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Today's Agenda

- **Iowa Client Trust Accounts**
 - Overview
 - Account Security
 - Rule & Reg Changes
- **Recent Ethics Complaints & Public Disciplinary Action**
- **Audit Program/ Top 5s as the Auditors See It**
- **Issues Specific to Workers' Compensation Practitioners**
- **Where to Find Information on Trust Account Management**

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I.

CLIENT TRUST ACCOUNTS

The Basics

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Some statistics...

- ❑ There are over 4300 active Iowa IOLTA trust accounts at over 250 financial institutions
- ❑ Banks with 100+ Iowa trust accounts:
 - US Bank
 - Wells Fargo
 - West Bank
 - Great Western Bank
 - Bank of the West
 - Hills Bank and Trust

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Interest on Lawyer Trust Accounts (IOLTA)

- ❑ The IOLTA program is used in all 50 states
- ❑ Method of raising charitable funds
- ❑ Funds used to support legal assistance programs to low-income Iowans with civil legal problems
- ❑ Over \$25 million awarded since 1985 start
- ❑ Last year 11 grants awarded, \$241,373
- ❑ This year 12 grants awarded, \$681,345



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Trust Account Rules

Iowa R. of Prof'l Conduct 32:1.15

(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 account. Other property shall be identified as such and appropriately safeguarded.

...

(f) All client trust accounts shall be governed by chapter 45 of the Iowa Court Rules.

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Books and Records Maintenance

- Maintain books and records
 - sufficient to show compliance with rule 32:1.15 and chapter 45
 - for at least six years after completion of the employment they relate to
- Iowa Court Rule 45.2(3) lists specific record requirements

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Financial Records to be Maintained

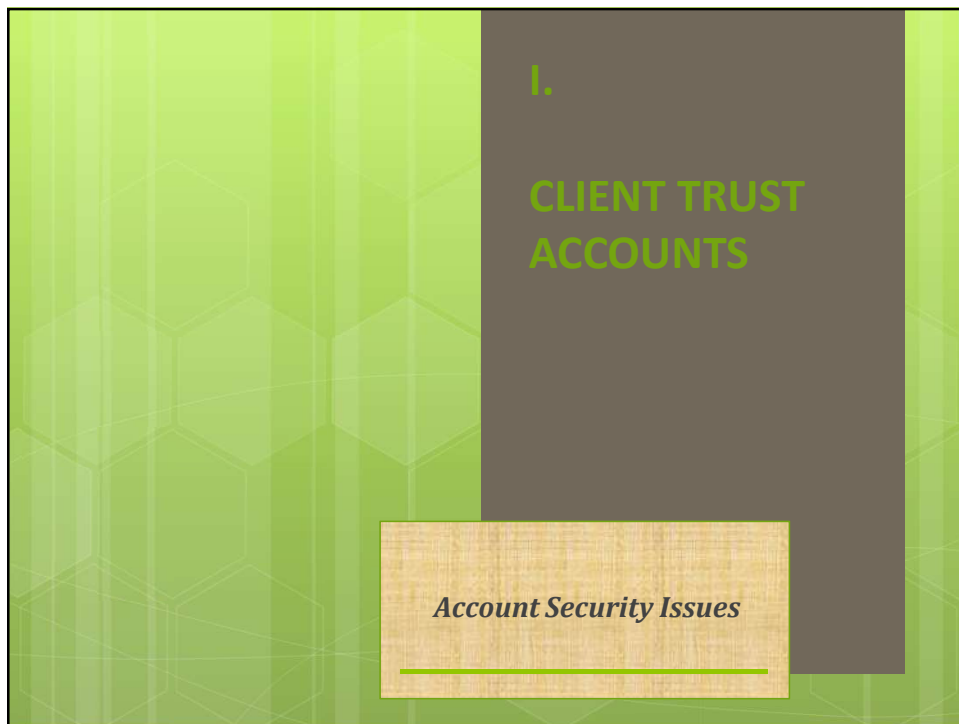
- ❑ Bank statements
- ❑ A general ledger (a/k/a check register) with a running balance
- ❑ A subaccount ledger for each client whose funds are deposited in the trust account, and also for firm funds
- ❑ Copies of deposit slips and cancelled checks
- ❑ Records of all electronic transfers, memos for electronic transactions w/ four components from rule 45.2(3)(8)
- ❑ Monthly list of client balances
- ❑ Monthly written triple reconciliations
- ❑ All retainer and fee contracts with clients
- ❑ All bills provided clients for legal fees and expenses
- ❑ All accounting statements provided to clients or third persons showing disbursements from the trust account
- ❑ Those portions of client files reasonably related to trust account transactions

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Reminders

- Deposits must be full federally insured
- No overdraft protection or credit line on trust account
- PayPal, Venmo, or similar platforms may not be used in conjunction with the trust account
- No cryptocurrency
- Must update OPR within 30 days of any change

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A presentation slide with a green background featuring a faint hexagonal pattern. At the top, a light brown rectangular box with a gradient contains the title "Trust Account Security" in green. Below this, a white rectangular box contains a bulleted list of four items, each preceded by a green circle.

- Fiduciary duty to clients to safeguard their funds – Iowa R. Prof'l Conduct 32:1.15 (safeguarding property)
- Cost of making good the loss can be significant
- Law firm disintegration is a frequent result
- Failure to supervise can result in disciplinary action – Iowa R. Prof'l Conduct 32:5.3 (duty to supervise non-lawyer staff)

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Fraud Targeting Trust Accounts

External

- Inducing disbursement on counterfeit check
- Keystroke logging program inserted by social media site on PC used for electronic banking
- Trojan horse connected to emails purporting to be from attorney regulation or government entities
- Fraudulent ACH Debits

Internal

- Diversion of cash retainers, earned fees
- Attorney's signature stamp or forged signature on unauthorized checks
- Employee's authorized signature on unauthorized checks
- Initiation of electronic transfer or use of trust account debit card to fund personal obligations
- Fiduciary account checks written to cash

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I.

CLIENT TRUST ACCOUNTS

Rule & Regulation Changes

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Rule & Regulation Changes

- *February 2012 Trust Account Rules (esp. Rule 45.2)*
- December 2012 Designation of Successor Signatories
- January 2013 FDIA Coverage - IOLTAs no longer insured separately from depositors
- January 2014 FDIC Coverage - \$250,000 limit extended permanently
- December 2014 NCUA Coverage for IOLTA accounts in credit unions
- 2015 - 2022 Division III of the Iowa Court Rules (esp. succession planning, costs of audits, CS admonitions)

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- Succession Planning -

- Iowa Court Rule 39.18 - All attorneys in private practice in Iowa must have a death or disability plan
 1. mandatory short form designation
 2. optional but encouraged written plan
- If subject to the rule, must
 - identify an active Iowa attorney in good standing, a law firm, or a qualified attorney-servicing association to serve as your designated representative
 - maintain a current list of active clients, in an accessible location
 - identify custodian and location of files, records, and security protocols

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Five Things You Can Do to Help Your Clients (& Successor Attorney)

1. Vigilantly maintain the client listing with current contact information.
2. Keep the written list of computer and program passwords updated and in a secure place.
3. Make sure **triple reconciliations** are *done monthly & balance to the penny*.
4. Print out triple reconciliations, keep together in a binder with supporting documents, and maintain for six (6) years.
5. Address the pesky "F"-word.

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- Audit Costs Recovery -

Rule 39.10(7) Investigations; audits.

The **costs of performing a trust account audit** must be assessed to the attorney or attorneys who are signatories on the account *if the audit reveals the account was not in substantial compliance* with Iowa Rule of Professional Conduct 32:1.15 or chapter 45 of the Iowa Court Rules, *and one or more of the following circumstances caused performance of the audit:*

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- a. A claim for reimbursement was filed under the provisions of rule 39.9 based on the alleged conduct of the attorney or attorneys who are signatories on the account.
- b. A notice of insufficient funds to honor an instrument drawn on the account was reported to the commission under the provisions of rule 45.4(4)(c).
- c. A complaint alleging an attorney signatory on the account committed a disciplinary infraction was filed with the attorney disciplinary board under the provisions of rule 34.1.
- d. An attorney signatory on the account was suspended from practice under the provisions of chapter 35.
- e. An attorney signatory on the account failed to timely file the statement and questionnaire required by rule 39.8.
- f. An attorney signatory on the account was served a 15-day notice under rule 39.8(2) based on failure to cooperate.
- g. A trustee was appointed under the provisions of Iowa Court Rule 34.17 or 34.18 for an attorney signatory on the account.
- h. An attorney signatory on the account was issued a certificate of noncompliance pursuant to Iowa Court Rule 34.20(1), 34.21(1), or 34.22 (1).
- i. The Client Security Commission specifically directed the audit.

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- Client Security Admonition -

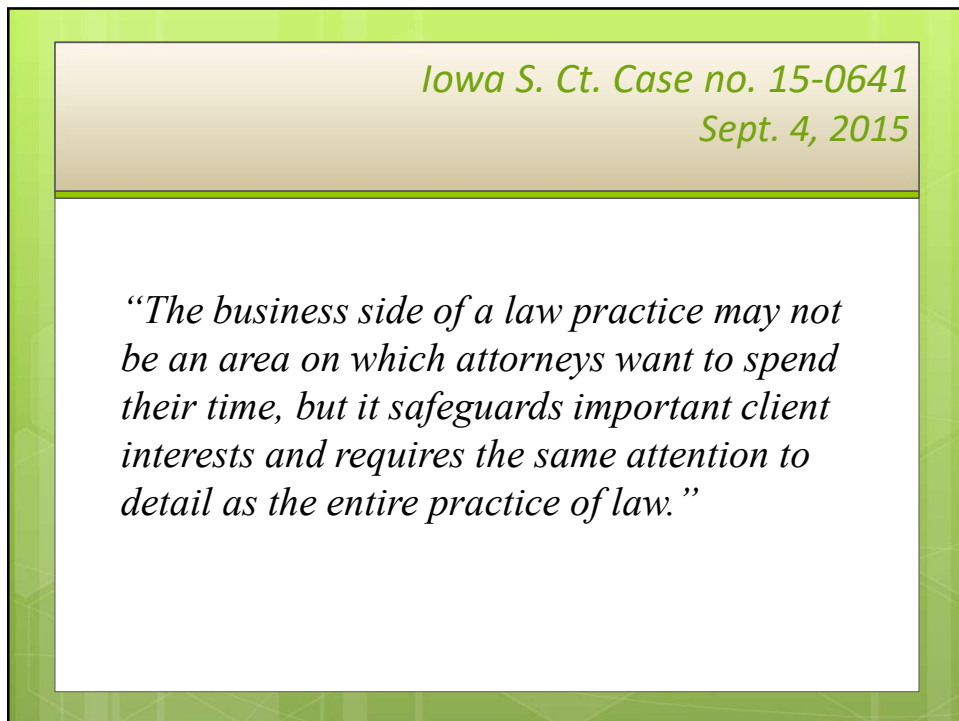
Rule 39.12(2)(a) Violation of the Iowa Rules of Professional Conduct.

When the audit, investigation, or verification of funds, securities, or other property held in trust by any member of the bar of Iowa.. discloses an apparent violation of the Iowa Rules of Professional Conduct, the director upon request of the commission.. may *privately admonish*, refer to the Attorney Disciplinary Board, or institute disciplinary proceedings under chapter 36 of the Iowa Court Rules for the suspension or revocation of the member's license to practice law in this state.

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2022 Attorney Disciplinary Board Complaint Demographics

Most frequent ethics allegations :

- **Neglect/ incompetence/ inadequate communication (42%)**
- Fraud, deceit, dishonesty, misrepresentation (15%)
- **Trust account irregularities (14%)**
- Conflict of interest (11%)
- Disregard of court order/ disrespect of court (10%)
- Pretrial or trial conduct (7%)
- **Misappropriation or mishandling of money or property (7%)**
- Attorney misconduct (7%)

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2022-23 Public Discipline

Trust-Account-Related Cases

Bookkeeping error+

Chronic mismanagement of client funds

Failure to cooperate with audit or respond to a claim

Improper business transaction with client

Misappropriation of client funds

Iowa S. Ct. Case no. 21-1068 (John K. Fischer)

Iowa S. Ct. Case no. 23-0030 (Patrick R. Anderson)



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5 Things You Can Do to Avoid a Trust-Accounts-Based Ethics Complaint

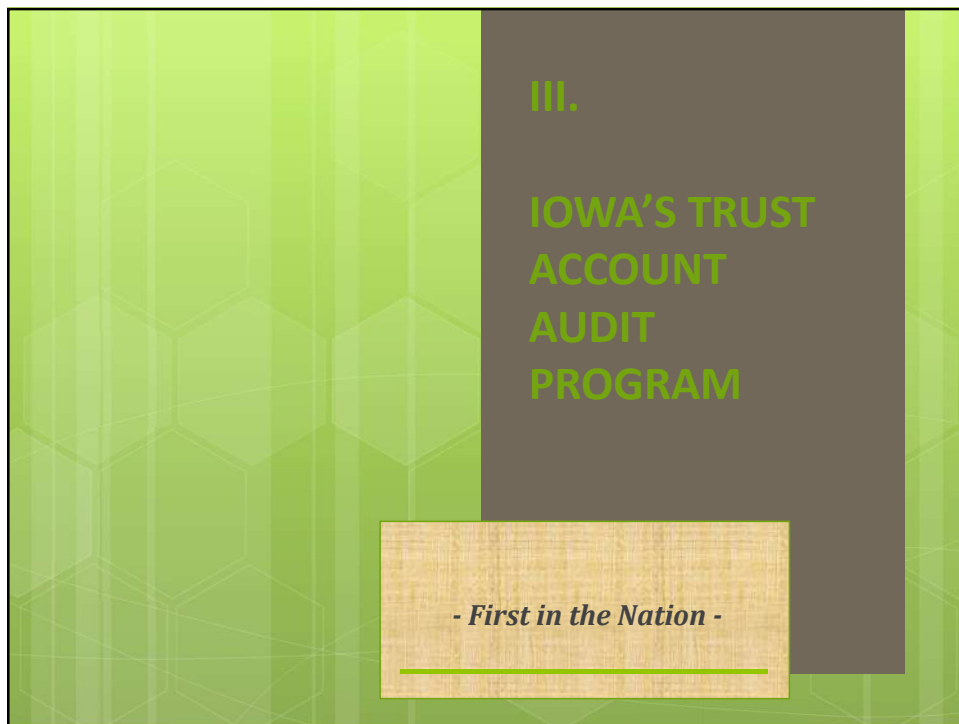
1. Make time for the business side of your law practice.
2. Know your skills & recognize your limitations.
3. Communicate with your clients.
4. Keep up-to-date, detailed records; make sure **triple reconciliations are done monthly & balance to the penny.**
5. If you (or the auditors) discover a problem, fix it.

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Lawyer Assistance Program

- High percentage of cases resulting in public discipline involve lawyers with substance abuse or mental health issues
- **Iowa Lawyer Assistance Program**
 - funded primarily with fees paid to support the disciplinary system
 - provides confidential assistance to Iowa lawyers
 - contact: Hugh Grady, Director
(800) 243-1533, cell (515) 360-1011
<http://www.iowalap.org>

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Improvements

- ❑ Audit Program B.C.
 - ❑ In-person routine and non-routine audits
 - ❑ Dual goals: education, verification of compliance
- ❑ Now...
 - ❑ Paperless as of 5/1/2020!
 - ❑ Correspondence audits
 - ❑ Help for trustees & successor counsel

COMPLIANCE REVIEWS

Category	2019	2020	2021	2022
TRUST ACCOUNTS AUDITED	443	492	345	350
# OF LAWYERS VISITED	782	726	723	726
FIDUCIARY ACCOUNTS REVIEWED	102	172	150	89

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5 Things Iowa Lawyers Are Doing Very Well Vis-à-vis Trust Accounts

1. Being honest stewards of client funds.
2. Maintaining detailed, accurate records.
3. Self-reporting errors and asking for guidance.
4. Rectifying any trust account shortage or overage immediately.
5. Cooperating with the audit process.

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As the Auditors See It : Prevalent Trust Account Management Issues

#1 Old Outstanding Checks

- ❖ Iowa Ct. R. 45.2(2)
“.. a lawyer must promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive..”
- ❖ Client Security’s definition of prompt return for old outstanding checks = *no more than six months*
- ❖ Plan A : immediate return at the end of the matter
- ❖ Plan B : regular or cashier’s check
- ❖ Plan C : The Great Iowa Treasure Hunt

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As the Auditors See It : Prevalent Trust Account Management Issues

#2 Inactive Client Balances

- ❖ Iowa Ct. R. 45.2(2) prompt return and/or
- ❖ Iowa Ct. R. 45.1 commingling
 - “.. No funds belonging to the lawyer or law firm may be deposited in the trust account..”
- ❖ Client Security’s definition of prompt return for inactive client balances = *no more than one year*
- ❖ Plan A : immediate return at the end of the matter
- ❖ Plan B : regular or cashier’s check
- ❖ Plan C : The Great Iowa Treasure Hunt

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As the Auditors See It : Prevalent Trust Account Management Issues

#3 Maintaining Required Records - Rule 45.3(2)

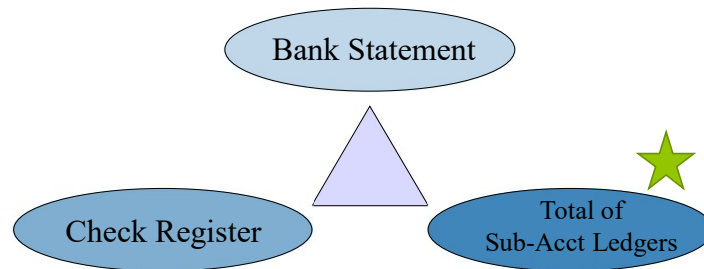
- ❖ February 2012 rules were designed to address developments in technology and provide uniform guidelines
- ❖ Change incorporated Model Rules with a few differences to reflect Iowa practice
- ❖ “New” Rules have greater specificity, particularly as to what records an attorney must keep
- ❖ Correlation between failure to triple monthly reconcile, and loss of accountability
- ❖ Highly recommended to have a backup off-site

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Monthly Triple Reconciliations

The missing pieces for some IA attorneys....

1. monthly reconciliations and
2. monthly 3-way reconciliations



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TRIPLE RECONCILIATION FOR BANK STATEMENT ENDING : _____

1. BANK STATEMENT RECONCILIATION				Amounts
Bank Balance Per Statement:				\$
Plus	Payer	Date	Amount	
Outstanding Deposits:				
			Total:	\$
Subtotal:				\$
Less	Payee	Date	Check #	Amount
Outstanding Checks:				
			Total:	\$
Subtotal:				\$
Less IOLTA Interest:				\$
Reconciled Balance:				\$

2. CHECK REGISTER RECONCILIATION				Amounts
[*] All information in this section comes from the check register, not from the bank statement.				
Check Register Balance as of: (Prior Month's Statement End Date)				\$
Plus Total Receipts This Month:				\$
Subtotal:				\$
Less Checks Written This Month:				\$
Reconciled Balance:				\$

3. CLIENT SUB-ACCOUNT BALANCE RECONCILIATION				Amounts
Itemization:	Name of Trust Sub-Account	Date of Last Transaction	Amount	
Reconciled Balance (Total of Client Sub-Acct Balances):				\$

[All Reconciled Balances Should Be Equal]

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Other Records Required to Be Maintained

- Check register with a running balance
- Copies of deposit slips and negotiated checks
- Monthly list of client balances
- Sub-account ledger for firm funds
- Memos for electronic transfers

The point of all of this is to

- a. Have what you need to balance to the penny each month
- b. Be able to find errors/ recreate the triple reconciliation later if necessary

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As the Auditors See It : Prevalent Trust Account Management Issues

#4 Negative Client Sub-Account Balances

- ❖ Must review for these during the monthly triple reconciliation process
- ❖ The longer one exists, the harder it is to locate the error
- ❖ Are negative balances really a trust account violation?
 - ❖ Ct. R. 45.7(3) – Advance fee and expense payments may be withdrawn only as the fee is earned or the expense is incurred.
 - ❖ Ct. R. 45.1 - No funds belonging to the lawyer or law firm may be deposited in the trust account.

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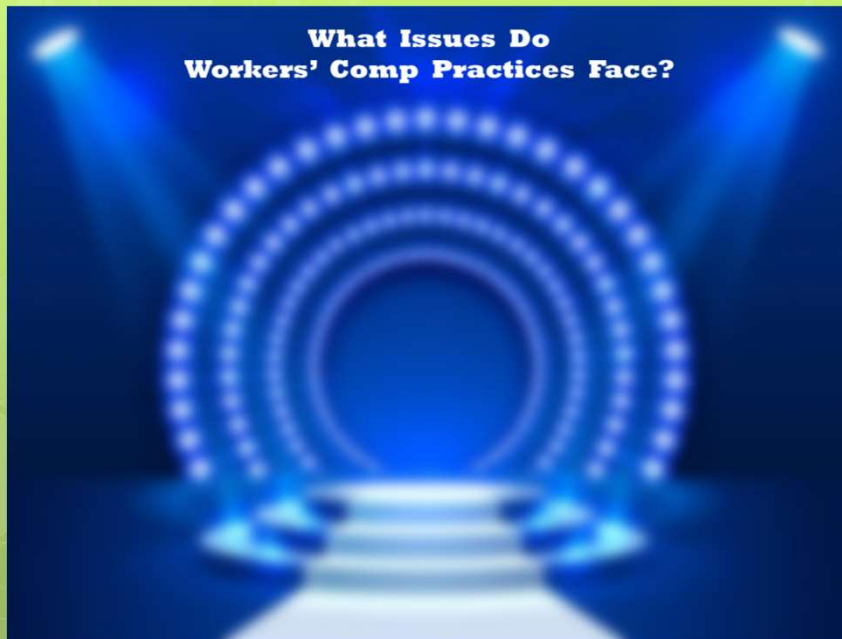
As the Auditors See It : Prevalent Trust Account Management Issues

#5 Handling of Credit Card Retainers

- ❖ Retainers must be deposited directly to the trust account
- ❖ Fees payable to the credit card institution are the lawyer's responsibility
- ❖ Interest must be paid to IOLTA program on the full face value of any retainer based on a credit card charge
- ❖ Ensure the credit card-based retainer is credited by the bank and is ineligible for charge-back before writing any checks against it
- ❖ Print and retain verification, on a monthly basis

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What Issues Do Workers' Comp Practices Face?



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Resources

- Administrative – call OPR at 515-348-4670
- Substantive Trust Account Questions
 - ❑ Iowa Trust Accounts Outline:
<http://www.iowacourts.gov/opr/attorneys/attorney-practice/>
 - ❑ Other Trust Accounting Publications:
 - Available for trust account management generally, and for every program in regular use in Iowa
 - e.g. “A Complete Guide to Trust Accounts” by LawPay; “Trust Accounting Using Quickbooks” by Lynette Benton
 - ❑ Current set of Iowa Court Rules:
<http://www.legis.iowa.gov/iowaLaw/courtRules.aspx>
 - ❑ Formal Disciplinary Opinions:
 - Westlaw, Lexis, FastCase
 - <http://www.iacourtcommissions.org/icc/SearchDiscipline.do>

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Opportunities for Service on Boards and Commissions

Client Security Commission
Lawyer Trust Account Commission
Commission on Continuing Legal Education
Board of Examiners of Shorthand Reporters
Attorney Disciplinary Board
Grievance Commission
Board of Law Examiners
Commission on Unauthorized Practice of Law

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Thank you for attending!

Trinity M. Braun-Arana
Director of Client Security

Office of Professional Regulation
Iowa Judicial Branch Building
1111 E. Court Avenue
Des Moines, Iowa 50319

(515) 348-4670

- Email: client.security@iowacourts.gov
- Web Site: <http://www.iowacourts.gov/OPR>