
TRUST ACCOUNTING FOR ALABAMA ATTORNEYS



a manual prepared by the
Law Office Management Assistance Program
A Member Service
of the
Alabama State Bar

Preface

This work is a general overview designed to answer commonly asked questions. It is not exhaustive and it does not attempt to cover every situation or every rule related to attorneys' trust accounts in Alabama. Originally prepared in 1997, it is based on *Trust Accounting for Attorneys in Georgia* which was written by Terri Olson during her term as Director of the Law Practice Management Program of the State Bar of Georgia. We are grateful for her help and the State Bar of Georgia's permission to use some of the materials from their handbook.

Rule 1.15 of the Alabama Rules of Professional Conduct, pertaining to safekeeping client property, and selected ethics opinions are included to provide further guidance. If, after reading this material, you still have questions about the propriety of certain actions, please contact the Office of the General Counsel at (334) 269-1515 or (800) 354-6154 for a free, confidential, informal opinion.

If you have questions regarding the mechanics of trust account setup or bookkeeping, please contact the Law Office Management Assistance Program at (334) 269-1515 or (800) 354-6154.

If you have any questions regarding the Alabama Law Foundation, please contact Tracy Daniel at (334) 269-1515 ext. 137 or 800-354-6154. Questions regarding the Alabama Civil Justice Foundation should be directed to Sue McInnish at (334) 263-3003.

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ABOUT TRUST ACCOUNTS

What is a trust account and what types of funds are placed in one?

A trust account is a separate bank account set up to hold **any** money you have received on behalf of a client or a third party in a legal matter. Examples of funds to be placed in a trust account include earnest money deposits or down payments for loan closings, settlement proceeds or damage payments that have not yet been divided between yourself and your client and distributed in personal injury or other tort cases, and advance payments for fees you have not yet earned. Attorneys in Alabama sometimes use both the terms “attorney’s trust account” and “attorney’s escrow account,” but “trust” account is preferred because “escrow” has a specific meaning related to real estate practice and its use may cause the account to be confused with the accounts that can legally be set up by real estate agents and other professionals.

Why do I have to have a trust account if I seldom hold client funds?

Rule 1.15(f) of the Alabama Rules of Professional Conduct (ARPC) requires that a lawyer **must** hold property of clients or third persons that is in a lawyer’s possession in connection with a representation **completely separate from the lawyer’s own property**. A lawyer, except a lawyer not engaged in active practice pursuant to §34-3-17 and §34-3-18, *Code of Alabama, 1975*, as amended, must maintain a separate account to hold the funds of clients. If the nature of your practice is such that you **never** hold any funds for clients, then you may give written notice to the Secretary of the Alabama State Bar that you will not maintain a trust account. This notice must be given within six (6) months of your admission to practice or return to active practice. If you have previously given such a notice, you must immediately revoke it in writing if you later open a trust account.

Does the account have to be an interest-bearing account?

Yes. Unless you properly “opt out” of IOLTA (more about that later), Rule 1.15(g) of the Alabama Rules of Professional Conduct requires that you hold client or third party funds **that are either nominal or to be held for a short period of time** in one or more IOLTA accounts. Your IOLTA account may be used only for amounts that are nominal or sums that are expected to be held for a short period of time. Funds that are not nominal or are expected to be held for long periods of time will be discussed below.

What is an IOLTA account, and where do I get one?

“IOLTA” means Interest on Lawyers’ Trust Accounts. An IOLTA account is an interest- or dividend-bearing account set up specifically to hold all trust funds you receive that are **nominal in amount** or that are expected to be held for **only a short time**. The interest that accrues on this account is remitted automatically by your financial institution to the Alabama Law Foundation (ALF) or the Alabama Civil Justice

Foundation (ACJF) to be awarded by them in the form of grants. You select which foundation receives the interest from your account.

The account must be maintained in an “eligible institution.” This is defined as a bank or savings and loan association whose deposits are insured by an agency of the federal government, or any open-end investment company which is registered with the Securities and Exchange Commission. The institution you select must be authorized by federal or state law to do business in Alabama.

The IOLTA program has been in effect in Alabama since 1987, and most financial institutions are familiar with it and will be happy to assist you in establishing such an account. A list of Alabama financial institutions offering IOLTA accounts appears at the end of this text.

What are the requirements for an IOLTA account?

Under the most recent revision of Rule 1.15 of the Alabama Rules of Professional Conduct (approved by the Alabama Supreme Court on April 14, 2003), IOLTA accounts must meet three requirements.

Financial institutions must pay no less than the highest interest rate or dividend generally available to non-IOLTA customers when the account meets the same minimum balance or other eligibility requirements. Interest or dividends for IOLTA accounts must be calculated in the same way as for non-IOLTA accounts.

Only “reasonable fees” may be deducted from the interest earned. Reasonable fees are defined by Rule 1.15 as: (1) per check charges; (2) per deposit charges; (3) a fee in lieu of minimum balance; and (4) a reasonable IOLTA account administrative fee. No other fees may be deducted from the interest. Any other fees which the depository institution charges are the responsibility of the lawyer or law firm maintaining the account.

The depository institution must agree that it will remit interest, less reasonable fees charged against the interest accrued by the account, at least quarterly to ALF or ACJF. It must also transmit with each remittance a statement reflecting the period of time covered by the remittance, the name in which the account is maintained, the account number, the interest rate, the gross amount of interest or dividend earned during the period, the amount and description of any service charges or fees assessed, and the net amount of interest remitted, with a copy to the lawyer.

What do ALF and ACJF do with the interest earned?

All interest transmitted to and received by ALF must be distributed by it for one or more of the following purposes: (1) to provide legal aid to the poor; (2) to provide law student loans; (3) to provide for the administration of justice; (4) to provide law-related educational programs to the public; (5) to help maintain public law libraries; (6) for

such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time. ALF was created by the Alabama State Bar, and is administered by the Fellows of the Alabama Law Foundation, a distinguished group of Alabama lawyers. New fellows are inducted yearly.

All interest transmitted to and received by ACJF must be distributed by it for one or more of the following purposes: (1) to provide financial assistance to organizations or groups providing aid or assistance to: (a) underprivileged children; (b) traumatically injured children or adults; (c) the needy; (d) handicapped children or adults; (e) drug and alcohol rehabilitation programs; and (2) for such other programs for the benefit of the public as are specifically approved by the Supreme Court of the State of Alabama from time to time. ACJF was created and is administered by the Alabama Trial Lawyers' Association.

Who defines “short term” and “nominal?”

You do, based on your own judgment and in consultation with the client or third party concerning what would be best for him or her. In situations where you will be holding a substantial sum of money for a period of several months or more, depending on prevailing interest rates, it might be in the client's best interest for you to open a separate interest-bearing account for that client alone. You should consider the amount involved, the length of time the sum will be held, the interest rate that you can get on a separate account, and the service charges payable. The question is whether or not the funds held can ***“practicably be invested for the benefit of the client or third person.”***

What if I decide the sum is not “nominal” or the term “short?”

In that case, you would generally set up an interest bearing account for the benefit of that client alone, using the client's tax identification number and remitting the interest to the client. When opening an individual trust account for a client, if you do place money in anything other than a deposit account, be sure that the money is ***safe*** (don't place trust funds in high risk investments, no matter what your client suggests or agrees to) and ***accessible*** (don't place trust funds in an account or other investment where they are non-liquid or penalties for early withdrawal are charged).

What if I just don't want to maintain an IOLTA account?

IOLTA accounts are probably less trouble to maintain than non-IOLTA accounts. Your bank automatically deducts the interest that is earned and takes care of all the reporting. In addition, “reasonable fees,” as defined in Rule 1.15, may be paid from the interest earned. You need only balance the account when your statement arrives. The program provides many benefits to the citizens of Alabama and to you as a practicing attorney, particularly through ALF grants that help support county law libraries and legal education for the public. The Alabama State Bar strongly encourages their use.

Nonetheless, if you would prefer not to maintain such an account you may “opt out” of the program.

If you do not intend to maintain an IOLTA account you must give written notice to the Secretary of the Alabama State Bar. This notice must be given within six (6) months of your admission to practice, and may later be given only between April 1 and June 1 of each year, to be effective as of June 1. The notice remains in effect until you revoke it in writing. If you have previously given notice, pursuant to DR-102(D)(2), that you do not intend to maintain an IOLTA account, no additional notice is needed under ARPC Rule 1.15. If you later desire to open an IOLTA trust account or convert an existing non-IOLTA trust account to an IOLTA account, you don't need to wait until June 1st, and no additional notice is necessary. Just do it!

What about interest paid on non-IOLTA trust accounts?

If you have an interest bearing non-IOLTA account, all the interest earned belongs to the client and third persons whose funds are being held. No account service charges or other bank fees may be deducted from the interest earned by a non-IOLTA account. Under Rule 1.15 of the Alabama Rules of Professional Conduct you may **never** receive and retain the interest earned on client or third party funds which you hold in trust.

You should not have the funds of more than one client or third person in a non-IOLTA account, but if you do, you must correctly allocate the interest among the all the owners based on the amount of money each owner has in the fund and the length of time you have held it. Because your social security number or your firm's tax identification number will be used on such an account, the interest will be reported to the IRS as having been paid to you. You will have to report, in turn, how much interest you have paid to each owner. Under these circumstances, it is much easier and takes less bookkeeping to have an IOLTA account.

Are there any circumstances under which I may personally benefit from the interest paid on, or the balance held in, my trust account?

Sorry, no. Balances held in trust accounts may not be taken into consideration as a part of your overall banking relationship. A lawyer may not benefit, even indirectly, from client or third party funds unless the lawyer is specifically authorized by law or rule to retain such benefits for him or herself. The term “benefit” means not only the interest that accrues on any such account, but also any other preferential treatment, rebate, or other reward earned because of such financial arrangement.

Can I ever place my own funds in my trust account?

Yes, but the rule lists only two instances in which this is permissible. One involves funds to cover maintenance fees and the other involves unearned attorneys fees.

A lawyer may place in his or her trust account the amounts needed to cover service charges for the account. The rule specifies amounts necessary to pay fees actually assessed, but this has generally been held to allow depositing and keeping in the account an amount necessary to meet minimum balance requirements and to keep the account from going to a zero balance if all client or third party funds are withdrawn.

A lawyer may also place in the trust account funds which represent unearned fees. This includes retainers which have not yet been earned, and amounts in which both the lawyer and a client or third party claim an interest. Examples of such sums would be fees paid in advance by the client and funds payable to the client in settlement of a case or satisfaction of a judgment, from which the attorney will also receive payment for his or her services. Such sums must be kept separate from the lawyer's own funds until there is an accounting and a severance of the lawyer and the client's interests. If a dispute arises concerning the respective interests, the amount in dispute must be kept separate until the dispute is resolved.

What about property that isn't money?

Under Rule 1.15 of the Alabama Rules of Professional Conduct, you are obligated to safeguard **all property** in your possession belonging to your clients or third parties, not just money. Non-monetary property of a client must be identified as belonging to the client and appropriately protected. The Rule does not specify methods of safekeeping for property other than money, but the method must be reasonable in light of the type of property held and its value to the client or third party. The intrinsic value of an item may be small, but its value in the context of the case may be substantial. If you do not have a safe or locking fire-proof file cabinet in your office, you may wish to rent a safe deposit box for such items. If you set up a safe deposit box to hold client property, make sure that it is properly labeled so that the bank will realize that what is held is not your personal property or that of your firm. As with money, you should not store items belonging to clients or third parties with items of your own. If you are a sole practitioner, make sure that, in the event something should happen to you, another lawyer acting on your behalf can obtain access to the box without undue delay.

What are my record-keeping requirements?

You are required to keep good, accurate records of all property you receive on behalf of clients or third parties. This means your trust accounts must **always** be in balance, and you must have a good method of keeping up with other property which you receive from, and return to, clients or third parties. You should obtain a receipt from a client or third party every time you return physical property of any type. You are required to keep trust account and other property records for a minimum of six (6) years after termination of the representation, and you must produce them if requested to do so by the Office of General Counsel. Failure to do so constitutes grounds for an investigation of yourself and your trust accounting practices, independent of any other grounds for the same that may exist.

SETTING UP A TRUST ACCOUNT

How do I set up a trust account?

You will need to go to an institution that handles IOLTA accounts. Most commercial banks in Alabama now offer these accounts, although some savings & loan associations and credit unions do not. A list of all Alabama financial institutions which offer IOLTA accounts available appears at the end of this text. It's usually a good idea to go to a main office and not to a small branch to set up your account, although you can still do your everyday banking at the branch. In the larger banking centers you are more likely to find an account representative who is familiar with attorney's trust accounts. Make sure you understand the bank's policy for dealing with service charges which do not fall within the "reasonable fees" defined by Rule 1.15 of the Alabama Rules of Professional Conduct. Call several banks and ask about service charges on their IOLTA accounts before you select one and go in to open the account.

If you are setting up an IOLTA account, you may need to provide the bank with the correct tax identification number. It is 63-0951482 for Alabama Law Foundation accounts and 63-1068740 for Alabama Civil Justice Foundation accounts. Most banks which offer IOLTA accounts have the necessary account agreement forms which contain all of the required provisions. If your bank does not have one of these forms, you can get one by calling ALF or ACJF. Contact information for each foundation is listed in the Preface to this handbook, on page iii.

If you are setting up a non-IOLTA account for a particular client, you will need to use the client's tax identification number. Do not use your firm's tax identification number. This will result in the interest being reported as having been paid to you or your firm, and you will be taxed accordingly.

Under Rule 1.15 you must include the words "Attorney Trust Account," "Attorney Escrow Account" or "Attorney Fiduciary Account" somewhere in the title of the account and on all checks and deposit slips for the account. We prefer "Trust Account" and suggest something along the lines of:

**Black, White & Green, P.C.
Attorneys at Law
Attorneys' IOLTA Trust Account**

You are not required to include the word "IOLTA" in the account name, but it can help to prevent the bank from mistaking the account for one for which you are to receive the interest earned.

If the account is an individual client trust account, use something like:

**Black, White & Green, P.C.
Attorney Trust Account for John Q. Client**

You should check your first statement to make sure that the IOLTA account has been set up properly and that the correct tax identification number is on the account, especially if you have several accounts with the same bank. (Be sure to make a note of the tax identification number because you may need to give it to the bank's customer service representative or enter it in an automated system before seeking information about the account over the phone.)

The words "Business Account," "Professional Account," "General Account," "Payroll Account," "Regular Account" or other appropriately descriptive words must be used in the titles for all such accounts you or your firm open, and all the documents associated with them.

Should I have all my bank accounts (office and trust) at the same bank?

There are several factors to consider. If you are a real estate attorney and do a lot of closings on behalf of a bank or bank-associated mortgage company, they may want you to place your account with them for convenience. (This can result in your having more than one IOLTA account - which is OK.) You may also have a banking relationship of long standing with a particular bank and wish to keep your account there. There are, however, some practical reasons to have your accounts distributed among several banks.

The most important reason is the possibility of error. With multiple accounts at one bank, you or your staff may mix up deposit slips or mistake the checkbook for one account with that of the other. Likewise, the bank may occasionally confuse the accounts. Many banks have a policy of automatically transferring funds from any account with your name on it to cover shortages in another. If you accidentally overdraw your office account, the bank may attempt to "help" you by transferring funds from your trust account to cover the overdraft. This should not be a problem if you have labeled the accounts properly, but no matter how careful you or your financial institution are, mistakes can happen.

Who should sign on my trust account?

You can designate anyone to sign your trust checks. It does not have to be you, and it does not have to be a lawyer. Nevertheless, because of the responsibility you bear to safeguard your client and third party funds (and the severe discipline you will face if those funds are improperly removed from the account), it is usually best to have only your own signature if you are a solo practitioner, or that of the firm managing partner.

Regardless of who signs the checks, always take the precaution of having all trust account statements delivered to your desk ***unopened*** each month. Examine each check for alterations before balancing the account. An employee who has the authority to sign checks should ***never*** be entrusted with the responsibility of also balancing the account. With current office technology, such as color printers and copy machines, the opportunities for unnoticed alteration of checks and bank statements is tremendous. Don't create opportunities for temptation, and don't take any chances!

RECEIVING AND DISBURSING FROM THE ACCOUNT

What are my obligations when I receive funds or other property for a client or third party?

When a lawyer receives funds or other property in which a client or third party has an interest, he or she must ***promptly notify*** the interested party. Except as the Alabama Rules of Professional Conduct or other rule or law allows, or as an agreement between the lawyer and the interested party provides, the lawyer must ***promptly deliver*** to the client or third party any funds or property the other is entitled to. If the other party requests it, the lawyer must also ***promptly render a full accounting*** of the money or property. As a practical matter, you should never make a disbursement from your trust account without rendering a statement showing the total amount received, a breakdown of each amount disbursed, including to whom and for what, with the dates of all receipts and disbursements.

What if I receive funds on behalf of a client and I lose the money or my office is burglarized before I can deposit it?

You are responsible for the funds from the moment you receive them until you remit them to the person to whom they are due. If you lose them, you will have to repay the loss. You should establish office procedures to ensure that cash and checks are safeguarded while in your office, and that funds are deposited promptly.

How do I handle advance payments or retainers?

You can, and should, move the money out of your trust account as soon as you have earned it. Your client should be aware, from the signed fee agreement between the two of you, that advance payments will be withdrawn and transferred as work is performed. If the client knows this, you don't need to notify the client and wait for permission each time you wish to make a withdrawal. You should, however, send the client a statement on a regular basis. The statement should indicate how much work has been done, how much money has been transferred out of the trust account, and how much remains. As additional funds are needed, the client will be prepared. Also, you will not have to worry about the client complaining at the end of the matter that he or she didn't realize the case was going to take so much work or cost so much.

Can I make a trust disbursement as soon as I deposit funds in my account?

You should investigate your bank's rules on availability of funds. Generally, funds will not be immediately available for withdrawal. You must wait for the funds to clear the bank. The length of time it takes for a deposit to clear depends on many things, such as what kind of deposit it is (personal check, cashier's check, cash) and which bank it was drawn on (local or out of town).

Attorneys sometimes feel that it doesn't matter whether a particular deposit has been collected by their bank, as long as there are sufficient funds in the trust account to cover the check being written. You must realize, however, that when you write a check against uncollected funds of one client, you are essentially "borrowing" from the funds of other clients. You will also be at risk if the uncollected item is returned for insufficient funds or payment is stopped.

Rule 1.15(d) of the Alabama Rules of Professional Conduct states that a lawyer shall not make disbursements of a client's funds from an account containing the funds of other clients ***unless the funds are collected***. The exception is that, if you have a reasonable and prudent belief that a deposit will be collected promptly, you may disburse uncollected funds ***at your own risk***. If collection does not occur ***you must replace the funds yourself*** within five (5) days of notice of non-collection. This means that you will bear the risk of any returned checks if you do not wait to be sure they have cleared before you disburse. When dealing with all but the smallest sums, it's better to be safe than sorry.

This rule poses particular problems for real estate closing attorneys. The sums involved in land transactions are often substantial and, in many cases, you don't know how much the purchaser needs to bring until a short time before the closing. It is always wise to require certified funds for closings. The only buyers who will object to this are the ones who know their checks may bounce. If you don't know exactly how much to tell the buyers to bring, instruct them to bring a cashier's check for a round amount near, but slightly less than, the sum you think they will need. That way you will only have to take a personal check for a small sum for the difference, or you can write them a refund check if you have overestimated the amount they will need.

What if I issue a check from my trust account but it's never cashed?

This is an annoying situation that most attorneys have to deal with at one time or another. It usually involves less than ten dollars, and may sometimes represent only a dollar or two. Unfortunately, the funds do not belong to you or your firm, so these amounts, even though nominal, may not be automatically transferred to your office account. Generally, if you have made a diligent effort to locate the payee and cannot do so, the funds may be returned to the client if paid out to a third party on the client's behalf. If the party not cashing the check is your client and you cannot locate him or her, you must continue to hold the funds, or dispose of them in accordance with the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, et seq., *Code of Alabama, 1975*, as amended.

MAINTAINING TRUST ACCOUNT RECORDS

What kind of records do I need to keep for my account, and for how long must I maintain them?

Rule 1.15(a) of the Alabama Rules of Professional Conduct requires that lawyers maintain complete records of all trust funds and other property kept on behalf of clients or third parties for six years after termination of the representation.

Common sense and good business practice require that you should always know your overall account balance and the individual balance held on behalf of each client or third party. This will require you to keep at least two sets of records:

General Trust Account Ledger - A ledger that shows all transactions for your account, regardless of the client on whose behalf they were made, and that gives a running balance for the account; and

Client Trust Account Ledger - A ledger that shows all transactions on behalf of a particular client, with the individual client's running balance.

You need both because without the general ledger you don't know the total in your account and without the client ledger you don't know how much you hold for any particular client. Each time you make an entry to the general trust account ledger, you must also make a corresponding entry to the appropriate individual client trust account ledger. You should also maintain a client trust account ledger for any funds of your own, such as service charges or minimum balance requirements, which you place in the account. (See the section ABOUT TRUST ACCOUNTS for information on when you may permissibly deposit your own funds into your trust account.)

Each time you make an entry in these ledgers, it should contain the date of the transaction, the amount of the transaction, the client or matter name, a description of the transaction and, if a disbursement, your check number. If you have a computerized trust accounting system you will only need to make each entry once. Some manual "one write" systems are designed to require only one entry.

When you make a deposit, you should fully complete the deposit slip. If you receive cash you should fill out a separate cash receipt, give a copy to the client, and retain a copy for yourself. All cash deposits should be carefully labeled as to client or matter and deposited immediately. Remember, any time you receive over ten thousand dollars in cash, whether as a fee or in trust, you must file a report with the IRS. The reporting form is found at the end of this manual.

Rule 1.15(a) of the Alabama Rules of Professional Conduct requires that lawyers maintain complete records of all trust funds and other property obtained on behalf of clients or third parties for six (6) years after termination of the representation.

Can I use a computer to do my trust accounting?

Yes. For most attorneys this will make trust accounting easier and reduce the possibility of errors. If you have only a few trust transactions per month, automation may not seem to be worth the time, trouble and expense. Nonetheless, it's better to set up an automated trust accounting system and master using it when you are not busy than to wait until the volume of trust transactions makes it desirable. By then your account will already be in a mess, and you won't have time to sort it out or investigate, implement and learn to use a computerized system when you need it the most.

In choosing a program, you should determine whether it will let you track all the information you need, and in the way you need it. For example, a program that will not let you enter information describing the transaction or include your case number may not be adequate. Many general purpose accounting programs are not set up to handle trust accounts. For that reason we recommend the use of programs specifically designed for attorney trust accounting. Also, many time and billing programs include a trust accounting component.

How should I handle trust account maintenance and review?

Once you have your account properly set up, don't sabotage your efforts by letting account maintenance slide. Each month, as soon as the statement arrives, you should reconcile the account. If you have a bookkeeper or other employee who reconciles the statement, you should still receive the ***unopened*** statement and review it thoroughly, looking carefully at each check, to eliminate the possibility, or even the temptation, of employee theft. Never allow an employee with check-writing authority to also balance the account. List all outstanding checks, and determine why each remains uncashed. You are personally responsible for your trust funds, so this should be a high priority in your office - equal in importance to docket control. One error that you don't catch immediately can lead to other errors that eventually lead to client dissatisfaction and, possibly, a grievance filed with the disciplinary authorities.

Mishandling any of your legal responsibilities can lead to some form of discipline, but mishandling your trust account will almost certainly lead to suspension or disbarment.

What if I bounce a trust check?

If a check written on your trust account is returned to the payee due to insufficient funds, or if a check honored by your bank creates an overdraft which is not paid in full within three (3) business days, your bank is required by Rule 1.15(e) to send a report to the Alabama State Bar notifying the Office of the General Counsel of the same.

Receipt by the Bar of such a notice is grounds for an investigation of you and your trust accounting practices. This requirement, which was added in 1997, should

give Alabama lawyers added incentive and justification for refusing to disburse funds from their trust accounts until they are sure the client's funds are collected.

Under the terms of Rule 1.15(e) of the Alabama Rules of Professional Conduct, it is your responsibility to enter into an agreement with your bank pursuant to which the bank will make the necessary reports of checks presented against insufficient funds. A form to amend your deposit contract to meet this obligation is found at the end of this manual. ***If you already have one or more trust accounts open, you should sign one of these forms for each account and ask your bank to file it with your existing account contract.***

Text of ARPC Rule 1.15

IN THE SUPREME COURT OF ALABAMA
April 14, 2003

ORDER

WHEREAS the Alabama State Bar has submitted to this Court a proposal to amend Rule 1.15 of the Alabama Rules of Professional Conduct, and

WHEREAS this Court has considered that proposed amendment to Rule 1.15 of the Alabama Rules of Professional Conduct and the comment to the amended rule,

IT IS HEREBY ORDERED that Rule 1.15 of the Alabama Rules of Professional Conduct be amended to read in accordance with Appendix A attached to this order.

IT IS FURTHER ORDERED that the comment to Rule 1.15 as amended effective April 14, 2003, be adopted to read in accordance with Appendix B attached to this order.

IT IS FURTHER ORDERED that this amendment shall be effective immediately.

IT IS FURTHER ORDERED that the following note from the reporter of decisions be added to follow this rule:

"Note from the reporter of decisions: The order amending Rule 1.15 of the Alabama Rules of Professional Conduct, effective April 14, 2003, and adopting a comment to that rule, is published in that volume of Alabama Reporter that contains Alabama cases from _____ So. 2d."

Houston, See, Lyons, Brown, Harwood, Woodall, and Stuart, JJ., concur.

Moore, C.J., dissents.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 14th day of April, 2003

/s/ Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX A

Rule 1.15 SAFEKEEPING PROPERTY

Definitions. As used in this rule, the terms below shall have the following meaning:

"IOLTA account" means an interest- or dividend-bearing trust account benefiting the Alabama Law Foundation or the Alabama Civil Justice Foundation established in an eligible institution for the deposit of nominal or short-term funds of clients or third persons.

"Eligible institution" means any bank or savings and loan association authorized by federal or state laws to do business in Alabama, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state laws to do business in Alabama. Eligible institutions must meet the requirements set out in section (g).

"Interest- or dividend-bearing trust account" means a federally insured checking account or an investment product, which is a daily (overnight) financial-institution repurchase agreement or an open-end money-market fund. A daily financial-institution repurchase agreement must be fully collateralized by U.S. Government Securities; an open-end money-market fund must invest solely in U.S. Government Securities or repurchase agreements fully collateralized by U.S. Government Securities. A daily financial-institution repurchase agreement may be established only with an eligible institution that is "well capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open-end money-market fund must hold itself out as a money-market fund as defined by applicable federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, have total assets of at least \$250,000,000. The funds covered by this rule shall be subject to withdrawal upon request and without delay.

"Reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, and (5) a reasonable IOLTA account administrative fee.

"U.S. Government Securities" means U.S. Treasury obligations and obligations issued or guaranteed as to principal and interest by the United States or any agency or instrumentality thereof.

(a) A lawyer shall hold the property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. No personal funds of a lawyer shall ever be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to cover maintenance fees, such as service charges, on the account. Interest, if any, on funds, less fees charged to the account, other than overdraft and returned item charges, shall belong to the client or third person, except as provided in Rule 1.15(g), and the lawyer shall have no right or claim to the interest. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for six (6) years after termination of the representation.

A lawyer shall designate all such trust accounts, whether general or specific, as well as deposit slips and all checks drawn thereon, as either an "Attorney Trust Account," an "Attorney Escrow Account," or an "Attorney Fiduciary Account." A lawyer shall designate all business accounts, as well as other deposit slips and all checks drawn thereon, as a "Business Account," a "Professional Account," an "Office Account," a "General Account," a "Payroll Account," or a "Regular Account." However, nothing in this Rule shall prohibit a lawyer from using any additional description or designation for a specific business or trust account, including, for example, fiduciary accounts maintained by the lawyer as executor, guardian, trustee, receiver, or agent or in any other fiduciary capacity.

(b) Upon receiving funds or other property in which a client or third person has an interest from a source other than the client or the third person, 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 that property.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and a severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall not make disbursements of a client's funds from separate accounts containing the funds of more than one client unless the client's funds are collected funds; provided, however, that if a lawyer has a reasonable and prudent belief that a deposit of an instrument payable at or through a bank representing the client's funds will be collected promptly, then the lawyer may, at the lawyer's own risk, disburse the client's uncollected funds. If collection does not occur, then the lawyer shall, as soon as practical, but in no event more than five (5) working days after notice of noncollection, replace the funds in the separate account.

(e) A lawyer shall request that the financial institution where the lawyer maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar in every instance where a properly payable item or order to pay is presented against a lawyer's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, and overdraft created thereby is not paid within three business days of the date the financial institution sends notification of the overdraft to the lawyer. The report of the financial institution shall contain the same information, or a copy of that information, forwarded to the lawyer who presented the item or order.

A lawyer shall enter into an agreement with the financial institution that holds the lawyer's trust account pursuant to which the financial institution agrees to file the report required by this Rule. Every lawyer shall have the duty to assure that his or her trust accounts maintained with a financial institution in Alabama are pursuant to such an agreement. This duty belongs to the lawyer and not to the financial institution. The filing of a report with the Office

of General Counsel pursuant to this paragraph shall constitute a proper basis for an investigation by the Office of General Counsel of the lawyer who is the subject of the report, pursuant to the Alabama Rules of Disciplinary Procedure. Nothing in this Rule shall preclude a financial institution from charging a lawyer or a law firm a fee for producing the report and maintaining the records required by this Rule. Every lawyer and law firm maintaining a trust account in Alabama shall hereby be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule and shall hold harmless the financial institution for its compliance with the aforesaid reporting and production requirements. Neither the agreement with the financial institution nor the reporting or production of records by a financial institution made pursuant to this Rule shall be deemed to create in the financial institution a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of a lawyer's overdrawing a trust account.

A lawyer shall not fail to produce any of the records required to be maintained by these Rules at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or Rules of Disciplinary Procedure for the production of documents and evidence.

(f) A lawyer, except a lawyer not engaged in active practice pursuant to Alabama Code 1975, §§34-3-17 and -18, shall maintain a separate account to hold funds of a client. If a lawyer does not hold funds for a client, then he or she shall give written notice to the Secretary of the Alabama State Bar that the lawyer will not maintain such an account. A lawyer must so advise the Secretary of the Alabama State Bar within six (6) months of admission to practice or of a return to active practice. A lawyer who has previously given the notice required by this paragraph shall revoke that notice by giving written notice to the Secretary of the Alabama State Bar immediately upon establishing a separate account to hold the funds of a client.

(g) Unless a lawyer shall have given the notice specified in Rule 1.15 (h), a lawyer shall hold the funds of a client or of a third person that are nominal in amount or that the lawyer expects to be held for a short period in one or more IOLTA accounts. A lawyer shall use the account only for the

purpose of holding funds of clients or third persons that are nominal in amount or that the lawyer expects to be held in the account for a short period and that the lawyer has determined cannot practicably be invested for the benefit of the client or third person. In no event shall a lawyer receive the interest on an IOLTA account.

Any eligible institution that elects to provide and maintain IOLTA accounts shall do so according to the following terms:

Eligible institutions that maintain IOLTA accounts that are, or are invested in, interest-bearing deposits or daily financial-institution repurchase agreements shall pay no less than the highest interest rate and dividend generally available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other eligibility qualifications, if any. In determining the highest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the balance in the IOLTA account, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and non-IOLTA accounts, and that those factors do not include the fact that the account is an IOLTA account. The eligible institution may offer, and the lawyer may accept, a sweep account that provides a mechanism for the overnight investment of balances in an IOLTA account into a daily financial-institution repurchase agreement or a money-market fund. However, this Rule shall not require any eligible institution to offer or otherwise to make available sweep accounts for IOLTA accounts.

Pursuant to a written agreement between the lawyer and the eligible institution, interest on the IOLTA account shall be remitted, as the lawyer shall designate, to the Alabama Law Foundation or the Alabama Civil Justice Foundation, at least quarterly.

Interest or dividends shall be calculated in accordance with the institution's standard practice for non-IOLTA account customers, less reasonable fees, if any, in connection with the deposited funds.

Reasonable fees, as defined in this Rule, are the only service charges or fees permitted to be deducted from interest

earned on IOLTA accounts. Reasonable fees may be deducted from interest on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for all of its customers with interest-bearing accounts. All other fees and charges shall not be assessed against the accrued interest on an IOLTA account but rather shall be the responsibility of, and may be charged to, the lawyer maintaining the IOLTA account.

Fees or charges in excess of the interest earned on the account for any month or quarter shall not be taken from interest earned on other IOLTA accounts or from the principal of the account.

A statement shall be transmitted to the Alabama Law Foundation or the Alabama Civil Justice Foundation with each remittance showing the period for which the remittance is made, the name of the lawyer or law firm from whose IOLTA account the remittance is being sent, the IOLTA account number, the rate of interest applied, the gross interest or dividend earned during the period, the amount and description of any service charges or fees assessed during the remittance period, and the net amount of interest or dividend remitted for the period. A copy of the statement shall also be sent to the lawyer.

(h) A lawyer, or a law firm on behalf of its lawyers as disclosed in the notice, may give written notice to the Secretary of the Alabama State Bar that the lawyer does not intend to maintain the IOLTA account otherwise required by Rule 1.15(g). This notice must be given within six (6) months of the lawyer's admission to practice or return to active practice, and may later be given only during the period between April 1 and June 1 of each year, to be effective as of June 1. The notice shall remain in effect until revoked or changed by the lawyer, or by a law firm on behalf of its lawyers. Notice given by a lawyer or law firm in compliance with prior DR 9-102(D) (3) to the Executive Director of the Alabama State Bar that the lawyer or law firm opted not to maintain the interest-bearing account required by prior DR 9-102(D) (2) shall remain effective without annual repetition.

(i) All interest transmitted to and received by the Alabama Law Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

- (1) to provide legal aid to the poor;

- (2) to provide law student loans;
- (3) to provide for the administration of justice;
- (4) to provide law-related educational programs to the public;
- (5) to help maintain public law libraries; and
- (6) for such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(j) All interest transmitted to and received by the Alabama Civil Justice Foundation pursuant to Rule 1.15(g) shall be distributed by it for one or more of the following purposes:

- (1) To provide financial assistance to organizations or groups providing aid or assistance to:
 - (a) underprivileged children;
 - (b) traumatically injured children or adults;
 - (c) the needy;
 - (d) handicapped children or adults; or
 - (e) drug- and alcohol-rehabilitation programs.

(2) To be used in such other programs for the benefit of the public as the Supreme Court of the State of Alabama specifically approves from time to time.

(k) A lawyer shall not fail to produce, at the request of the Office of General Counsel, the Disciplinary Commission, or the Disciplinary Board, any of the records required to be maintained by these Rules. This obligation shall be in addition to, and not in lieu of, any other requirements of the Rules of Professional Conduct or the Rules of Disciplinary Procedure for the production of documents and evidence.

APPENDIX B

COMMENT TO RULE 1.15 AS AMENDED EFFECTIVE APRIL 14, 2003.

In addition to stylistic changes, the amendment added the "Definitions" section to the rule and amended section (g) to provide that a lawyer shall hold those funds of a client or a third person that are nominal or that the lawyer expects to be held for only a short period in IOLTA accounts.

SELECTED ETHICS OPINIONS

ETHICS OPINION RO-88-92

QUESTION:

A solo practitioner with an active trust account died. Attorney A was appointed executor and undertook to wind up the practice and to distribute the funds from the trust account. The solo practitioner maintained an accounts ledger of the trust account but the balances did not reconcile with the bank account. After several years A was able to determine the clients who owned the various accounts and appropriate disbursements were made. He was unable, however, to determine the owners of some of the funds or the whereabouts of certain clients. What distribution should A make in order to close the account?

ANSWER:

There are two categories of funds in the account. The first category involved those funds that cannot be attributed to a particular client. After a reasonable and good faith effort is made to determine the ownership of the funds, and after holding the funds as long as necessary to assure that no unidentified client could make a successful claim against the account, A may distribute the funds to the solo practitioner's estate. The second category of funds in the account are those that can be attributed to a client but the location of that client is unknown. After making a good faith and reasonable effort to locate the client, A must hold the funds until they are presumed abandoned under state law, at which time he should turn them over to the state.

DISCUSSION:

Attorney A should first make every reasonable effort to ascertain the identity and location of the clients entitled to the funds. This would include publication of a notice in a newspaper of general circulation, not only in the area where the decedent practiced but also in the last known area where the client or clients reside or do business.

Regarding the funds that cannot be attributed to a client or clients, several state ethics committees have held that after reasonable and good faith attempts to ascertain the ownership and after holding the funds long enough to insure that no unidentified client could make a claim against the funds within any applicable statute of limitations, they may be distributed to the attorney's personal account or his estate.

Unidentified funds in a trust account could properly be funds deposited to pay service charges [DR 9-102(A)(1)] or to avoid any possibility of a shortage in the account or fees earned but not withdrawn [DR 9-102(A)(2)].

The Michigan Bar Committee on Professional and Judicial Ethics held that funds that could not be associated with any particular client or file, or were presumed to belong to attorneys formerly with the firm or to be interest earned on an account, after notifying former clients of the existence of the funds and providing them an opportunity to substantiate any claim, could be retained by the attorneys involved [Opinion CI-947 (1983) and CI-752 (1982)].

Similarly, in Virginia, it was held that such unidentifiable funds must be placed in an interest bearing account a sufficient length of time to determine that no successful claim by an unidentified client could be made. If no owners or claims are found, the lawyer may then transfer the funds to his own account [Virginia Opinion 548 (3/1/84)].

In another Virginia Opinion, it was held that unidentifiable funds in a trust account could be distributed to a deceased lawyer's estate or distributed according to law to meet the deceased lawyer's non-trust obligations, provided a good faith effort to determine ownership is made and the funds are retained a sufficient length of time to assure that a successful claim could not be made.

The Alabama Disciplinary Commission addressed a similar question in RO-82-649. In that case there were several thousand dollars in a deceased attorney's trust account that could not be "traced to its rightful owner The Commission held that:

* * *

"Some type of legal proceeding should be instituted whereby notice by publication could be given to potential claimants. Although other proceedings may be available we suggest that the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, Section 35-12-20, Code of Alabama, 1975."

In this case the Commission assumed that the funds were client funds and were "not earned attorney's fees which [the attorney] deposited in a trust account pursuant to the provisions of DR 9-102(A) and failed to withdraw therefrom." The opinion then cites an earlier opinion where the client was known but could not be located.

In the case at hand, we make no such assumptions and hold that where it cannot be determined that the funds are client funds by reasonable, diligent, and good faith efforts, including public notice in a newspaper of general circulation and after holding the funds long enough to assure that no successful claim will be filed by an unknown client, the funds may be distributed to the deceased attorney's estate.

The second category of funds in the trust account are those that can be attributed to a client but the whereabouts of the client are unknown. In this situation Attorney A does not have the option of distributing the funds to the deceased attorney's estate because the money clearly does not belong to the deceased attorney. In situations

such as this numerous opinions of state bar ethics committees, including the Disciplinary Commission of the Alabama State Bar, have held that the funds must be retained until presumed abandoned under State law at which time the funds must be turned over to the state [Mississippi State Bar Ethics Committee Opinion 104 (6/6/85); State Bar of New Mexico Advisory Opinions Committee, Opinion 1983-3, (7/25/83); North Carolina State Bar Association Ethics Committee Opinion 372 (7/25/85); Michigan Committee on Professional and Judicial Ethics of the State Bar of Michigan, Opinion CI-1144 (4/9/86); Committee on Professional Responsibility of the Vermont Bar Association, Opinion 87-9 (8/87)].

The Office of General Counsel and the Disciplinary Commission have, in a number of opinions, held that where funds in a trust account may be attributed to a client but the location of the client is not known, that some type of legal proceedings should be instituted whereby notice by publication could be given to the owner of the deposited funds. The opinions also hold that although other proceedings may be available the property could be disposed of under the Alabama Uniform Disposition of Unclaimed Property Act, §35-12-20, Code of Alabama) 1975, [RO-82-649, RO-83-14, RO-84-26, RO-84-48, RO-83-146, and RO-84-106].

In situations where the client is known but cannot be found the money clearly does not belong to the attorney. Consequently, the lawyer has no alternative but to retain the funds on the client's behalf at least until such time as the funds may be considered legally abandoned.

Consequently, in the case at hand, we hold that lawyer A must make every reasonable effort to locate the client, including public notices in a newspaper of general circulation in the area where the deceased lawyer practiced as well as in the area where the client maintained his last known address or business. If these efforts are unsuccessful then Attorney A must hold the funds until such time as they may be considered abandoned under the Alabama Uniform Disposition of Unclaimed Property Act, Chapter 12, Article II of Title 35, Code of Alabama, 1975.

RWN/vf

10/21/88

Handling Client Funds in the IOLTA Era
by Alex W. Jackson
Assistant General Counsel

With the adoption on May 5, 1987, by the Alabama Supreme Court of an Interest on Lawyers Trust Accounts (IOLTA) rule, the general counsel's office has been asked by many Alabama lawyers to explain both current rules and future practice regarding clients' funds. Surprisingly, there is a fairly common misconception among members of the bar that it is permissible to invest clients' funds in interest-bearing accounts and for the lawyer to retain all, or a portion, of the interest generated thereby as a fee or service charge.

First, as to current practice, it is not permissible for an attorney to invest clients' funds in an interest-bearing account and to retain, for his own use, the income generated. The Disciplinary Commission has held that an attorney may, on a case-by-case basis, and with the prior, informed consent of his client, invest that client's funds provided the client receives the benefit derived from his own funds. For example, suppose Mr. Lawyer collects \$10,000 for Ms. Client but for some reason cannot disburse the funds for 90 days. With Ms. Client's express prior approval Mr. Lawyer may invest those funds at interest, with the interest income being the property of Ms. Client. Suppose further that Mr. Lawyer is entitled to a 40 percent contingency fee from the \$10,000 corpus; Mr. Lawyer then may be entitled to retain 40 percent of the income, but once again prior, informed consent of Ms. Client is required. For lawyers' trust accounts in general, where the funds of more than one client are held for varying periods of time, the lawyer may not utilize an interest-bearing account, and, as it follows, his entitlement to interest should never arise.

IOLTA creates something that never was, in that it provides a mechanism to allow investment of these mixed accounts and provides for distribution of the income generated. Neither the lawyer nor the client loses anything as the new IOLTA rules apply only to clients' funds which are nominal in amount or expected to be held for a short period of time [DR 9-1 02(D)(2)(a)].

Thus, individual lawyer/client agreements regarding investment of large amounts, or of amounts expected to be held for a long period of time, are still permissible, subject to full disclosure. It should be noted that, pursuant to DR 9-102 (A) all clients' funds...shall be deposited in one or more identifiable insured depository trust accounts maintained in the state in which the law office is situated."

The lawyer, in essence, has two choices under Canon 9. He may participate in IOLTA while retaining the ability to place individual client funds in interest-bearing insured depository trust accounts, or he may "opt out" of IOLTA, and still have the same ability to place individual client funds in interest-bearing accounts. He may not utilize any form of account other than an identifiable insured depository trust account located

in Alabama, and he may not share the benefit of an individualized interest-bearing investment of a client's funds without the express, prior informed consent of that client.

As now written, certificates of deposit, treasury notes, mutual funds, promissory notes and the like are not permitted since they are not insured depository trust accounts. Other, more imaginative forms of investment are equally unavailable regardless of their merit or the client's willingness to accept the risk. A client interested in more lucrative types of investment simply will have to wait until he has absolute control over the funds involved.

IOLTA plans have been in operation in other states for some time. They have proved to be little, if any, bother to the lawyers who participate and of great benefit to the legal system and to the public. Most of the changes required to implement IOLTA are for the banking community and involve no additional responsibilities for the lawyer; the fiduciary role of the lawyer remains intact.

The lawyer is not now expected to be an investment counselor, at least insofar as those clients' funds to which Canon 9 applies, and nothing in the IOLTA era should change that. The Disciplinary Rules actually are quite simple with most problems arising due to a misunderstanding of the lawyer's role as custodian of his clients' funds. A lawyer should invest a little of his own time with Canon 9 before he invests his clients' funds - it will be time well spent.

The Alabama Lawyer - January 1988

**SUPPLEMENT TO DEPOSIT AGREEMENT(S)
RE: REPORTING OF INSTANCES OF INSUFFICIENT FUNDS OF LAWYERS**

Date: _____

Name and Address of Financial Institution
(herein the "Bank"):

Name and Address of Attorney or Law Firm Depositor
(herein the "Depositor"):

Depositor's Trust Account(s) at Bank to Which this Supplement Applies (individually an "Account" and collectively the "Accounts."):

Name of Account	Account No.	Name of Account	Account No.
Name of Account	Account No.	Name of Account	Account No.

As authorized by Supreme Court of Alabama order dated May 13, 1997, and for the purpose of Depositor complying with the Alabama Rules of Professional Conduct for lawyers, Depositor and Bank agree that all deposit agreements between Bank and Depositor (however named) relating to the Accounts (herein the "Deposit Agreements") are amended to include the following additional provisions:

1. Depositor has informed Bank that Rule 1.15 of the Alabama Rules of Professional Conduct for lawyers ("**Rule 1.15**") requires that Depositor shall request that the financial institution where Depositor maintains a trust account file a report to the Office of General Counsel of the Alabama State Bar (an "**ISF Report**") in every instance where a properly payable item or order to pay is presented against Depositor's trust account with insufficient funds to pay the item or order when presented and either (1) the item or payment order is returned because there are insufficient funds in the account to pay the item or order or, (2) if the request is honored by the financial institution, any overdraft created thereby is not paid within three (3) business days of the date the financial institution sends notification of the overdraft to the Depositor (a "**Reportable ISF Event**"). The ISF Report of the financial institution shall contain the same information, or a copy of that information, forwarded to the Depositor who presented the item or order.
2. At Depositor's request, and as an accommodation to Depositor, Bank agrees to file an ISF Report with the Office of General Counsel of the Alabama State Bar upon the occurrence of any Reportable ISF Event relating to any of the Accounts. Bank shall send any ISF Report to: **Office of General Counsel of the Alabama State Bar, P.O. Box 671, Montgomery, Alabama 36101**. Depositor agrees to pay Bank fees, as established from time to time by Bank, for processing and filing of any ISF Report without further notice or demand.
3. Depositor consents to the reporting and production requirements mandated by Rule 1.15 and agrees to hold Bank harmless for its compliance with these reporting and production requirements. **Depositor represents to Bank that Rule 1.15 provides that the duty for complying with Rule 1.15 belongs to the Depositor and not to Bank. Bank has agreed to file any ISF Report as an accommodation to Depositor; however, Bank shall have no liability to Depositor of any nature whatsoever in the event that Bank shall fail to file an ISF Report as set forth herein. Depositor agrees that, in any instance where the filing of an ISF Report may be appropriate, it shall be Depositor's responsibility and duty to verify that Bank has filed the ISF Report.** Neither this Supplemental Agreement nor the reporting or production of records by Bank made pursuant to Rule 1.15 shall be deemed to create in Bank a duty to exercise a standard of care or a contract with third parties that may sustain a loss as a result of Depositor's overdrawing any of the Accounts. There are no third party beneficiaries to this Agreement.
4. Except as modified herein, all other terms and conditions of the Deposit Agreements shall remain in full force and effect.

DEPOSITOR:

BANK:

Name of Lawyer/Law Firm

Name of Financial Institution

By: _____
Its:

BY: _____
Its:

Rev. 07/02/97

SAMPLE TRUST ACCOUNT LEDGERS

Please Note: These ledger pages are not intended to represent the only ethically correct way to keep trust accounting records. The purpose of this example is to show the different types of information which should be kept, and one way of setting up the ledgers.

Sample Page IOLTA Trust Account General Ledger Black, White & Green, P.C.

All check numbers in sequence.

Full description of all transactions included.

Date	Check No.	Client	File No.	Payee	Description	Payment	Deposit	Balance
								13,251.14
01/05/03	820	Village Appliances	02-0250	AAA Court Reporters	Deposition Transcript	125.00		13,126.14
01/05/03	821	Jed Bartlett	02-1599	Capitol Medical Center	Copy Medical Records	30.00		13,096.14
01/05/03	822	Nora Jones	02-1598	Clerk of Court	Filing Fee	95.00		13,001.14
01/06/03	Dep. 03-01 Receipt #1234	Jayne Thomas	01-0023		Settlement Check		38,000.00	51,001.14
01/06/03	823	Moviestore	02-1423	Excelsior Legal	Corporate Kit	235.00		50,766.14
01/09/03	824	Jayne Thomas	01-0023	Dr. Eileen Rogers	Rehab. Final	1,340.89		49,425.25
01/09/03	825	Jayne Thomas	01-0023	BW&G	Fees	11,400.00		38,025.25
01/09/03	826	Jayne Thomas	01-0023	Jayne Thomas	Net Settlement	25,259.11		12,766.14
01/09/03	827	VOID						12,766.14
01/11/03	Dep. 03-02 Receipt #1235	Ross Geller	03-0001		Advance Fees & Costs		1,000.00	13,766.14
01/12/03	828	Nora Jones	02-1598	Thomas Magnum	Investigative Report	475.00		13,291.14

Note that check is given time to clear before disbursement.

All receipts tied to receipt book number.

**Sample Page: Client Trust Ledger Card
Black, White & Green, P.C.**

Name: Nora Jones Matter: Divorce File No. 02-1598
 Address: 123 Main Street Attorney: RLG
Anywhere, AL 36000

Date	Check No.	Payee	Description	Payment	Deposit	Balance
			Balance Forward			0.00
12/31/02	Dep. 02-57 Receipt #1233		Fee & Cost Deposit		1,500.00	1,500.00
01/05/03	822	Clerk of Court	Filing Fee	95.00		1,405.00
01/12/03	828	Thomas Magnum	Investigative Report	475.00		930.00
01/15/03	834	BW&G, P.C.	Fees	600.00		330.00
02/28/03	Dep. 03-12		Additional Fee & Cost Deposit		500.00	830.00
03/17/03	859	BW&G, P.C.	Copy costs	47.95		782.05
03/31/03	873	BW&G, P.C.	Fees	700.00		82.05
03/31/03	874	Nora Jones	Refund	82.05		0.00

Note: Ending balance for closed matters must always come to zero.

Section references are to the Internal Revenue Code unless otherwise noted.

Changes To Note

- Section 60501 (26 United States Code (U.S.C.) 60501) and 31 U.S.C. 5331 require that certain information be reported to the IRS and the Financial Crimes Enforcement Network (FinCEN). This information must be reported on **IRS/FinCEN Form 8300**.
- Item 33 box **i** is to be checked **only** by clerks of the court; box **d** is to be checked by bail bondsmen. See the instructions on page 4.
- For purposes of section 60501 and 31 U.S.C. 5331, the word "cash" and "currency" have the same meaning. See **Cash** under **Definitions** below.

General Instructions

Who must file. Each person engaged in a trade or business who, in the course of that trade or business, receives more than \$10,000 in cash in one transaction or in two or more related transactions, must file Form 8300. Any transactions conducted between a payer (or its agent) and the recipient in a 24-hour period are related transactions. Transactions are considered related even if they occur over a period of more than 24 hours if the recipient knows, or has reason to know, that each transaction is one of a series of connected transactions.

Keep a copy of each Form 8300 for 5 years from the date you file it.

Clerks of Federal or State courts must file Form 8300 if more than \$10,000 in cash is received as bail for an individual(s) charged with certain criminal offenses. For these purposes, a clerk includes the clerk's office or any other office, department, division, branch, or unit of the court that is authorized to receive bail. If a person receives bail on behalf of a clerk, the clerk is treated as receiving the bail. See the instructions for **Item 33** on page 4.

If multiple payments are made in cash to satisfy bail and the initial payment does not exceed \$10,000, the initial payment and subsequent payments must be aggregated and the information return must be filed by the 15th day after receipt of the payment that causes the aggregate amount to exceed \$10,000 in cash. In such cases, the reporting requirement can be satisfied either by sending a single written statement with an aggregate amount listed or by furnishing a copy of each Form 8300 relating to that payer. Payments made to satisfy separate bail requirements are not required to be aggregated. See Treasury Regulations section 1.60501-2.

Casinos must file Form 8300 for nongaming activities (restaurants, shops, etc.).

Voluntary use of Form 8300. Form 8300 may be filed voluntarily for any suspicious transaction (see **Definitions**) for use by FinCEN and the IRS, even if the total amount does not exceed \$10,000.

Exceptions. Cash is not required to be reported if it is received:

- By a financial institution required to file **Form 4789**, Currency Transaction Report.
- By a casino required to file (or exempt from filing) **Form 8362**, Currency Transaction Report by Casinos, if the cash is received as part of its gaming business.
- By an agent who receives the cash from a principal, if the agent uses all of the cash within 15 days in a second transaction that is reportable on Form 8300 or on Form 4789, and discloses all the information necessary to complete Part II of Form 8300 or Form 4789 to the recipient of the cash in the second transaction.

- In a transaction occurring entirely outside the United States. See **Pub. 1544**, Reporting Cash Payments Over \$10,000 (Received in a Trade or Business), regarding transactions occurring in Puerto Rico, the Virgin Islands, and territories and possessions of the United States.
- In a transaction that is not in the course of a person's trade or business.

When to file. File Form 8300 by the 15th day after the date the cash was received. If that date falls on a Saturday, Sunday, or legal holiday, file the form on the next business day.

Where to file. File the form with the Internal Revenue Service, Detroit Computing Center, P.O. Box 32621, Detroit, MI 48232.

Statement to be provided. You must give a written statement to each person named on a required Form 8300 on or before January 31 of the year following the calendar year in which the cash is received. The statement must show the name, telephone number, and address of the information contact for the business, the aggregate amount of reportable cash received, and that the information was furnished to the IRS. Keep a copy of the statement for your records.

Multiple payments. If you receive more than one cash payment for a single transaction or for related transactions, you must report the multiple payments any time you receive a total amount that exceeds \$10,000 within any 12-month period. Submit the report within 15 days of the date you receive the payment that causes the total amount to exceed \$10,000. If more than one report is required within 15 days, you may file a combined report. File the combined report no later than the date the earliest report, if filed separately, would have to be filed.

Taxpayer identification number (TIN). You must furnish the correct TIN of the person or persons from whom you receive the cash and, if applicable, the person or persons on whose behalf the transaction is being conducted. **You may be subject to penalties for an incorrect or missing TIN.**

The TIN for an individual (including a sole proprietorship) is the individual's social security number (SSN). For certain resident aliens who are not eligible to get an SSN and nonresident aliens who are required to file tax returns, it is an IRS Individual Taxpayer Identification Number (ITIN). For other persons, including corporations, partnerships, and estates, it is the employer identification number (EIN).

If you have requested but are not able to get a TIN for one or more of the parties to a transaction within 15 days following the transaction, file the report and attach a statement explaining why the TIN is not included.

Exception: *You are not required to provide the TIN of a person who is a nonresident alien individual or a foreign organization if that person does not have income effectively connected with the conduct of a U.S. trade or business and does not have an office or place of business, or fiscal or paying agent, in the United States.* See **Pub. 1544** for more information.

Penalties. You may be subject to penalties if you fail to file a correct and complete Form 8300 on time and you cannot show that the failure was due to reasonable cause. You may also be subject to penalties if you fail to furnish timely a correct and complete statement to each person named in a required report. A minimum penalty of \$25,000 may be imposed if the failure is due to an intentional or willful disregard of the cash reporting requirements.

Penalties may also be imposed for causing, or attempting to cause, a trade or business to fail to file a required report; for causing, or

attempting to cause, a trade or business to file a required report containing a material omission or misstatement of fact; or for structuring, or attempting to structure, transactions to avoid the reporting requirements. These violations may also be subject to criminal prosecution which, upon conviction, may result in imprisonment of up to 5 years or fines of up to \$250,000 for individuals and \$500,000 for corporations or both.

Definitions

Cash. The term "cash" means the following:

- U.S. and foreign coin and currency received in any transaction.
- A cashier's check, money order, bank draft, or traveler's check having a face amount of \$10,000 or less that is received in a **designated reporting transaction** (defined below), or that is received in any transaction in which the recipient knows that the instrument is being used in an attempt to avoid the reporting of the transaction under either section 60501 or 31 U.S.C. 5331.

Note: *Cash does not include a check drawn on the payer's own account, such as a personal check, regardless of the amount.*

Designated reporting transaction. A retail sale (or the receipt of funds by a broker or other intermediary in connection with a retail sale) of a consumer durable, a collectible, or a travel or entertainment activity.

Retail sale. Any sale (whether or not the sale is for resale or for any other purpose) made in the course of a trade or business if that trade or business principally consists of making sales to ultimate consumers.

Consumer durable. An item of tangible personal property of a type that, under ordinary usage, can reasonably be expected to remain useful for at least 1 year, and that has a sales price of more than \$10,000.

Collectible. Any work of art, rug, antique, metal, gem, stamp, coin, etc.

Travel or entertainment activity. An item of travel or entertainment that pertains to a single trip or event if the combined sales price of the item and all other items relating to the same trip or event that are sold in the same transaction (or related transactions) exceeds \$10,000.

Exceptions. A cashier's check, money order, bank draft, or traveler's check is not considered received in a designated reporting transaction if it constitutes the proceeds of a bank loan or if it is received as a payment on certain promissory notes, installment sales contracts, or down payment plans. See **Pub. 1544** for more information.

Person. An individual, corporation, partnership, trust, estate, association, or company.

Recipient. The person receiving the cash. Each branch or other unit of a person's trade or business is considered a separate recipient unless the branch receiving the cash (or a central office linking the branches), knows or has reason to know the identity of payers making cash payments to other branches.

Transaction. Includes the purchase of property or services, the payment of debt, the exchange of a negotiable instrument for cash, and the receipt of cash to be held in escrow or trust. A single transaction may not be broken into multiple transactions to avoid reporting.

Suspicious transaction. A transaction in which it appears that a person is attempting to cause Form 8300 not to be filed, or to file a false or incomplete form. The term also includes any transaction in which there is an indication of possible illegal activity.

Specific Instructions

You must complete all parts. However, you may skip Part II if the individual named in Part I is conducting the transaction on his or her behalf only. For **voluntary reporting of suspicious transactions**, see **Item 1** below.

Item 1. If you are amending a prior report, check box 1a. Complete the appropriate items with the correct or amended information only. Complete all of Part IV. Staple a copy of the original report to the amended report.

To voluntarily report a suspicious transaction (see **Definitions**), check box 1b. You may also telephone your local IRS Criminal Investigation Division or call 1-800-800-2877.

Part I

Item 2. If two or more individuals conducted the transaction you are reporting, check the box and complete Part I for any one of the individuals. Provide the same information for the other individual(s) on the back of the form. If more than three individuals are involved, provide the same information on additional sheets of paper and attach them to this form.

Item 6. Enter the taxpayer identification number (TIN) of the individual named. See **Taxpayer identification number (TIN)** on page 3 for more information.

Item 8. Enter eight numerals for the date of birth of the individual named. For example, if the individual's birth date is July 6, 1960, enter 07 06 1960.

Item 13. Fully describe the nature of the occupation, profession, or business (for example, "plumber," "attorney," or "automobile dealer"). Do not use general or nondescriptive terms such as "businessman" or "self-employed."

Item 14. You must verify the name and address of the named individual(s). Verification must be made by examination of a document normally accepted as a means of identification when cashing checks (for example, a driver's license, passport, alien registration card, or other official document). In item 14a, enter the type of document examined. In item 14b, identify the issuer of the document. In item 14c, enter the document's number. For example, if the individual has a Utah driver's license, enter "driver's license" in item 14a, "Utah" in item 14b, and the number appearing on the license in item 14c.

Part II

Item 15. If the transaction is being conducted on behalf of more than one person (including husband and wife or parent and child), check the box and complete Part II for any one of the persons. Provide the same information for the other person(s) on the back of the form. If more than three persons are involved, provide the same information on additional sheets of paper and attach them to this form.

Items 16 through 19. If the person on whose behalf the transaction is being conducted is an individual, complete items 16, 17, and 18. Enter his or her TIN in item 19. If the individual is a sole proprietor and has an employer identification number (EIN), you must enter both the SSN and EIN in item 19. If the person is an organization, put its name as shown on required tax filings in item 16 and its EIN in item 19.

Item 20. If a sole proprietor or organization named in items 16 through 18 is doing business under a name other than that entered in item 16 (e.g., a "trade" or "doing business as (DBA)" name), enter it here.

Item 27. If the person is not required to furnish a TIN, complete this item. See **Taxpayer Identification Number (TIN)** on page 3. Enter a

description of the type of official document issued to that person in item 27a (for example, "passport"), the country that issued the document in item 27b, and the document's number in item 27c.

Part III

Item 28. Enter the date you received the cash. If you received the cash in more than one payment, enter the date you received the payment that caused the combined amount to exceed \$10,000. See **Multiple payments** under **General Instructions** for more information.

Item 30. Check this box if the amount shown in item 29 was received in more than one payment (for example, as installment payments or payments on related transactions).

Item 31. Enter the total price of the property, services, amount of cash exchanged, etc. (for example, the total cost of a vehicle purchased, cost of catering service, exchange of currency) if different from the amount shown in item 29.

Item 32. Enter the dollar amount of each form of cash received. Show foreign currency amounts in U.S. dollar equivalent at a fair market rate of exchange available to the public. **The sum of the amounts must equal item 29.** For cashier's check, money order, bank draft, or traveler's check, provide the name of the issuer and the serial number of each instrument. Names of all issuers and all serial numbers involved must be provided. If necessary, provide this information on additional sheets of paper and attach them to this form.

Item 33. Check the appropriate box(es) that describe the transaction. If the transaction is not specified in boxes a-i, check box j and briefly describe the transaction (for example, "car lease," "boat lease," "house lease," or "aircraft rental"). If the transaction relates to the receipt of bail by a court clerk, check box i, "Bail received by court clerks." This box is **only** for use by court clerks. If the transaction relates to cash received by a bail bondsman, check box d, "Business services provided."

Part IV

Item 36. If you are a sole proprietorship, you must enter your SSN. If your business also has an EIN, you must provide the EIN as well. All other business entities must enter an EIN.

Item 41. Fully describe the nature of your business, for example, "attorney" or "jewelry dealer." Do not use general or nondescriptive terms such as "business" or "store."

Item 42. This form must be signed by an individual who has been authorized to do so for the business that received the cash.

Privacy Act and Paperwork Reduction Act Notice. Except as otherwise noted, the information solicited on this form is required by the Internal Revenue Service (IRS) and the Financial Crimes Enforcement Network (FinCEN) in order to carry out the laws and regulations of the United States Department of the Treasury. Trades or businesses, except for clerks of criminal courts, are required to provide the information to the IRS and FinCEN under both section 60501 and 31 U.S.C. 5331. Clerks of criminal courts are required to provide the information to the IRS under section 60501. Section 6109 and 31 U.S.C. 5331 require that you provide your social security number in order to adequately identify you and process your return and other papers. The principal purpose for collecting the information on this form is to maintain reports or records where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or

counterintelligence activities, by directing the Federal Government's attention to unusual or questionable transactions.

While such information is invaluable with regards to the purpose of this form, you are not required to provide information as to whether the reported transaction is deemed suspicious. No penalties or fines will be assessed for failure to provide such information, even if you determine that the reported transaction is indeed suspicious in nature. Failure to provide all other requested information, or the provision of fraudulent information, may result in criminal prosecution and other penalties under Title 26 and Title 31 of the United States Code.

Generally, tax returns and return information are confidential, as stated in section 6103. However, section 6103 allows or requires the IRS to disclose or give the information requested on this form to others as described in the Code. For example, we may disclose your tax information to the Department of Justice, to enforce the tax laws, both civil and criminal, and to cities, states, the District of Columbia, U.S. commonwealths or possessions, and certain foreign governments to carry out their tax laws. We may disclose your tax information to the Department of Treasury and contractors for tax administration purposes; and to other persons as necessary to obtain information which we cannot get in any other way in order to determine the amount of or to collect the tax you owe. We may disclose your tax information to the Comptroller General of the United States to permit the Comptroller General to review the IRS. We may disclose your tax information to Committees of Congress; Federal, state, and local child support agencies; and to other Federal agencies for the purposes of determining entitlement for benefits or the eligibility for and the repayment of loans. We may also disclose this information to Federal agencies that investigate or respond to acts or threats of terrorism or participate in intelligence or counterintelligence activities concerning terrorism.

FinCEN may provide the information collected through this form to those officers and employees of the Department of the Treasury who have a need for the records in the performance of their duties. FinCEN may also refer the records to any other department or agency of the Federal Government upon the request of the head of such department or agency and may also provide the records to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any law under Title 26 or Title 31.

The time needed to complete this form will vary depending on individual circumstances. The estimated average time is 21 minutes. If you have comments concerning the accuracy of this time estimate or suggestions for making this form simpler, you can write to the Tax Forms Committee, Western Area Distribution Center, Rancho Cordova, CA 95743-0001. **Do not** send this form to this office. Instead, see **Where To File** on page 3.



ALABAMA FINANCIAL INSTITUTIONS OFFERING IOLTA ACCOUNTS

Alabama Exchange	Farmers & Merchants, Lafayette
Alamerica Bank	Farmers & Merchants, Piedmont
Aliant Bank	Farmers National Bank
American Bank	First Bank of Dothan
AmerFirst Bank	First Bank of the South
AmSouth Bank	First Citizen's Bank, Luverne
Auburn Bank	First Citizen's Bank
BB & T	First Commercial Bank
Bancorp South, Albertville	First Commercial, Cullman
Bancorp South, Birmingham	First Commerical, Huntsville
BankTrust	First Community Bank
Bank Alabama	First Gulf Bank
Bank of Alabama	First Lowndes Bank
Bank Independent	First Metro Bank
Bank of Dadeville	First National Bank, Baldwin County
Bank of Tallassee	First National Bank, Brundidge
Bank of Tuscaloosa	First National, Hamilton
Bank of Wedowee	First National, Jasper
Barbour County Bank	First National, Pickens County
Brantley Bank & Trust	First National, Scottsboro
CBS Bank	First National, Shelby County
C B & T of Russell County	First Southern Bank
Camden National Bank	First Southern National Bank
Capital Bank	First State Bank, Fort Payne
Capital City Bank	First United Security, Jackson
Charter Federal Savings & Loan	First United Security, Centreville
Citizen's Bank, Florence	Fort Deposit Bank
Citizen's Bank, Geneva	Frontier Bank
Citizen's Bank, Moulton	Heritage Bank
Citizen's Bank, Russellville	Home Bank
Citizen's Bank, Talladega	Horizon Bank
Citizen's Federal	Jacobs Bank
Colonial Bank	Marion Bank & Trust
Commerce South	Merchants Bank, Cullman
Commercial Bank of Ozark	Merchants Bank, Jackson
Commercial Nat'l, Demopolis	Metro Bank
Commonwealth National Bank	Mid South Bank
Community Bank & Trust	Monroe County Bank
Compass Bank	National Bank of Commerce
Covington County Bank	National Bank of Commerce, Tuscaloosa
Cullman Savings Bank	National Bank of the South
Dekalb Bank	

North Jackson Bank
Peoples Bank & Trust
Peoples Bank, Cullman County
Peoples Bank, Greensboro
Peoples Bank, Tallassee
Peoples Southern Bank
Perry County Bank
Phenix Girard Bank
Pike County Bank
Regions Bank
Reliance Bank
Robertson Banking Company
Security Bank
Small Town Bank

Southland Bank
SouthTrust Bank
Sterling Bank
Suntrust
Sweetwater State Bank
The Bank
Town-Country National Bank
Union Planters Bank
United Bank
United Security Bank
Vision Bank
West Alabama Bank
Whitney Bank