts carry the advantage of eliminating the bookkeeping headaches associated with allocating interest among clients which is a necessity for pooled interest-bearing non-IOLTA accounts (see No. 3 below).

## **2. Individual Interest-Bearing Non-IOLTA Account**

You must use an individual interest-bearing client trust account if your client instructs you to do so in writing (see WRPC 1.15(b)(2)). Establishing the account may include a charge for your time in opening the account in addition to any bank charges. The cost of maintaining the account would include any monthly bank service charges and charges for preparation of the trust account bank and client ledger reconciliations. The account is set up using the client's tax identification number, but the attorney is the signer on the account.

## **3. Pooled Interest-Bearing Non-IOLTA Account**

WRPC 1.15(a)(2)(ii) allows for a pooled client trust account "with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person." These accounts are seldom used due to the complexity of allocating the interest and the extra accounting work involved.

### **Who may be a signer on a trust account?**

WRPC 1.5(b)(4)(vii) provides, "Only a lawyer admitted to practice law in Wyoming or a person supervised by such lawyer shall be an authorized signatory on a trust account." In addition, WRPC 5.3 imposes important responsibilities upon lawyers with respect to supervision of non-lawyer assistants. Best practices require that appropriate internal controls be implemented with respect to all aspects of trust account administration, including the designation of persons authorized to sign checks on the account and physical control of the checks themselves.

Lawyers or law firms who disburse funds by electronic transfer may not wish to perform the manual execution of those transactions themselves. In those cases, it is recommended that you create an authorization form noting the amount of transfer, recipient, client, routing number, and bank account number, etc., and signed by a lawyer authorized to sign on the trust account. The executed form can then be given to a bookkeeper or assistant who will complete the transfer. The lawyer who performs the quarterly review of trust account records required by WRPC 1.15(g)(3) should compare the authorization forms to the bank statement to ensure that all the transfers from the trust account were properly authorized.

### **How do I open an IOLTA account?**

Remember that IOLTA accounts should be used if you will handle client money for a short period of time, or if the funds are nominal. WRPC 1.15(a)(1) provides, "An IOLTA Account is a pooled interest-bearing account that shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a Non-

IOLTA Account.” For a list of the factors that you must consider in determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, see WRPC 1.15(a)(1)(i).

**1. Decide which financial institution you want to use for the account.**

Depository institutions for IOLTA accounts, like all trust accounts, must be approved by the Wyoming State Bar (see page 2). In addition, for IOLTA accounts, WRPC 1.15(a)(1)(ii) provides, “Lawyers may only place their IOLTA Accounts in IOLTA Eligible Institutions.” Some IOLTA Eligible Institutions offer significantly higher rates of interest on IOLTA accounts to help increase access to justice for Wyoming citizens. EJWF recognizes these as Leadership Financial Institutions. They are identified in orange type on the IOLTA Eligible Institutions list which is available on EJWF’s website, [www.equaljusticewyomingfoundation.org](http://www.equaljusticewyomingfoundation.org).

**Note:** Many lawyers choose to have their IOLTA account at the financial institution they use for other banking. Some deliberately use a different bank so that there can be no inadvertent mixing of their general business account transactions with the trust account.

**2. Give the bank instructions that you want to open an IOLTA account.**

Lawyers desiring to open an IOLTA account may complete EJWF’s IOLTA Participation Form for Attorneys (available on EJWF’s website) and return it to an IOLTA eligible institution to open an account. The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a “trust account.” The lawyer must be able to write checks or make disbursements directly from the account. IOLTA accounts must be set up using the tax identification number of EJWF: 27-3029906. The interest earned on IOLTA accounts is remitted monthly by the financial institution to EJWF.

Lawyers and financial institutions seeking information about the Wyoming IOLTA program or how to establish an IOLTA account may contact the Equal Justice Wyoming Foundation by mail to 2300 Capitol Ave., 1st Floor, Cheyenne, WY 82002, by email to [angie.dorsch@equaljusticewyomingfoundation.org](mailto:angie.dorsch@equaljusticewyomingfoundation.org) or by phone at 307-777-8383. There are helpful resources available on EJWF’s website, [www.equaljusticewyomingfoundation.org](http://www.equaljusticewyomingfoundation.org).

**3. Order checks and deposit slips.**

You must be able to write checks or make disbursements directly from the account. The checks and deposit slips for your IOLTA account should be clearly labeled “IOLTA Trust Account.” In addition, it is a good idea to have checks of different color from the checks used for your general business account. These details may prevent erroneous use of the trust account.

The cost of printing checks and deposit slips is your responsibility. You can make an initial deposit to the trust account in an amount sufficient to cover this cost or have these costs charged to your general business account. Under no circumstances should it be deducted from client funds in the trust account.

### **What about bank fees for IOLTA accounts?**

Many attorneys mistakenly believe that a bank cannot charge fees for an IOLTA account. Although most banks do not charge fees for IOLTA accounts, some do. Fees incurred in IOLTA accounts may be deducted from the interest earned on the account and the difference is remitted to the EJWF. WRPC 1.15(a)(1)(iii)(B) lists what may be included in reasonable account fees, including per deposit and check charges, a fee in lieu of minimum balance, sweep fees, FDIC insurance fees, and a reasonable IOLTA account administration fee. Any other service charges or fees are the sole responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Some fees the lawyer remains responsible for are check printing, NSF, and stop payment fees. So what is the proper way to pay bank fees? WRPC 1.15(c) states, "A lawyer may deposit the lawyer's own funds in a trust account solely to satisfy the bank's minimum deposit requirement or for the purpose of paying bank service charges on that account, but only in an amount necessary for such purposes."

You are permitted to keep a reasonable amount of personal or business funds in the IOLTA account to cover any bank fees you might incur. In determining this amount, the lawyer needs to look at an average of a few months' fees. Some law firms will be charged significantly more fees than others. While it is acceptable to have some law firm money in a trust account to cover bank fees, it is not acceptable to keep money in the trust account as a "cushion" to prevent overdrafts. Also, note that if asked, some banks will charge any trust account fees to the general business account, thereby avoiding the fee issue altogether.

### **How do I open a non-IOLTA account?**

Remember that non-IOLTA accounts are required when the amount of funds being held on behalf of an individual client or third person is sufficient to earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held (see WRPC 1.15(a)(1)). For a list of the factors that you must consider in determining whether client or third person funds should be deposited in an IOLTA account or a non-IOLTA account, see WRPC 1.15(a)(1)(i). Any interest earned on non-IOLTA accounts must be paid to the client(s) or third person(s).

There are two types of non-IOLTA accounts: (1) individual interest-bearing accounts and (2) pooled interest-bearing accounts (see page 9). Individual interest-bearing accounts are required when you have the client's written instruction to do so (see WRPC 1.15(b)(2)).

#### **1. Decide which financial institution you want to use for the account.**

Depository institutions for all trust accounts must be approved by the Wyoming State Bar. In order to be approved, the financial institution must be insured by an agency of the federal government and must have a Trust Account Overdraft Notification Agreement on file with the Wyoming State Bar. See WRPC 1.15(b). The Wyoming State Bar maintains a list of approved trust account depository institutions on its website at [www.wyomingbar.org](http://www.wyomingbar.org).

**Note:** Many lawyers choose to have their trust account at the financial institution they use for other banking. Some deliberately use a different bank so that there can be no inadvertent mixing of their general business account transactions with the trust account.

**2. Give the bank instructions that you want to open a non-IOLTA trust account.**

For an individual interest-bearing trust account, you will need your client's tax identification number. This is either a Social Security number or an EIN (Employer Identification Number). For a pooled interest-bearing trust account, use your tax identification number or your law firm's. The account must be in your name or the name of your law firm and be clearly labeled or designated as a "trust account."

**3. Order checks and deposit slips.**

You must be able to write checks or make disbursements directly from the account. The checks and deposit slips for your non-IOLTA account(s) should be clearly labeled "Client Trust Account." In addition, it is a good idea to have checks of a different color from the checks used for your general business account. These details may prevent erroneous use of the trust account.

The costs of checks and deposit slips, along with other costs associated with opening and maintaining non-IOLTA trust accounts are properly charged to the client(s) or third person(s).

## **Deposits, Disbursements and Related Recordkeeping**

### **What do I deposit into the trust account?**

All receipts containing funds belonging to a client or third person must be deposited directly into the trust account. Funds belonging to the lawyer may not be deposited into the trust account unless they are: (1) used to pay bank fees, (2) receipts belonging in part to a client and in part to the lawyer, and (3) funds to restore required balances.

While seemingly simple, the concept that client funds must be deposited to a trust account and lawyer funds may not be deposited to a trust account (i.e., commingled) can get complicated when put into practice. Your firm will receive funds from many different sources and for many different purposes. To decide if these funds must be deposited to a trust account, you need to determine if the client still has an ownership interest in any portion of the funds when you receive them. For example:

- If you have sent the client a billing statement for legal services performed and the client gives you a check in the amount of the billing statement, these are clearly earned fees and must be deposited to your general business account.
- If your client gives you a cost advance to be disbursed on his/her behalf as costs related to litigation are incurred, these funds must be deposited to your trust account.
- If your client sends a check that contains both earned fees and an advance fee deposit and/or cost advance, the check must be deposited to your trust account. Once the funds have cleared the banking system and been collected, transfer the earned fees to your general business account. You cannot deposit one check into two accounts (commonly called a split deposit). WRPC 1.15(b)(4)(ii) states that "Client or third party funds received must be deposited intact."

### **What about credit card payments?**

Lawyers are allowed to accept credit card payments from clients for advance fees and cost deposits, as well as earned fees. Please see the discussion of credit cards in the Frequently Asked Questions section on pages 23-24. It is critical for attorneys to handle credit card transactions between their trust and operating accounts correctly. The Wyoming State Bar encourages lawyers to utilize LawPay, which offers credit card processing designed for the unique needs of attorneys and has earned the approval of the ABA and 39 state bar associations, including Wyoming. LawPay's unique processing program correctly separates earned and unearned fees in compliance with the WRPC. For more information, see <https://lawpay.com/wyomingbar/>.

### **How do I keep proper deposit records?**

To help keep proper records, clearly identify the client by name or file number on the deposit slip (see example below). Keep copies of deposit slips for your records. In addition, it is a good idea to make copies of the deposited items to back up your deposit slips. If a deposit is made to the trust account via bank or electronic transfer, keep a copy of the transfer confirmation. Should you forget to record the deposit, the copy will be available for reference. Sample check from client:





### ***A word of caution***

Lawyers sometimes fall victim to fraudsters who pose as clients but actually intend to commit check fraud, sometimes requesting that a lawyer collect on a debt. The lawyer receives a cashier's check from the company paying on the "client's" debt, deposits the funds, and quickly transfers funds to the "client" in the form of an electronic transfer because the "client" pressures the lawyer to make the transfer before the check is even collected. Disbursing before the funds have cleared the banking process is not only a violation of the rule, but can also put the lawyer in the position of having to personally pay back all of the other client funds that were in the trust account but were lost as a result of the scam. The amount may be substantial if the deposit proves to be counterfeit. There are many schemes perpetrated on lawyers, most likely because it is common for lawyers to be involved with large financial transactions in the course of practicing law. Be cautious.

### **Have written evidence supporting all disbursements from your trust account**

WRPC 1.15(d) provides that a lawyer may withdraw advance payments from the trust account "only as fees are earned and expenses are incurred."

You should never remove funds from a trust account without being able to document entitlement to those funds. If the client funds in the trust account are understood to be an advance fee deposit, such fees must be promptly removed from the trust account after the client has had an opportunity to review the billing to which they relate. It is not appropriate to send your client a bill and pay yourself your fees on the same day.

The amount of time you need to wait before withdrawing the earned fees will depend, in part, on where your clients are located. You should allow enough time for your client to receive the invoice and review it. Should a client dispute the billing, the disputed portion of the fee must remain in the trust account until the dispute is resolved. Similarly, if a client disputes a proposed settlement distribution, you are required to promptly disburse the undisputed funds and retain the disputed funds in the trust account until the dispute is resolved. You are further required to take reasonable action to resolve these disputes, including, when appropriate, interpleading the disputed funds.

You are not required to give notice to your client before paying a cost on your client's behalf. However, you should provide an accounting to your client, such as by providing monthly invoices. A full accounting must be provided upon request by a client or third person.

Disbursements made on behalf of a client may never exceed the amount that the client has on deposit in the trust account; if they do, you are using one client's funds on behalf of another.

**Note:** WRPC 1.15(b)(4) requires that all checks drawn on the trust account be written to a named payee. You cannot make a check payable to "cash." In addition, you cannot make cash or ATM withdrawals from the trust account, nor may you use a debit card. All withdrawals must be made by check or electronic transfer.

Identify the client on the face of each check. If you make an electronic transfer, keep a copy of the transfer acknowledgement document.

Sample check from trust account on behalf of client:

My Law Firm IOLTA Account 101 Main St Cheyenne, WY 82001	Date <u>November 18, 20XX</u>	18566
Pay to the order of <u>Superior Court Clerk</u>	\$	<b>210.00</b>
<u>Two Hundred Ten and 00/100</u>		Dollars
Any Bank USA Cheyenne, WY		
for <u>Zelinski filing fee</u>		<u>My Lawyer</u>

### Required trust account records

WRPC 1.15(g) requires you to maintain current trust account records. They may be in electronic, photographic or other media but you must be able to produce printed copies. Such records must be retained for at least five years after termination of the representation and must be "readily accessible." At a minimum, the records must include the following six items:

- 1. Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement.**
  - From your copy of the deposit slip or electronic transfer receipt, promptly record the deposit. The entry should show the client matter, date of the deposit, the payor, and the amount for each client.
  - Record checks and electronic transfers in the check register promptly as they are issued/made. Record the issue date, check number or transfer reference, payee, description, client reference, and amount.
  - When funds are received or disbursed from the trust account by electronic transfer, these transactions must be recorded as well. List the date of the transaction, payee or payor, client, description, and amount.
  - After every transaction, calculate the new trust account balance.
  - A sample receipt and disbursement journal appears on the following page.

Receipt and Disbursement Journal							
Date	Ref	Payor/Payee	Client	Memo	Deposit	Check	Balance
Balance forward							38,916.71
11/1/XX	18560	My Law Firm	Olson, M	attorney fees		866.66	38,050.05
11/5/XX	18561	My Law Firm	Felty	attorney fees		1,745.62	36,304.43
11/7/XX	18562	My Law Firm	Smith, D	attorney fees		8,450.50	27,853.93
11/8/XX	Deposit	Jones	Kane	award	15,000.00		42,853.93
11/10/XX	18563	Dr. Grey	Weatherholt	medical		238.00	42,615.93
11/11/XX	18564	Dr. Radtke	Tyner	medical		169.50	42,446.43
11/17/XX	18565	WSP	Zelinski	records		67.89	42,378.54
11/18/XX	Deposit	Johnson	Johnson	attorney fees	5,000.00		47,378.54
		Tuck	Tuck	attorney fees	3,500.00		50,878.54
11/18/XX	18566	Superior Ct Clerk	Zelinski	filing fee		210.00	50,668.54
11/24/XX	18567	No-Pain Chiro	Olson, E	medical		156.38	50,512.16
11/25/XX	18568	Pinkerton Inv.	Dexter	investigation		2,450.25	48,061.91
11/30/XX	18569	Karen Kane	Kane	settlement		15,000.00	33,061.91

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

- Client ledgers are individual client transaction summaries. They contain all deposits and disbursements for a particular client, as well as the current client ledger balance.
- Maintain one ledger for each client with trust account activity.
- Post deposits and disbursements promptly to client ledgers.
- Each entry in the receipt and disbursement journal must also be posted to a client ledger. These should be done simultaneously. The client ledger should include the same information as is contained in the check register plus the purpose of each transaction. A running balance must also be maintained on each client ledger.
- If you have deposited a nominal amount of your own money to the trust account per WRPC 1.15(c) to satisfy a minimum balance requirement or pay bank charges, you should also maintain a ledger for your own funds.

Client Ledger						
Client:	A. Zelinski					
Date	Ref	Payor/Payee	Memo	Deposit	Check	Balance
10/15/XX	Deposit	A. Zelinski	Adv. Fee dep	3,500.00		3,500.00
10/23/XX	18545	My Law Firm	Attorney fees		423.14	3,076.86
11/17/XX	18565	WSP	Records		67.89	3,008.97
11/18/XX	18566	Superior Ct Clerk	Filing fee		210.00	2,798.97

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

- You should receive a bank statement monthly, though some trust account depositories only issue quarterly statements.
- The account balance on the bank statement must be reconciled to the account balance shown in your receipt and disbursement journal. There is usually a form for performing the reconciliation on the back of the bank statement, or you can devise your own format.

Differences between the bank statement balance and the check register balance should be investigated immediately and corrected either in your records or by the bank.

- As soon as you have completed the bank reconciliation, you should make sure the individual client ledger balances are equal to the reconciled receipt and disbursement journal balance. The easiest way to do this is to make a list of your clients and the balance shown for each. Add the balances together and compare the total to the balance in your check register. If every item has been posted correctly and the math is correct, these two numbers will agree. If they do not agree, it means: (1) you have left a client off the list, (2) the activity during the month was not posted to the client ledgers correctly, or (3) you added or subtracted incorrectly. Find the error and correct it immediately.
- You are required to keep both the bank reconciliation and the client ledger reconciliation with your client trust records. If more than one lawyer uses the trust account, each lawyer with client funds in the account should review the balances for his or her clients. This review should be used to determine if the balance on deposit should be applied to billings for services, refunded to the client, or transferred to an individual interest-bearing account.
- A sample trust account reconciliation appears on the following page.

**Note:** If an employee or other person maintains the trust account records, you should review his/her monthly reconciliations. This ensures they are being completed and that the client records are accurate. It also emphasizes the importance of maintaining these records accurately and on a timely basis. The fact that a bookkeeper, paralegal or administrative assistant in your office was maintaining the records will not excuse you from responsibility if the trust account is not handled properly.

- 4. The physical or electronic equivalents of all checkbooks registers, bank statements, records of deposit, and canceled or voided checks.**
- 5. Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed.**
- 6. Copies of those portions of client files that are reasonably related to trust account transactions.**

**Note:** The trust accounting records listed above must be preserved for a period of five years after termination of the representation.

### Sample Trust Account Reconciliation

Bank Reconciliation	November XX
Ending Bank Balance	50,736.43
Add: Deposits in Transit	
None	
Total	-
Less: Outstanding checks (or other withdrawals)	
#18565 11/17/XX 67.89	
#18567 11/24/XX 156.38	
#18568 11/25/XX 2,450.25	
#18569 11/30/XX 15,000.00	
Total	<u>(17,674.52)</u>
Adjusted Bank Balance	33,061.91
Check Register Balance	<u>33,061.91</u>
Difference	0

Client Ledger Reconciliation	November XX	
<u>Client</u>	<u>Last Activity</u>	<u>Balance</u>
Dexter, N	12/10/XX	1,500.00
Felty, J	12/5/XX	3,425.11
Johnson, L	11/18/XX	5,000.00
Olson, E	3/29/XX	416.33
Olson, M	7/24/XX	950.00
Smith, D	8/21/XX	11,322.78
Tuck, T	6/24/XX	3,500.00
Tyner, M	7/31/XX	278.22
Weatherholt, R	4/28/XX	3,870.50
Zelinski, A	11/18/XX	2,798.97
		<u>33,061.91</u>

### **Reporting to clients and third persons**

You are required to notify the client or third person when money is received on their behalf. Specifically, WRPC 1.15(e) states:

“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 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.”

The reporting of this activity is not optional; it is required.

The reporting of trust account activity can be done in many different ways. The most common method is to show the activity on your client’s monthly billing statement. The information listed on the statement should include:

- The amount of your client’s money held in the trust account at the beginning of the month
- New deposits (including the source of the deposit) or other additions
- Costs paid on the client’s behalf and other disbursements (including the payee)
- The balance of your client’s funds in the trust account at the end of the month
- If the amount owed on the bill is going to be paid from the trust account unless the client objects, a statement noting this should appear on the bill.

### **Disbursement of settlement proceeds**

If you are disbursing settlement proceeds to a client, a settlement statement should be prepared. The statement should show:

- The source of funds
- The total amount of recovery or settlement
- The amount of attorney fees
- The total costs
- Liens or other obligations (i.e., worker’s compensation or Medicare/Medicaid reimbursement)
- The amount held in reserve, if any, for costs which have not yet been billed and a statement of the period during which such reserve shall be held in trust
- The net proceeds payable to the client

You should have your client sign a copy of the settlement statement and keep the signed copy in the file.

**Note:** In contingent fee cases, the Rules Governing Contingent Fees for Members of the Wyoming State Bar require a Statement Upon Distribution with the above listed information, including the contingent fee percentage applicable to the settlement. Appended to those Rules are

forms for the Representation Agreement required by the Rules and sample Statements Upon Distribution.

### **Third party interests in funds held in trust**

By its terms, WRPC 1.15 applies equally to property of clients and property of “third persons.” Common examples of third parties who may claim ownership of trust account funds are:

- Statutory lienholders, e.g., Medicare, Medicaid, Wyoming Worker’s Compensation Division
- Contractual subrogees, e.g., health and casualty insurers whose policies entitle the company to be reimbursed from settlement proceeds
- Contractual lienholders – it is not unusual for creditors to forbear from collection efforts in exchange for your client’s agreement to satisfy the obligation from a share of settlement proceeds
- Persons entitled to a share of funds being held in escrow

### **What if there is a dispute as to ownership of funds held in trust?**

It is not always possible to determine the amount that each person who claims an interest in trust monies is entitled to receive. For instance, it is customary for lawyers to negotiate the amount payable to third persons, such as statutory or contractual lienholders and contractual subrogees. Or, you may have a dispute with your client as to the amount of fees and costs to which you are entitled. In such circumstances, WRPC 1.15(f) requires that the disputed amount be kept in trust until the dispute is resolved. Comments [2] and [3] to Rule 1.15 provide additional guidance on this subject.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. 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. The undisputed portion of the funds shall be promptly distributed.

[3] Paragraph (f) recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between a client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

## **Non-Cash Property Belonging to Clients and Third Persons**

Although most of the discussion of WRPC 1.15 involves handling client and third person funds and managing the client trust account, WRPC 1.15 also imposes a fiduciary responsibility on the lawyer when holding property other than funds. Comment [1] provides, "A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, 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 ...."

### **Frequently Asked Questions**

#### **What do I do with unclaimed trust account funds?**

Unclaimed funds may result, for example, from a balance left in the trust account for a client you can no longer locate or when a check issued from your trust account is never cashed. Any unclaimed trust funds must be dealt with pursuant to the Wyoming Uniform Unclaimed Property Act, W.S. § 34-24-101 *et seq.*, and remitted to the State Treasurer.

#### **What do I do when I issue a check that never gets cashed?**

As part of your quarterly bank reconciliation, you should have a list of checks that have not cleared your account. A good practice is to send letters to the payees of any checks older than six months. The letter should indicate that you issued a check that remains outstanding. Ask the payee to cash the check or to contact you for a replacement if necessary. If a letter is returned unclaimed, handle the funds in accordance with the Unclaimed Property Act as noted above.

#### **What do I do with an unidentified balance in the trust account?**

Occasionally a lawyer ends up with a balance in the trust account that is not identified as belonging to a particular client. You must make a reasonable effort to identify these funds. If your best effort to identify the excess funds in the trust account fails, they must be handled as unclaimed property.

#### **Must I notify the Wyoming State Bar if I want to open or close a trust account, or move my client funds to another bank?**

You are not required to notify the Bar if you decide to open or close a trust account, or want to move your trust account to another bank. You will simply report whatever trust accounts you have open on the Trust Account Certification section of your Annual License Fee Statement during the next licensing period.

#### **If I am licensed to practice in more than one state, where should I maintain my trust account?**

A trust account complying with WRPC 1.15 is required for funds of clients or third persons coming into a lawyer's possession in the course of legal representation for which membership in the Wyoming State Bar is required. (Members of the Wyoming State Bar who, because of the nature



of their practice, do not, in the course of providing legal representation requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this rule.) The account must be with a regulated financial institution that is located or has a branch located in Wyoming which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

**What is the required waiting period between deposit and disbursement?**

The time period depends on what was deposited and your financial institution's requirements regarding collected funds. Funds may be deposited in many different forms: checks, warrants, drafts, money orders, cashier's checks, electronic transfers, etc. Each financial institution has its own schedule, based on regulatory requirements and internal banking procedures, for recognizing collected funds. Discuss this with the financial institution handling your trust account. They should be able to provide you with a schedule for the routine items you deposit. See the discussion on disbursements and collected funds on page 14.

**What should I do if I receive an overdraft notice on my client trust account from my bank?**

You should immediately contact your bank and take whatever steps are necessary to correct the deficiency in your client trust account. If necessary, deposit your own funds to make up any shortfall until the cause of the overdraft is determined.

WRPC 1.15(b) requires the financial institution holding a lawyer trust account to notify the Wyoming State Bar Office of Bar Counsel whenever a trust account becomes overdrawn.

**What should I do when a client wants to pay by credit card?**

You can accept credit card payments. You must decide which type of credit card payments you will accept. There are two kinds: advance fee/cost deposits and earned fees. You can accept payments for both types, or accept only one type of payment. If you decide to accept credit card payments for both earned fees and advance fees/costs, you must have two merchant accounts. Advance fees and costs cannot be deposited into a non-trust account with earned fees and then transferred to a trust account.

Please note that when you accept payments by credit card, it sometimes takes several days for the merchant services provider to process the card payment and have the funds deposited into your account. As with any other items deposited into your trust account, you have to wait for those funds to clear that process before you disburse them.

It is critical for attorneys to handle credit card transactions between their trust and operating accounts correctly. The Wyoming State Bar encourages lawyers to utilize LawPay, which offers credit card processing designed for the unique needs of attorneys and has earned the approval of the ABA and 39 state bar associations, including Wyoming. LawPay's unique processing program correctly separates earned and unearned fees in compliance with the WRPC. For more information, see <https://lawpay.com/wyomingbar/>.

**What should I do about credit card fees?**

Credit card companies charge a fee for credit card payments. You may be able to arrange for credit card fees related to the trust account to be charged to the general business account. However, if the fees are charged to the trust account, you should deposit your own funds in the trust account to cover these fees.

Some lawyers may choose to charge credit card fees to their clients. This is not prohibited under the WRPC; however, the lawyer should ensure that the client is aware of the fees, that the fees charged reasonably reflect the actual cost incurred by the lawyer, and that there is nothing in their merchant services agreement prohibiting them from doing so.

**Can I deposit one check into two accounts at the same time (commonly called a split deposit)?**

A split deposit is not allowed. WRPC 1.15(b)(4)(ii) states, "Client or third party funds received must be deposited intact." If you receive a payment from a client that contains earned fees and unearned fees, the payment must first be deposited into the trust account. After the funds have been collected by the bank, withdraw the earned fee portion. The remaining funds can be returned to your client or remain in the trust account to be used for future work.

**I have very little activity in my trust account. My bank closes the account when the balance is \$0. What can I do?**

First you must decide if you need a trust account. If you do, you can deposit a small amount of your money in the account to keep it open. Some banks will allow you to do this with as little as \$1; check with your bank to determine the minimum amount required. You should keep as little of your money in the account as necessary.

**How long must I retain my trust account records?**

WRPC 1.15(g) states the trust account records must be preserved "for a period of five years after termination of the representation."

## **WRPC 1.15: SAFEGUARDING PROPERTY**

(Effective November 1, 2016)

- (a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in an "IOLTA Account" or "Non-IOLTA Account" (or accounts). Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.
- (1) "IOLTA Account" refers to a trust account at an "IOLTA-Eligible Institution" from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA Account is a pooled interest-bearing account that shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a Non-IOLTA Account.
- (i) In determining whether client or third person funds should be deposited in an IOLTA Account or a Non-IOLTA Account, a lawyer shall consider the following factors:
- (A) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited;
- (B) the cost of establishing and administering Non-IOLTA Accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;
- (C) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and
- (D) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.
- (ii) Lawyers may only place their IOLTA Accounts in IOLTA Eligible Institutions. IOLTA Eligible Institutions are depository institutions which voluntarily offer IOLTA Accounts and meet the requirements of this Rule. The Equal Justice Wyoming Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Accounts, and shall provide the list upon request.
- (iii) An IOLTA Eligible Institution shall:

- (A) ensure that each IOLTA Account receives the highest interest rate that the depository institution pays other customers when the IOLTA Account meets the same minimum balance or other requirements. IOLTA Eligible Institutions may elect to pay higher rates than required;
  - (B) deduct only allowable reasonable fees from IOLTA interest, defined as per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA Account administrative or maintenance fee. 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 interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA Accounts or from the principal of the account. IOLTA Eligible Institutions may elect to waive any or all fees on IOLTA Accounts;
  - (C) remit, each month, interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, to the Equal Justice Wyoming Foundation, a tax exempt entity;
  - (D) transmit with each remittance to the Equal Justice Wyoming Foundation, in an electronic format to be specified by the Equal Justice Wyoming Foundation, a statement which shall include the following: (1) the name of the member or the member's law firm for whom the remittance is sent, (2) the account number of each account, (3) the rate of interest applied, (4) the amount of interest or dividends remitted, (5) the amount and type of charges or fees deducted, if any, and (6) the average account balance for the period in which the report is made; and
  - (E) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.
- (iv) All interest transmitted to the Equal Justice Wyoming Foundation shall be distributed by the Equal Justice Wyoming Foundation for the purposes of providing legal services to the indigent of Wyoming, who would otherwise be unable to obtain legal assistance; providing public education projects which promote a knowledge and awareness of the law; providing projects which improve the administration of justice; or providing for the reasonable costs of administration of interest earned on accounts under this Rule. Subject to the fulfillment of fund purposes, the Equal Justice Wyoming Foundation shall have the sole discretion of allocation, division, and distribution of funds.
- (v) The Equal Justice Wyoming Foundation shall have authority to promulgate administrative policies and rules consistent with this Rule, subject to the approval of the Supreme Court.

(2) "Non-IOLTA Account" refers to a trust account from which funds may be withdrawn upon request as soon as permitted by law. Any interest earned on such an account shall be paid to the client or third person. Such an account shall be established as:

(i) A separate client trust account for the particular client or matter; or

(ii) A pooled client trust account with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.

(3) A lawyer's good-faith decision regarding the deposit or holding of all client or third person funds in an IOLTA Account versus a Non-IOLTA Account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non-IOLTA Account.

(b) Any trust account shall comply with the following provisions:

(1) The account shall be with a regulated financial institution that is located or has a branch located in Wyoming, the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

(i) To apply for approval, financial institutions shall file with the Wyoming State Bar an overdraft notification agreement, in a form provided by the Wyoming State Bar, to report to the Office of Bar Counsel, Wyoming State Bar, in the event any properly payable trust account instrument is presented against insufficient funds or when any other debit to such account would create a negative balance in the lawyer trust account, whether or not the instrument or other debit is honored and irrespective of any overdraft protection or other similar privileges that may attach to such account. Such agreement shall apply to all branches of the financial institution and shall not be canceled except on 120 days' notice in writing to the Wyoming State Bar. Upon notice of cancellation or termination of the agreement, a financial institution must notify all holders of trust accounts subject to the provisions of this rule at least 90 days before termination of approved status that the financial institution will no longer be approved to hold such trust account.

(ii) The Wyoming State Bar shall establish guidelines regarding the process of approving and terminating "approved status" for financial institutions, and for other operational procedures to effectuate this rule in consultation with the Office of Bar Counsel. The Wyoming State Bar shall periodically publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that has

not been so approved. Approved status under this section does not substitute for "IOLTA-Eligible Institution" status under Rule 1.15(a)(1).

- (iii) The overdraft notification agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of an instrument that is presented against insufficient funds but which instrument is honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor. If an instrument presented against insufficient funds is honored, then the report shall be made within five business days of the date of presentation for payment against insufficient funds.
  - (iv) The overdraft notification agreement must provide that a financial institution is not prohibited from charging the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest earned on trust accounts, including earnings on IOLTA Accounts payable to the Equal Justice Wyoming Foundation. Such costs, if charged, shall not be borne by clients.
  - (v) Each financial institution must cooperate with the Office of Bar Counsel and produce any trust account records on receipt of a subpoena in accordance with any proceeding pursuant to the Rules of Disciplinary Procedure.
  - (vi) Every lawyer or law firm maintaining a trust account in accordance with this Rule shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by this Rule, and shall be deemed to have consented under applicable privacy laws to the reporting of information required by this Rule.
  - (vii) A financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule.
  - (viii) The agreement required by this Rule shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing trust accounts.
- (2) The account shall include all client or third party funds except those funds deposited pursuant to the written instructions of the client or third party in a special interest bearing account with the interest being paid pursuant to the written instructions of the client or third party.

(3) No interest from the account shall be made available to a lawyer or law firm.

(4) Trust accounts shall be managed as follows:

(i) Debit cards or automated teller machine cards shall not be used to withdraw funds from a trust account.

(ii) Client or third party funds received shall be deposited intact and records of deposit should be sufficiently detailed to identify each item.

(iii) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in Wyoming or by a person supervised by such lawyer and may be made only by authorized bank or wire transfer or by check payable to a named payee.

(iv) Cash withdrawals and checks made payable to "Cash" are prohibited.

(v) A lawyer shall request that the lawyer's trust account bank return to the lawyer, photo static or electronic images of canceled checks written on the trust account. If the bank provides electronic images, the lawyer shall either maintain paper copies of the electronic images or maintain the electronic images in readily obtainable format.

(vi) Only a lawyer admitted to practice law in Wyoming or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(5) The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a "trust account." The lawyer must be able to write checks or make disbursements directly from the account.

(c) A lawyer may deposit the lawyer's own funds in a trust account solely to satisfy the bank's minimum deposit requirement or for the purpose of paying bank service charges on that account, but only in an amount necessary for such purposes.

(d) A lawyer shall deposit into a client trust account legal fees that have been paid but not yet earned and expenses that are anticipated but have not yet been incurred. The lawyer may withdraw such advance payments only as fees are earned or expenses incurred.

(e) 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. Complete records of such accounting shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

- (f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property in dispute shall be kept in trust by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.
- (g) A lawyer shall maintain current trust account records and shall retain the following records for a period of five years after termination of the representation.
  - (1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement;
  - (2) Ledger records for all trust accounts showing, for each separate client, the payor of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;
  - (3) At least quarterly a written reconciliation of trust account journals, ledgers, and bank statements;
  - (4) The physical or electronic equivalents of all checkbooks registers, bank statements, records of deposit, and canceled or voided checks;
  - (5) Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed; and
  - (6) Copies of those portions of client files that are reasonably related to trust account transactions.

Records required by this Rule may be maintained in electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

- (h) A trust account complying with this Rule is required for funds of clients or third persons coming into a lawyer's possession in the course of legal representation for which membership in the Wyoming State Bar is required. Members of the Wyoming State Bar who, because



of the nature of their practice, do not, in the course of providing legal representation requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this Rule.

- (i) Each active member of the Wyoming State Bar who practices within the state shall certify each year upon making payment of annual license fees that the member has and intends to keep in force in the State of Wyoming a separate bank account or accounts for the purpose of keeping money in trust for clients or third persons, which account conforms to the requirements of this Rule, or that because of the nature of the member's practice no client or third person funds are received. Certification shall be upon a form to be provided by the Wyoming State Bar and shall include the following: (1) the name and address of the lawyer or law firm filing the certification; (2) the name and address of each financial institution in which the account or accounts are maintained; (3) the account number of each account maintained pursuant to this Rule; (4) the dates covered by the certification; (5) the lawyer's express consent to the overdraft notification required by subsection (b)(1) of this Rule; and (6) the signature, under penalty of perjury, of the lawyer making the certification.
- (j) If the owner of property being held in trust by a member of the Wyoming State Bar cannot be located after reasonable efforts, such property shall be remitted to the Wyoming State Treasurer pursuant to the Wyoming Uniform Unclaimed Property Act, W.S. § 34-24-101 et seq.
- (k) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.
- (l) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

#### COMMENT

[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. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. 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. The undisputed portion of the funds shall be promptly distributed.

[3] Paragraph (f) recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute

[4] 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 and is not governed by this Rule.

[5] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (c) provides that it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the funds belong to the lawyer.

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