

Client Fund Management

Client Fund Management (1 hr.)

- * Setting up an IOLTA
- * Management of IOLTA
- * Forms

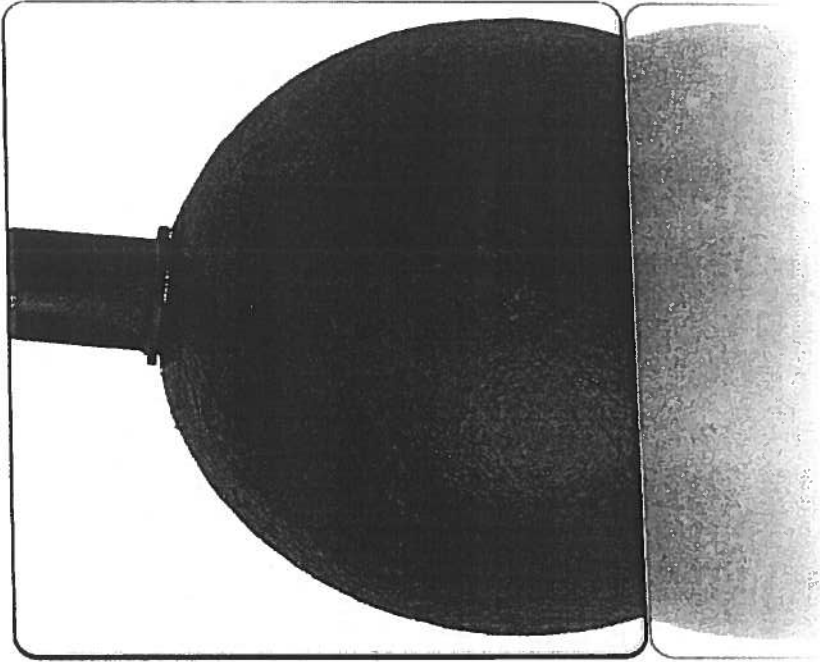
* By Benjamin S. Zacks, Esq.
Zacks Law Group LLC

History

* Interest on Lawyers' Trust Accounts" and "Interest on Trust Accounts" respectively. The IOLTA program was established by the Ohio General Assembly in 1985, followed by IOTA in 1995. The interest earned on these accounts generates revenue for the state's legal aid fund. IOTA and IOLTA provisions are fully set out in Ohio Revised Code 3953.231 and 4705.09 and 4705.10.

History Cont.

- * Prior to this program, lawyers and title agents placed nominal or short-term deposits into pooled, non-interest bearing accounts for two primary reasons:
- * 1) a prohibition from collecting interest on client funds for themselves, and
- * 2) the cost of establishing individual accounts for deposits of escrow funds outweighs the gain of any interest earned.
- * Under the IOLTA/IOTA program, lawyers and title agents must place pooled escrow funds in interest-bearing accounts, with interest remitted by financial institutions to the state treasurer for deposit into the legal aid fund.



Setting up an IOLTA

- Professional Obligation
- Oversight by Ohio Supreme Court
- Office of Disciplinary Counsel
- Malpractice Insurance Issue
- Indicia of negligence in MP cases

RULE 1.15: SAFEKEEPING FUNDS AND PROPERTY

- * (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.
- * Funds shall be kept in a separate interest-bearing account in a financial institution authorized to do business in Ohio and maintained in the state where the lawyer's office is situated.
- * The account shall be designated as a "client trust account," "IOLTA account," or with a clearly identifiable fiduciary title.
- * Other property shall be identified as such and appropriately safeguarded.
- * Records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation or the appropriate disbursement of such funds or property, whichever comes first.
- * For other property, the lawyer shall maintain a record that identifies the property, the date received, the person on whose behalf the property was held, and the date of distribution. For funds, the lawyer shall do all of the following:
 - * (1) maintain a copy of the fee agreement with each client;
 - * (2) maintain a record for each client on whose behalf funds are held that sets forth all of the following:
 - * (i) the name of the client;
 - * (ii) the date, amount, and source of all funds received on behalf of such client;
 - * (iii) the date, amount, payee, and purpose of each disbursement made on behalf of such client;
 - * (iv) the current balance for such client.
 - * (3) maintain a record for each bank account that sets forth all of the following:
 - * (i) the name of such account;
 - * (ii) the date, amount, and client affected by each credit and debit;
 - * (iii) the balance in the account.
 - * (4) maintain all bank statements, deposit slips, and cancelled checks, if provided by the bank, for each bank account;
 - * (5) perform and retain a monthly reconciliation of the items contained in divisions (a)(2), (3), and (4) of this rule.

Do's

- * (b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying or obtaining a waiver of bank service charges on that account, but only in an amount necessary for that purpose.
- * (c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- * (d) 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 or a third person, *confirmed in writing*, 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. Upon request by the client or third person, the lawyer shall promptly render a full accounting regarding such funds or other property.
- * (e) When in the course of representation a lawyer is in possession of funds or other property in which two or more persons, one of whom may be the lawyer, claim interests, the lawyer shall hold the funds or other property pursuant to division (a) of this rule until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or other property as to which the interests are not in dispute.
- * (f) Upon dissolution of any law firm, the former partners, managing partners, or supervisory lawyers shall promptly account for all client funds and shall make appropriate arrangements for one of them to maintain all records generated under division (a) of this rule.
- * (g) A lawyer, law firm, or estate of a deceased lawyer who sells a law practice shall account for and transfer all funds held pursuant to this rule to the lawyer or law firm purchasing the law practice at the time client files are transferred.
- * (h) A lawyer, a lawyer in the lawyer's firm, or a firm that owns an interest in a business that provides a law-related service shall:
 - * (1) maintain funds of clients or third persons that cannot earn any net income for the clients or third persons in an interest-bearing trust account that is established in an eligible depository institution as required by sections 3953.231, 4705.09, and 4705.10 of the Revised Code or any rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code.
 - * (2) notify the Ohio Legal Assistance Foundation, in a manner required by rules adopted by the Ohio Legal Assistance Foundation pursuant to section 120.52 of the Revised Code, of the existence of an interest-bearing trust account;
 - * (3) comply with the reporting requirement contained in Gov. Bar R. VI, Section 1(F).

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.

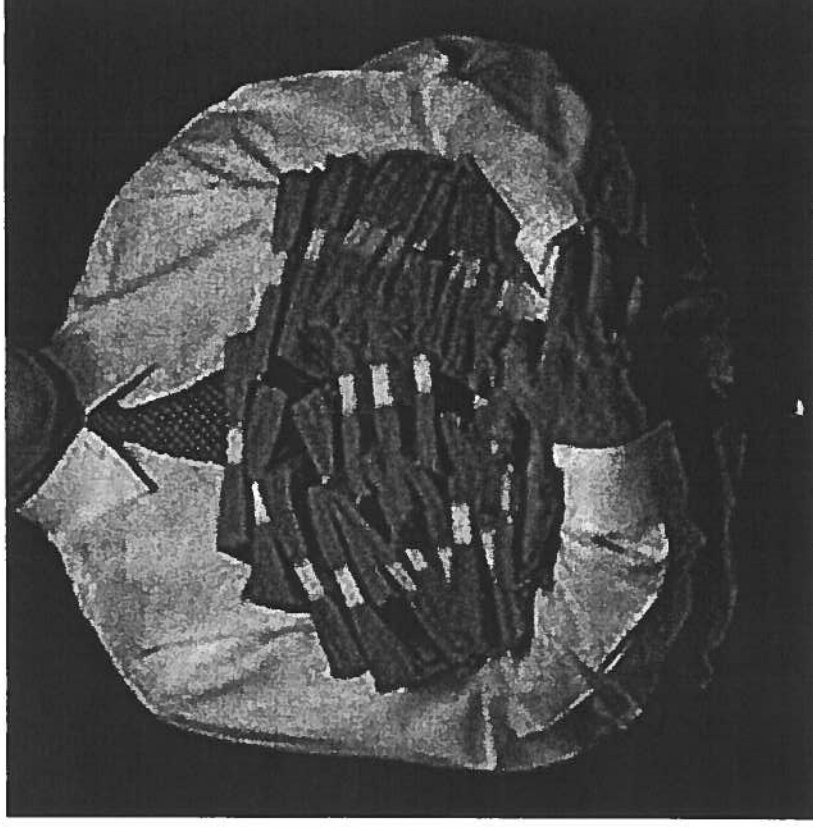
All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if moneys, in one or more trust accounts.

A lawyer should maintain separate trust accounts when administering estate moneys.

A lawyer must maintain the records listed in division (a)(1) to (5) of this rule to effectively safeguard client funds and fulfill the role of professional fiduciary. The records required by this rule may be maintained electronically.

Setting up an IOLTA

Forms
Information
Internal Controls
Misuse Prevention
Review & Audit



Forms

Internal

- * Tracking of Activity
- * Track access to Account
- * Assignment/execution
- * Bookwork/Reconciliation
- * Accounting per rule
- * Letters to Client/Related parties

Bank/Institutional

- * IOLTA Account Establishment
- * Bank Statements
- * Monthly Reconciliation
- * Changes To Account
- * Signature Documents
- * Termination of Account

Information & Tools Needed

- * Account Name
- * Lawyers Covered & Why
- * Reporting to Ohio Supreme Court
- * Bookkeeping process compliant with rules
- * Forms & bookwork

Information & Tools Needed

- * New IOLTA and IOTA accounts must be established at, or existing accounts converted to, an eligible, participating financial institution.
- * The participating bank should have a uniform process for establishing a new IOLTA or IOTA account that complies with the Rules established by OLAF for the administration of the program.
- * This process, at a minimum, should establish an IOTA account in the name of the title insurance agent or company and be identified as an "Interest on Trust Account" or IOTA and should establish an IOLTA account in the name of the attorney, firm, or association that established it and should be identified as an "Interest on Lawyers Trust Account" or IOLTA.
- * The name of these accounts may contain additional identifying information to distinguish it from other accounts. When establishing a new account, the attorney has the responsibility to ensure that the new account will provide the greatest return possible and that only reasonable service charges will be applied to the account.
- * Finally, once an account is established, the attorney must notify OLAF by using the IOLTA/IOTA Registration Form. While the registration form is not a prerequisite to establishing an account, the attorney register the account **on-line** or complete and return the form once the account is established in order to complete the process for establishing a new account.
- * The registration form is only for the purpose of notifying the Foundation that an account has been established. It does not by itself establish an account.

Examples of the types of funds to be placed into these trust accounts include:

- * Retainers received from clients, until they are actually earned;
- * Funds which belong in part to the client and in part to the lawyer;
- * Funds of the client that are being held for disbursement at a later time;
- * Personal injury settlements and awards;
- * Deposits required to close property transactions.
- * Prepaid court costs

- internal control categories:
 - Effectiveness and efficiency of operations.
 - Reliability of financial reporting.
 - Compliance with laws and regulations.

Internal Office Controls

Bank & Post Set-up Monitoring of Institution

- * Consider that these funds require some forethought and assignment of responsibilities, which could be evaluated under accounting, fiduciary, bookkeeping and auditing standards, even though attorneys receive no specific training in these areas

Misuse Prevention

Employees

- * Internal Controls
- * Restricted Access
- * Insurance

Attorneys

- * Internal controls
- * License & Disciplinary Risk
- * Professionalism
- * Insurance
- * Documented Rules

Audit & Review Mindset

* Audit

Seek out specific issues as if an audit with the five elements, sometimes called the "5 C's":

1. **Condition:** What is the particular problem identified?
2. **Criteria:** What is the standard that was not met? The standard may be a company policy or other benchmark.
3. **Cause:** Why did the problem occur?
4. **Consequence:** What is the risk/negative outcome (or opportunity foregone) because of the finding?
5. **Corrective action:** What should management do about the finding? What have they agreed to do and by when?

* Review

* Regularly and periodically
spot check

* Ask accountant to review
at least annually

Management of IOLTA

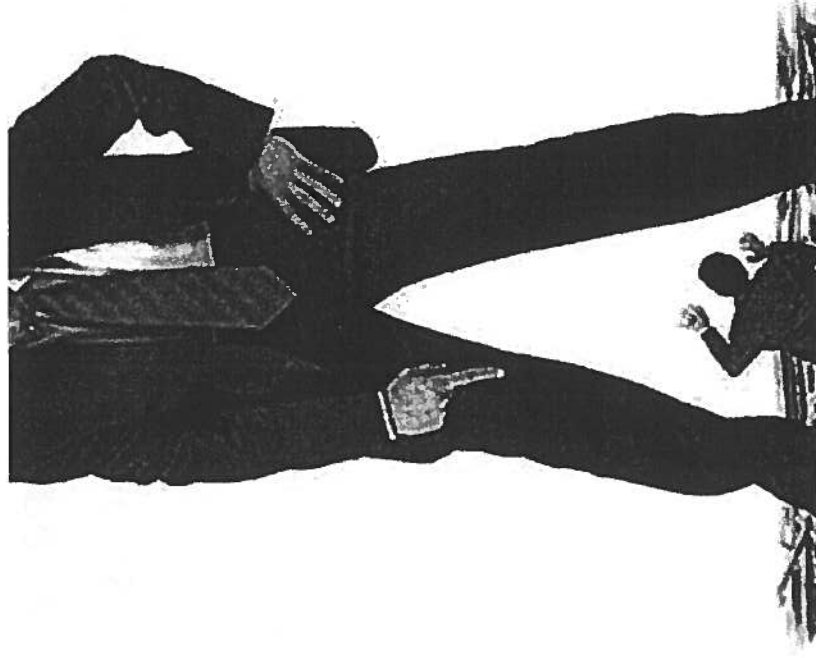
Control

Checks & Balances

Document Trail

Reconciliation

Audit



Bank Statement, January				
Day	Details	Outflow	Inflow	Balance
				234
	624 Cheques received	320	-	-86
	625	45	1560	1474
	626	1800	-	1429
	Cheques received	-	810	-371
	627	200	-	439
	628	1567	-	239
	British way	100	-	-1328
	Cheques received	-	865	-1428
	629	311	-	-563
	Cheques received	-	2340	-874
	Cheques received	-	54	1466
	BC Way	-	1000	1520
	630	98	-	2520
	Cheques received	-	124	2546
	Cheques received	-	154	5249
	630	28	-	5250
	BC Way	-	1000	1250
	Cheques received	-	24	1499
	Cheques received	-	514	1014

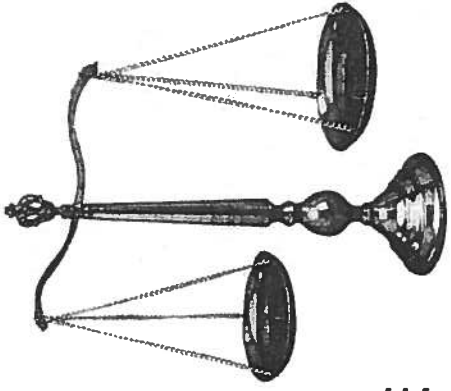
FORMS

- ✓ Internal to your office
- ✓ Created by a bank
- ✓ Internet and electronic banking
- ✓ Record keeping & tracking

Control

- -all check requests are accompanied by a signed check requisition evidencing approval;
- -only certain designated lawyers may authorize trust account payments;
- -only certain designated individuals may authorize general account payments;
- -firm personnel responsible for preparing checks are instructed not to prepare checks unless the requisition includes a signature of approval;
- -supporting documentation (such as an original invoice, reporting letter, statement of receipts or disbursements) accompanies the check requisition, where possible;
- -original copy of the invoice is stamped paid (to prevent an individual from using an invoice more than once to obtain funds); and
- -photocopies of invoices are not generally accepted as support for check requisitions.

- Who in your office has access and control over your checkbooks?
- How do you monitor access?
- Who balances and makes deposits
- Who writes checks?
- How many signatures are required on checks?



Chances Balances

Best Practices

Doable Practices

Reconstructive Practices

Timing

- * indicators of potential problems which may result in inappropriate activities or conduct, including:
 - * a lawyer or staff member who is consistently too busy to take holidays;
 - * a lawyer or staff member who appears to be living beyond his or her means;
 - * sudden and significant increases in advances for entertainment expenditures;
 - * large increases in unbilled disbursements;
 - * a lawyer or staff member whose production has fallen off for no apparent reason;
 - * a lawyer or staff member who appears withdrawn or nervous; and
 - * a lawyer or staff member who continually makes last minute requests for funds.

DOCUMENT TRAIL

- * the individual who opens the mail is different from the individual responsible for preparing a listing of all cash and checks received;
- * all checks received are stamped "deposit only";
- * the firm issues receipts for all cash or checks received to:
 - * provide client with proof of payment; and
 - * help prevent funds from being redirected to another client's account; and
- * the numerical sequence of receipts is checked to ensure that all funds receipted are also recorded in accounting records and deposited.

Reconciliation

31	BC Way	1000	91	British way	100
31	Adjusted balance	3338			
Bank Reconciliation January					
Adjusted Cash Book Balance		3338			
Add not presented cheques		774			
	Logypol	234			
	Dizzy	540			
		4112			
Deduct payments accepted by the bank after period end		(1566)			
	Koala	(1566)			
As per bank statement		2346			
Cash Book, January					
Day	Details	Inflow	Day	Details	Outflow
1	Opening balance	234	1	Jäät	320
2	Harold	1560	5	Agness	45
5	Love G	810	6	Maxim	1800
14	Baby G	865	8	Wonderland	200
17	Xavier	2340	10	Novel	1567

Audit

- * monthly reconciliations and adjustments are reviewed and signed by someone other than the individual who prepared the reconciliation,
 - * reviewer of the reconciliation ensures that: reconciliations are prepared on time; reconciled items are cleared promptly; all unusual items are questioned and an adequate explanation is given for the unusual nature of the item and noted in the firm records and client file;
- * do a list of trust balances that is periodically reviewed for closed or completed matters including trust balances that have not changed in the past twelve months; and
- * Trust transfer requisitions are prepared to transfer funds from one client's trust ledger account to another trust ledger account, and on written authorization from the client to transfer funds to another trust ledger is always obtained prior to the trust transfer;
- * the trust transfer requisition is signed by the responsible lawyer and an explanation is provided; and
- * the accounting department, or personnel responsible for accounting has been instructed to process trust transfer requisitions only if the criteria for signatures and explanations has been met;
- * A senior partner or office manager periodically reviews the client's trust ledger accounts for unusual items;
- * Blank trust checks should be kept in a secure manner.

IRS Addresses Accounting Software Audit Concerns

BY BENSON S. GOLDSTEIN, J.D.

JULY 2011-

2013

In a March 29 letter from Patricia Thompson, chair of the AICPA’s Tax Executive Committee, to Chris Wagner, commissioner of the IRS’ Small Business/Self-Employed Division, the AICPA communicated its concerns regarding the

Service’s program to request the accounting software files of certain small business taxpayers under examination;

the letter cites QuickBooks and Peachtree as examples of accounting software actively used by small businesses (for previous coverage see “Tax Matters: AICPA Calls for Accounting Software Safeguards in IRS Audits,” June 2011-2013, page 68).

This is a critical matter because the use of accounting software has become commonplace by businesses in meeting the requirement to maintain proper “books and records,” including records involving income, expenses, assets and other pertinent information.

If the firm is subsequently selected by the IRS for examination, the Service’s general position is that the entire file must be turned over to the IRS, even though it may contain information:

- (1) from tax years unrelated to the years under examination; or
- (2) (2) even data not normally considered part of a firm’s “books and records” as that phrase is commonly understood for tax administration or audit purposes.

Cash Book, January		
Inflow	Day	Details
<u>balance</u>		
234	1	Janet
1560	3	Agness
810	6	Maxim
865	8	Wonderlan
2340	10	Novel
54	15	Gabriel
124	24	Faust
1566	28	Logypol
2438	31	Dizzy
<u>balance</u>		
5138	31	Dixy
1200	58	Podlybol
154	54	Faust

Key Documents

- ◆ Bank form completion
- ◆ Internal Form creation & completion
- ◆ Disbursement sheets
- ◆ Client IOLTA Ledger
- ◆ DC Letter & Response

Create Standard Internal Forms

Why?

Does this appear any different than regular statements?

Bank Statements

Sample Disbursement

Handout

Sample IOLTA Ledger

Disciplinary Counsel investigates complaints by sending a letter requesting information and then determines if there is cause to proceed or conclude the investigation.

Discussion of DC Letter & Response

A couple of common questions

What do I do with client funds in my IOLTA when I am unable to locate the client?

The Supreme Court of Ohio's Board of Commissioners on Grievances and Discipline has offered the following informal, nonbinding opinion **Advisory Opinion** from the **Supreme Court of Ohio** on this question:

The Board advises that the proper disposition of client funds in a lawyer's IOLTA or individual client trust account, when either the identity or the whereabouts of the client who is the owner of the funds is unknown, is for a lawyer to follow the statutory procedure for the disposition of unclaimed funds to the state set forth in Chapter 169 of the Ohio Revised Code. A lawyer's reporting of unclaimed funds of a client whose identity or whereabouts are unknown does not violate either the ethical duty of safekeeping a client's funds under Rule 1.15 or the ethical duty to protect a client's confidentiality under Rule 1.6.”

A couple of common questions (cont.)

For more information on unclaimed funds, contact the state's Division of Unclaimed Funds: Ohio Department of Commerce's Division of Unclaimed Funds 77 South High Street, 20th Floor Columbus, OH 43215-6108 webunfd@com.state.oh.us (614) 466-4433 **Division of Unclaimed Funds**

Are the funds in my IOLTA or IOTA insured from loss if something happens to the bank?

The Federal Deposit Insurance Corporation (FDIC) in August 2009 announced that it has extended the time in which client funds deposited in IOLTA accounts at participating financial intuitions are eligible for unlimited deposit insurance coverage as part of the Temporary Liquidity Guarantee Program (TLGP). All funds in an IOLTA account, regardless of size, will now be insured in full by the FDIC and backed by the full faith and credit of the United States Government, as part of the Temporary Account Guarantee (TAG) provisions of the TLGP. Financial institutions opting out of the TAG coverage must display a notification to customers. The additional coverage is in effect until June 30, 2010, unless extended.

Full text of the final Rule can be found at:

<http://www.fdic.gov/news/news/financial/2009/fil09048.html>

A couple of common questions (cont.)

On December 29, 2010, President Obama signed into law legislation (H.R. 6398) that extends unlimited FDIC insurance for IOLTA accounts through December 31, 2012.

Contact your financial institution to determine whether it has opted-out of the TAG program or if it is participating. Also remember that any fees the financial institution may assess for its participation in the TAG program are not eligible for deduction from the interest earned on your IOLTA account.

Finally, the FDIC rule specifically states that "Accounts commonly known as Interest on Lawyers Trust Accounts (IOLTAs) (or functionally equivalent accounts)" are included in the TAG program. The notes and comments to the rule focus on IOLTA as accounts held by an attorney or law firm for its clients. There is no specific discussion of IOTAs, as established in Ohio, which are pooled, client trust accounts for real estate escrow closings held by both attorneys and non-attorneys - although the notes and comments to the rule do use interchangeably IOLTA, IOTA, and IOLA. **It is the opinion of the Foundation that client funds deposited in an Ohio IOTA account at participating financial institutions are eligible for unlimited deposit insurance coverage as part of the Temporary Liquidity Guarantee Program (TLGP), as long as interest from the account does not inure to the benefit of the title insurance agent or agency or clients (and thus making it the equivalent of a non-interest-bearing transaction account).**

A couple of common questions (cont.)

Do I need to register my IOLTA account?

Yes, state law and the Supreme Court of Ohio's rules require attorneys licensed in the state to register their IOLTA accounts with the Court.

How do I register my IOLTA account?

Upon admission to the bar and then every two years, you will receive a Certificate of Registration from the Supreme Court of Ohio. *This form includes a section to register your IOLTA accounts.* In between biennial registrations, the attorney may register new accounts and/or provide account updates by visiting the Ohio Legal Assistance Foundation's Web site or contacting the Foundation directly.

What information do I need to provide to the Court regarding my IOLTA account?

An attorney is required to provide the Court with his or her registration number, *IOLTA account name and number, and the name and location of the financial institution with which the account is established.* You must list all IOLTA accounts with which you are associated.

May I use my employer's IOLTA account or do I need my own?

If you are working for a firm and that firm maintains an IOLTA account, you are permitted to use your firm's IOLTA account. When registering your firm's account, you need to obtain the number of the firm's trust account and the name and location of the financial institution with which the

account is established.

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A couple of common questions (cont.)

What if I don't know my account or my firm's account information when I first register with the Court?

Upon first being admitted to the practice of law in Ohio, you may not have established your own IOLTA account or you may not know your firm's account information. On the Certificate of Registration, you should complete the account registration section with the information that you do know ' your personal information and your firm's name and location. Once you have established your own account or know your firm's account number, then you should forward that information to the Foundation.

www.olaf.org/iolta-and-iota/faq/

PROPERLY RESPONDING TO IOLTA ACCOUNT OVERDRAFTS

By Alvin E. Mathews Jr.

You are pleased about the substantial fee your firm earned from the recent client settlement. The fee is one of the largest your firm ever earned. The firm is off to a great year. All is well until you receive a notice from the bank. One of the client expense checks related to the settlement written from the trust account bounced!

You were so busy doing legal work that you did not reconcile the IOLTA account for several months. Your contentment turns to grave concern, as you try to determine the severity of the problem. You phone the bank. The bank's customer service representative initially allays your concerns. The bank paid the check, so you transfer funds sufficient to cure the deficit and cover any bank fees. Easy enough.

A week later, just as you breathe a sigh of relief, you receive a letter in the mail containing the initials "ODC" listed on the return address. The Office of Disciplinary Counsel of the Supreme Court of Ohio commenced an investigation of your trust account because of your IOLTA account overdraft, requiring your explanation within 14 days.

Rule 1.15 Requirements

Trust accounts require lawyers to adhere to specific financial record-keeping for the proper practice of law. Unfortunately, many lawyers do not know these requirements. Yet, given the dire consequences a lawyer may suffer for failing to follow IOLTA account ethics rules; and given the financial institution reporting mandated by R.C. 4705.10, all lawyers who maintain client funds must strive to enhance their knowledge of IOLTA account requirements.

The lawyer discipline system enforces the standard of safekeeping of client property as a fundamental, fiduciary obligation of lawyers. Rule 1.15(a) requires that client and third-person funds are maintained (1) in an insured, interest-bearing account; (2) in a financial institution permitted under Ohio law and in the state where the lawyer's office is situated; and (3) in an account designated as "client trust account," "IOLTA account," or with another identifiable fiduciary title. Rule 1.15 requires the lawyer to maintain the following financial records for a period of seven years:

insufficient funds. The depository institution shall provide this notice without regard to whether the instrument is honored by the depository institution. The depository institution shall provide the notice described in division (A)(4) of this section by electronic or other means within five banking days of the date that the instrument was honored or returned as dishonored. The notice shall contain all of the following:

- The name and address of the depository institution;
- The name and address of the lawyer, law firm, or legal professional association that maintains the account;
- The account number and either the amount of the overdraft and the date issued or the amount of the dishonored instrument and the date returned.

While bank error or poor record-keeping by the lawyer may be explanations for an overdraft on the IOLTA account, the far more serious concern is commingling of lawyer and client funds. If the overdraft was caused by a banking error, in responding to the Disciplinary Counsel's investigation, the lawyer should immediately provide evidence of the bank's mistake. If the overdraft is caused by the lawyer's accounting mistakes, the lawyer must assure the Disciplinary Counsel that the lawyer understands the mistakes, that they are isolated and will not be repeated. If the problem is more serious, involving commingling and misuse of the trust account by the lawyer and the lawyer's bank providing additional bank records to determine if client funds were impacted and if formal disciplinary action is warranted.

Regardless of the severity of the problem, the lawyer should determine whether he or she can benefit from the assistance of counsel so that formal disciplinary action can be avoided if possible.

- Prof. Cond. Rule 1.15(a)
- Prof. Cond. Rule 1.15(a)(1)-(5)
- Prof. Cond. Rule 1.15(b)
- Prof. Cond. Rule 1.15(c)
- Prof. Cond. Rule 1.15(b)
- R. C. 4705.10 (A)(4)



amathews@bricker.com



Alvin E. Mathews Jr.,
Bricker & Eckler

- Any fee agreements
- A record for each client's funds, setting forth:
 - the client's name
 - the date, amount, and source of received funds
 - the date, amount, payee, and disbursement's purpose
 - the current balance
- A record of each bank account that sets forth:
 - the name of the account
 - the date, amount, and client for each credit and debit
 - the balance in the account

Any bank statements, deposit slips, and canceled checks provided by the bank, for each account

- A monthly reconciliation of the client ledgers bank account records
- IOLTA account rules authorize lawyers to deposit their own funds into the trust account for the sole purpose of paying or obtaining a waiver of bank service charges, to place advances on expenses into the trust account, and to comply with R.C. 120.52, 3953.231, 4705.09, and 4705.10 and Gov. Bar R. VI, (1) (F).

A dishonored check drawn from an IOLTA client trust account can signal (a) that the lawyer or the bank made an honest administrative, or accounting error, or (b) that the account is "out of trust," and the lawyer is intentionally or unintentionally using the client funds.

Overdraft Notification

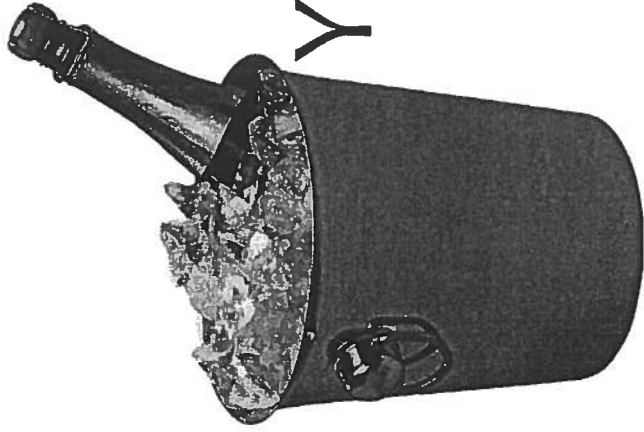
The ABA Standing Committee on Client Protection has promulgated rules as guidelines for implementing client protection and discipline programs. An ABA Model Rule for Trust Account Overdraft Notification was approved by the ABA House of Delegates in 1988. Ohio adopted its overdraft notification provision in 2005.

R.C. 4705.10 requires that any bank which holds attorney trust accounts notify Disciplinary Counsel of any dishonored checks written on an IOLTA account:

The depository institution shall notify the office of disciplinary counsel or other entity designated by the Supreme Court on each occasion when a properly payable instrument is presented for payment from the account, and the account contains

An unique arrangement which provides funding for the underserved legal needs of society and protects fiduciary funds held in an attorney's trusts account at a bank from possible misuse by those in control.

IOLTA



Getaway
C.L.E. Ltd.

You for your time & attention

Viva Las Vegas!!!!!!!!!!

Benjamin S. Zacks, Esq.
bszacks@zlglaw.com

Temporary Unlimited FDIC Coverage for Noninterest-Bearing Transaction Accounts (Including IOLTA Accounts)

You are here now : [Puget Sound Bank](#) > [News](#) > [News](#) > Temporary Unlimited FDIC Coverage for Noninterest-Bearing Transaction Accounts (Including IOLTA Accounts)

On December 29, 2010, President Obama signed into law an amendment to the Federal Deposit Insurance Act to include Interest on Lawyer Trust Accounts (“IOLTAs”) within the definition of “noninterest-bearing transaction accounts.” On January 18, 2011, the FDIC Board of Directors issued a final rule to implement this amendment, and on January 21, 2011 the FDIC issued Financial Institution Letter FIL-2-2011 to provide further guidance on the matter to insured depository institutions.

Please be aware that since the last version of the Frequently Asked Questions dated December 20, 2010, some questions have been added, deleted, and amended. Specific references to the IOLTA changes are reflected in the following summary and in FAQs 2, 8, 17-25, and 33-36.

On November 9, 2010, the FDIC Board of Directors (the “Board”) issued a final rule (the “November Final Rule”) to implement Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”) that provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts at all FDIC-insured depository institutions (the “Dodd-Frank Provision”). The separate coverage for noninterest-bearing transaction accounts became effective on December 31, 2010 and terminates on December 31, 2012. The Dodd-Frank Provision and November Final Rule are discussed in Financial Institution Letter FIL-76-2010, issued November 9, 2010. The November Final Rule is published in the Federal Register at 75 Fed. Reg. 69577 (Nov. 15, 2010).

In issuing the November Final Rule, the Board confirmed it would not extend the Transaction Account Guarantee Program (“TAGP”) beyond its sunset date of December 31, 2010.

On December 29, 2010, President Obama signed into law an amendment (the “December 29 Act”) to the Federal Deposit Insurance Act (as amended by Section 343 of the DFA) to include Interest on Lawyer Trust Accounts (“IOLTAs”) within the definition of “noninterest-bearing transaction

41

accounts.” As a result, IOLTAs will receive temporary unlimited insurance coverage at all FDIC-insured institutions (“IDIs”) from December 31, 2010 through December 31, 2012.

On January 18, 2011, the Board issued a final rule (the “January Final Rule”) to implement the December 29 Act. The January Final Rule is discussed in Financial Institution Letter FIL-2-2011, issued January 21, 2011.

The Dodd-Frank Provision is similar to the TAGP, except that it does not include low-interest Negotiable Order of Withdrawal (“NOW”) accounts. The Dodd-Frank Provision also differs significantly from the TAGP in that it applies at all IDIs with qualifying deposits.

The January Final Rule requires that by no later than February 28, 2011, each IDI that offers noninterest-bearing transaction accounts must post prominently an amended notice (see [FAQ 17](#)) in the lobby of its main office, in each domestic branch and, if it offers internet deposit services, on its website. The amended notice provides that noninterest-bearing transaction accounts are fully insured until December 31, 2012, and that IOLTAs are included in the definition of “noninterest-bearing transaction account.”

The November Final Rule required IDIs participating in the TAGP on December 31, 2010 to notify IOLTA customers by mail that IOLTAs would not receive unlimited insurance coverage starting January 1, 2011. The December 29 Act now includes IOLTAs in the definition of a “noninterest-bearing transaction account” entitled to temporary unlimited deposit insurance coverage. Financial Institution Letter FIL-2-2011 encourages (but does not require) IDIs who were participating in TAGP and sent individual notices to IOLTA holders advising that those accounts would not receive unlimited insurance coverage to send a revised notice explaining that IOLTAs will be fully insured through December 31, 2012. IDIs that have not already sent the individual notices need not send any such notice to IOLTA depositors. See www.fdic.gov for more information.

tags: [FDIC](#), [IOLTA](#), [November Final Rule](#), [TAGP](#)

April 19th 2011 | [Richard Lester](#)



§ 330.16 Noninterest-bearing transaction accounts.

(a) *Separate insurance coverage.* From December 31, 2010, through December 31, 2012, a depositor's funds in a "noninterest-bearing transaction account" (as defined in § 330.1(s)) are fully insured, irrespective of the SMDIA. Such insurance coverage shall be separate from the coverage provided for other accounts maintained at the same insured depository institution.

(b) *Certain swept funds.* Notwithstanding its normal rules and procedures regarding sweep accounts under 12 CFR § 360.8, the FDIC will treat funds swept from a noninterest-bearing transaction account to a noninterest-bearing savings deposit account as being in a noninterest-bearing transaction account.

(c) *Disclosure and notice requirements--*

(1) By no later than February 28, 2011, each depository institution that offers noninterest-bearing transaction accounts must post prominently the following notice in the lobby of its main office, in each domestic branch and, if it offers Internet deposit services, on its Web site.

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a "noninterest-bearing transaction account" are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It also includes Interest on Lawyers Trust Accounts ("IOLTAs"). It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, and money-market deposit accounts.

(2) Institutions participating in the FDIC's Transaction Account Guarantee Program on December 31, 2010, must provide a notice by mail to depositors with negotiable order of withdrawal accounts that are protected in full as of that date under the Transaction Account Guarantee Program that, as of January 1, 2011, such accounts no longer will be eligible for unlimited protection. This notice must be provided to such depositors no later than December 31, 2011.

(3) If an institution uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage under this section, the institution must notify affected customers and clearly advise them, in writing, that such actions will affect their deposit insurance coverage.

[Codified to 12 CFR 330.16]

[Section 330.16 added at 75 Fed. Reg. 69577; amended at 76 Fed. Reg. 4618, January 27, 2011]



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Expiration of Temporary Unlimited Coverage for Noninterest-Bearing Transaction Accounts

Frequently Asked Questions Regarding the Expiration of Temporary Unlimited Coverage for Noninterest-Bearing Transaction Accounts

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Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts (NIBTAs) at all FDIC-insured depository institutions (IDIs) from December 31, 2010 through December 31, 2012 (the Dodd-Frank Deposit Insurance Provision). In anticipation of the expiration of the Dodd-Frank Deposit Insurance Provision, the FDIC issued Financial Institution Letter [FIL-45-2012](#) to provide related direction and guidance to IDIs.

Below are frequently asked questions and answers concerning the expiration of the Dodd-Frank Deposit Insurance Provision.

1. When the Dodd-Frank Deposit Insurance Provision expires, how will noninterest-bearing transaction accounts be insured by the FDIC? What will be the impact on deposit insurance coverage on other types of accounts?

Beginning January 1, 2013, noninterest-bearing transaction accounts will no longer be insured separately from depositors' other accounts at the same IDI. Instead, noninterest-bearing transaction accounts will be added to any of a depositor's other accounts in the applicable ownership category, and the aggregate balance insured up to at least the standard Maximum Deposit Insurance Amount (SMDIA) of \$250,000, per depositor, at each separately chartered IDI.

For example, if after the expiration of the Dodd-Frank Deposit Insurance Provision a depositor under the single ownership category has \$500,000 deposited in a noninterest-bearing transaction account and \$250,000 deposited in a certificate of deposit, or total deposits of \$750,000, the depositor would be insured for up to \$250,000 and uninsured for the remaining balance of \$500,000.

Depositors should be made aware that Section 335 of the Dodd-Frank Act permanently increases the SMDIA to \$250,000.

2. How will the expiration of the Dodd-Frank Deposit Insurance Provision affect deposit insurance coverage for Interest on Lawyer Trust Accounts (IOLTAs)?

After December 31, 2012, funds deposited in IOLTAs will no longer be insured under the Dodd-Frank Deposit Insurance Provision. However, because IOLTAs are fiduciary accounts, they generally qualify for pass-through coverage on a per-client basis. FDIC regulations provide that deposit accounts owned by one party but held in a fiduciary capacity by another party are eligible for pass-through deposit insurance coverage if (1) the deposit account records generally indicate the account's custodial or fiduciary nature and (2) the details of the relationship and the interests of other parties in the account are ascertainable from the deposit account records or from records maintained in good faith and in

44

the regular course of business by the depositor or by some person or entity that maintains such records for the depositor.

If an IOLTA does qualify for pass-through coverage as a fiduciary account, then each separate client for whom a law firm holds funds in an IOLTA may be insured up to \$250,000 for his or her funds.

For example, if a law firm maintains an IOLTA with \$250,000 attributable to Client A, \$150,000 to Client B, and \$75,000 to Client C, the account would be fully insured if the IOLTA meets the requirements for pass-through coverage. If the clients have other funds at the same IDI, those funds would be added to their respective shares of the funds in the IOLTA for insurance coverage purposes.

3. How will the expiration of the Dodd-Frank Deposit Insurance Provision affect deposit insurance coverage for official checks?

Official checks, such as cashier's checks and money orders issued by IDIs, are "deposits" as defined under the FDI Act (12 U.S.C. §1831(l)) and Part 330 of the FDIC's regulations. The payee of the official check (the party to whom the check is payable) or, if applicable, the party to whom the payee has negotiated the official check, is the insured party. Since official checks meet the definition of a noninterest-bearing transaction account, under the Dodd-Frank Deposit Insurance Provision the payee (or the party to whom the payee has endorsed the check) is insured by the FDIC for the full amount of the check through December 31, 2012. However, after the expiration of the Dodd-Frank Deposit Insurance Provision, if an issuing IDI were to fail, the balance of any official checks will be added to the amount of any other deposits the payee holds in the same ownership category at the issuing IDI, and the aggregate balance insured up the payee's applicable deposit insurance limit.

4. How will the expiration of the Dodd-Frank Deposit Insurance Provision affect the obligation of IDIs to pledge collateral for accounts held by government/public fund depositors?

The requirement that collateral be pledged to secure government/public deposits at IDIs is imposed by state law and not by the FDIC; there is no provision in the FDIC regulations requiring collateralization of government/public fund deposits. However, to the extent that applicable state law requires IDIs to pledge collateral for uninsured deposits held by government/public fund depositors, after December 31, 2012, IDIs should be prepared to set aside sufficient collateral to secure the accounts of its government/public depositors whose deposits exceed \$250,000. Further questions about this matter should be directed to the responsible state regulator or state department of banking.

5. After the expiration of the Dodd-Frank Deposit Insurance Provision, will IDIs have any remaining obligation under 12 C.F.R. § 330.16(c)(3) to notify customers if the IDI "uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage" under the Dodd-Frank Deposit Insurance Provision?

Notices pursuant to 12 C.F.R. § 330.16(c)(3) will no longer be required after December 31, 2012, since the Dodd-Frank Deposit Insurance Provision will no longer be in effect and noninterest-bearing transaction accounts will no longer be eligible for unlimited deposit insurance coverage, but will be subject to the same insurance limits as interest-bearing deposit accounts. Since there will be no distinction for deposit insurance coverage between noninterest-bearing transaction accounts and interest-bearing accounts, there will be no need for the notice required under 12 C.F.R. § 330.16(c)(3).

6. After December 31, 2012, what should IDIs do with the notices (Dodd-Frank Notices) required by the Dodd-Frank Deposit Insurance Provision to be posted in the lobby of the IDI's main office, in each domestic branch and, if it offers Internet deposit services, on its Web site?

With the expiration of the Dodd-Frank Deposit Insurance Provision, the Dodd-Frank Notices are no longer required. As stated in [FIL-45-2012](#), IDIs should

45

remove all Dodd-Frank Notices from their main offices, domestic branches, and Web sites. The FDIC suggests that IDIs should remove all Dodd-Frank Notices from their main office, branches and Web sites by January 2, 2013. If removal of all Dodd-Frank Notices by January 2, 2013 is not possible, then the FDIC expects IDIs to remove the Dodd-Frank Notices as soon as practicable.

7. How are depositors going to be notified about the expiration of the Dodd-Frank Deposit Insurance Provision? Are IDIs required to replace the Dodd-Frank Notice with notice of the expiration of the Dodd-Frank Deposit Insurance Provision?

The Dodd-Frank Act imposes no specific notice requirements on IDIs in connection with the expiration of the Dodd-Frank Deposit Insurance Provision. However, in [FIL-45-2012](#), the FDIC encourages IDIs to remind their NIBTA depositors about the pending expiration of the temporary unlimited coverage for NIBTAs and the impact that expiration will have on their deposit insurance coverage. IDIs may use any reasonable method of providing reminders to depositors, such as individual written notices to each NIBTA depositor or notices on regular account statements. IDIs may use electronic mail for depositors who ordinarily receive account information in this manner.

Below is language for such a notice to NIBTA depositors:

NOTICE OF EXPIRATION OF THE TEMPORARY FULL FDIC INSURANCE COVERAGE FOR NONINTEREST-BEARING TRANSACTION ACCOUNTS

By operation of federal law, beginning January 1, 2013, funds deposited in a noninterest-bearing transaction account (including an Interest on Lawyer Trust Account) no longer will receive unlimited deposit insurance coverage by the Federal Deposit Insurance Corporation (FDIC). Beginning January 1, 2013, all of a depositor's accounts at an insured depository institution, including all noninterest-bearing transaction accounts, will be insured by the FDIC up to the standard maximum deposit insurance amount (\$250,000), for each deposit insurance ownership category.

For more information about FDIC insurance coverage of noninterest-bearing transaction accounts, visit:
<http://www.fdic.gov/deposit/deposits/unlimited/expiration.html>

Institutions placing notices on regular account statements with space limitations may wish to utilize a shorter notice to NIBTA depositors, such as:

NOTICE: By federal law, as of 1/1/2013, funds in a noninterest-bearing transaction account (including an IOLTA/IOLA) will no longer receive unlimited deposit insurance coverage, but will be FDIC-insured to the legal maximum of \$250,000 for each ownership category. For more information visit:
<http://www.fdic.gov/deposit/deposits/unlimited/expiration.html>

Please Note: If an IDI cannot use the above Web link in its depositor notices due to spacing or other issues, the IDI can use the following:

For more information about FDIC insurance coverage of noninterest-bearing transaction accounts, visit "What's New" on www.fdic.gov.

8. When should notice of the expiration of the Dodd-Frank Deposit Insurance Provision be provided to NIBTA depositors?

The FDIC encourages IDIs to be proactive in reminding NIBTA depositors of the scheduled expiration. Reminders should be provided to NIBTA depositors sufficiently in advance of the insurance coverage change so depositors have adequate time to consider the impact of any change in coverage in their management of these transaction accounts.

46

9. What other steps should IDIs take to ensure that information provided to depositors accurately reflects the change in deposit insurance coverage for NIBTAs beginning January 1, 2013?

To ensure that NIBTA account agreements and disclosure statements provided to new IDI depositors accurately reflect the change in coverage as of January 1, 2013, IDIs should review all of their account agreements and disclosure statements used in connection with NIBTA deposits to ensure that these documents accurately reflect FDIC insurance coverage for these accounts as of January 1, 2013. IDIs should complete this review and make necessary adjustments to NIBTA account documentation promptly upon expiration of the Dodd-Frank Deposit Insurance Provision.

Archived Information: [Frequently Asked Questions Regarding Sections 343 and 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act](#)

For more information, visit www.fdic.gov or call the FDIC toll free at 1-877-275-3342.

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