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# TRUST ACCOUNTING FOR ALABAMA ATTORNEYS

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a manual prepared by the  
**Practice 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 for the State Bar of Georgia's permission to create our own handbook based on the design of theirs.

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 Practice 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 or 800-354-6154. Questions regarding the Alabama Civil Justice Foundation should be directed to Sue McInnish at (334) 263-3003.

Laura A. Calloway, Director  
Practice Management Assistance Program



**TABLE OF CONTENTS**

About Trust Accounts ..... 1

Setting Up a Trust Account ..... 7

Receiving and Disbursing from the Account..... 11

Maintaining Trust Account Records..... 13

Text of Supreme Court Order and Revised ARPC 1.15 ..... 17

Selected Ethics Opinions ..... 29

Notice to Financial Institution to Establish an IOLTA Account..... 39

Supplement to Deposit Agreement ..... 40

Sample Trust Account Ledgers ..... 41

IRS Form 8300 - Report of Cash Payments Over \$10,000 ..... 43



## 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 receive 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 awards 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 (sometimes called “retainers”) that you have not yet earned. Attorneys in Alabama sometimes use both the terms “attorney’s trust account” and “attorney’s escrow account” interchangeably, 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(a) 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 legal matter **completely separate from the lawyer’s own property**. All lawyers, except those 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 pursuant to Rule 1.15(f). Under Rule 1.15(f) the only lawyers admitted to practice in Alabama who do not have to maintain a trust account are those who (a) do not have an office within the state; (b) do not ever hold funds of clients or third parties; are not engaged in the active practice of law; are judges, attorneys-general, public defenders, U.S. attorneys, district attorneys, on duty with the armed services or are employed by a local, state or federal government entity and are not otherwise engaged in the practice of law; or are corporate or in-house counsel or are law professors and are not otherwise engaged in the active practice of law.

### Does the account have to be an IOLTA account?

Yes. With the changes to Rule 1.15 of the Alabama Rules of Professional Conduct, which the Alabama Supreme Court adopted on September 27, 2007 to be effective on January 1, 2008, all Alabama lawyers are required to hold client or third party funds **that are either nominal or are to be held for only a short period of time** in one or more IOLTA accounts. This means that IOLTA is now mandatory in Alabama. Your IOLTA account should 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 a pooled 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 may select which foundation receives the interest from your account.

The account must be maintained in an “eligible institution.” This is defined by Rule 1.15 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, when voluntary use of such accounts first became available, and most financial institutions are familiar with it and will be happy to assist you in establishing such an account. Under the rule changes, financial institutions which meet the requirements to offer IOLTA account will now be certified yearly. If your bank does not offer IOLTA accounts, call Tracy Daniel at the Alabama Law Foundation for the name of a bank in your area which does.

## **How will anyone know if I don’t comply?**

Rule 1.15 (f) requires that “Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt...” for the reasons stated in the rule.

In April of each year you will receive a postcard requesting you to verify that the email address you have registered with the bar is correct. Then, on May 1st you will receive an email instructing you to log in to the bar’s website and either certify your IOLTA trust account number or that you are exempt from maintaining a trust account. You will have until June 30th to complete this process. Lawyers who do not do so will receive a letter from the Office of General Counsel giving them an additional 14 days within which to complete the certification process, after which any non-compliant lawyers will be referred for discipline.

## **What are the requirements for an IOLTA account?**

Under the most recent revision of Rule 1.15 of the Alabama Rules of Professional Conduct, IOLTA accounts must meet the following requirements.

Financial institutions must pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA

account meets or exceeds 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. The rule has some methods for determining how the various accounts an institution offers should be compared to IOLTA accounts and whether the highest rate of interest is being paid to IOLTA accounts, but you don't have to worry about these calculations. Under the rule, financial institutions which offer IOLTA accounts must file a report, showing the interest or dividend rate paid on both IOLTA and other accounts offered, with the Alabama Law Foundation and Alabama Civil Justice Foundation. The foundations will then certify the participating financial institutions' compliance with the rule on an annual basis.

Only "allowable reasonable fees" may be deducted from the interest earned by IOLTA accounts. 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; (4) Federal Deposit insurance fees; (5) sweep fees; and (6) 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, the average account balance for the remittance period, 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 Alabama Law Foundation.

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 Association for Justice.

### **Who defines “nominal” and “short term?”**

You do, based on the criteria which became part of Rule 1.15(g) as revised. 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.

The standard is now whether the interest which could be earned for the client will exceed the costs incurred to secure that income. To determine this, you must consider: (1) the amount of interest or dividends likely to be earned; (2) the estimated cost of establishing and administering a non-IOLTA account for the individual client, including the cost of your services and the cost of preparing any tax reports required; (3) the ability of the financial institutions, lawyers or law firms involved to calculate and pay interest to individual clients or third parties; and (4) any other circumstances which would affect the ability of the client or third person's funds to earn income in excess of the costs required to earn it. You must review your IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third party.

### **What if I decide the client would benefit from a separate trust account?**

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 make a mistake regarding whether to open a separate account?**

Don't worry. Rule 1.15 states that this determination "... shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment."

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

Under the amended rule you now have no choice. Alabama is the 35th state in which IOLTA accounts are mandatory.

### **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 pay bank service charges or "to obtain a waiver thereof." There used to be a tacit understanding that a lawyer could place a minimum amount in the account

to keep it from going to a zero balance if all client funds were withdrawn and to avoid service charges, even though the rule did not explicitly say so. With the 2007 amendment to Rule 1.15 this is now official.

The other involves unearned attorneys fees that are being held until earned. A lawyer must place in the trust account funds which represent unearned fees. This includes retainers or flat fees which have not yet been earned in full, and amounts in which both the lawyer and a client or third party claim an interest, when the interests have not yet been determined or the funds been divided. 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 property other than money, but the method used 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 offers IOLTA accounts. Most commercial banks in Alabama now offer these accounts, although some savings & loan associations do not. Credit unions are not eligible to offer IOLTA accounts due to the way in which their deposits are insured. A list of all Alabama financial institutions which offer IOLTA accounts 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 "allowable 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. You can obtain the correct tax identification number for the Alabama Law Foundation or the Alabama Civil Justice Foundation from the respective foundation, or request the bank to do so. Most banks which offer IOLTA accounts have the necessary account agreement forms which contain all of the required provisions and information. If your bank does not have one of these forms, you can get one by calling ALF or ACJF or by going to their respective websites at [www.alfinc.org](http://www.alfinc.org) or [www.acjf.org](http://www.acjf.org). 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 and earned by 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 now that IOLTA is mandatory, it's a good idea.

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 or online.)

The words "Business Account," "Professional Account," "General Account," "Payroll Account," "Regular Account" or other appropriately descriptive words must also 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.

**Does FDIC insurance cover all funds in my trust account?**

Like all legal questions, the answer to this one is an emphatic "maybe."

This is an issue that most lawyers never even thought about until the financial crash of 2008, when banks began to fail and be taken over by the FDIC. Because attorney trust accounts were subject to the then \$100,000 FDIC insurance limit, if an attorney held funds in excess of \$100,000 on behalf of a single client or third-party in an insured institution which failed, it was possible that the excess amount might be an

uninsured loss. While the question was never addressed, it is at least arguable that an attorney could be liable for uninsured losses in the event of a bank failure since he or she is absolutely responsible to protect trust funds.

Under the provisions of the Dodd-Frank Wall Street Reform and Consumer Protection Act, FDIC insurance now provides unlimited coverage on “noninterest-bearing transaction accounts **through December 31, 2012**. The Insurance Provision of the act includes IOLTA accounts within the definition of noninterest-bearing transaction accounts, provided that they meet certain requirements – which Alabama IOLTA accounts do. In order to claim the coverage, however, you must have accurate records regarding how much you hold on behalf of each client or third-party.

### **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, and any balance which remains in trust.

### **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 collected funds of other clients in order to pay that check. 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. See Formal Opinion RO-88-92.

## MAINTAINING TRUST ACCOUNT RECORDS

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

Common sense and good business practice require that you should always know your overall trust account balance and the 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 trust account, regardless of the client on whose behalf they were made, and that gives a running balance for the account; and

**Individual 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 funds deposited to maintain a required minimum balance, 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 source of the funds or the entity to which funds were disbursed, the date of the transaction, the amount of the transaction, the client or matter name or number for which the funds were received or disbursed, a description of the purpose 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 also 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 (8300) is found at the end of this manual and is also available on the IRS website at [www.irs.gov](http://www.irs.gov).

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 a minimum of six years after termination of the representation. See

Formal Opinion 2011-02 for more information on records retention requirements of attorneys.

### **Can I use a computer to do my trust accounting?**

Yes, and we hope you will. 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 be in a mess, and you won't have time to sort it out or to 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. Many time and billing programs also include a trust accounting component.

The Alabama State Bar offers a member benefit discount for EasyTrust, a software program designed for legal trust accounting, as well as manuals with instructions on using various checkbook and general accounting programs for trust accounting. See the Member Benefits information on the bar's website ([www.alabar.org](http://www.alabar.org)) for more information.

### **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 un-cashed. 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 will 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. As a practical matter, the bank will notify the Office of General Counsel regardless of whether the items is made good within three business days.

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, and your bank should have a supply of these forms, too. ***If you already have one or more trust accounts open and have not yet done so, you should sign one of these forms for each account and ask your bank to file it with your existing account contract.***



IN THE SUPREME COURT OF ALABAMA  
September 27, 2007

ORDER

WHEREAS, the Alabama State Bar has submitted to this Court a proposed amendment to 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;

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

IT IS FURTHER ORDERED that this amendment shall be effective January 1, 2008; and

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 January 1, 2008, is published in that volume of Alabama Reporter that contains Alabama cases from \_\_\_ So. 2d."

Cobb, C.J., and See, Lyons, Woodall, Stuart, Smith, Bolin, Parker, and Murdock, JJ., concur.

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 27<sup>th</sup> day of September, 2007

*Robert G. Esdale, Sr.*  
Clerk, Supreme Court of Alabama

## APPENDIX

### Rule 1.15 SAFEKEEPING PROPERTY

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

"IOLTA account" means a pooled 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 a business checking account with an automated investment feature, such as an overnight sweep and investment in a government money-market fund or daily (overnight) financial-institution repurchase agreement invested solely in or 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 except as permitted by law.

"Allowable reasonable fees" means: (1) per check charges, (2) per deposit charges, (3) a fee in lieu of minimum balance, (4) Federal deposit insurance fees, (5) sweep fees, and (6) 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 funds of a lawyer shall be deposited in such a trust account, except (1) unearned attorney fees that are being held until earned, and (2) funds sufficient to pay bank service charges on that account or to obtain a waiver thereof. Interest or dividends, 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 the overdraft created thereby is not paid within three (3) 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 or third person. Every lawyer admitted to practice in this State shall annually certify to the Secretary of the Alabama State Bar that all IOLTA eligible funds are held in an IOLTA Account, or that the lawyer is exempt because the lawyer: does not have an office within the State of Alabama; does not hold funds for clients or third persons; is not engaged in the active practice of law; is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law; or is a corporate or other in-house counsel or teacher of law and is not otherwise engaged in the private practice of law. Certification may be made by a firm on behalf of all lawyers in a firm.

(g) Lawyers shall hold in IOLTA accounts all funds of clients or third persons that are nominal in amount or that the lawyer expects to be held for a short period and from which no income could be earned for the client or third person in excess of the costs incurred to secure such income. In no event shall a lawyer receive the interest on an IOLTA account.

In determining whether to deposit funds into an IOLTA account, a lawyer shall consider the following factors: the amount of interest or dividends likely to be earned during the period the funds are expected to be deposited; the estimated cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of

the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the ability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that affect the ability of the client or third-person funds to earn income in excess of the costs incurred to secure such funds. A lawyer shall review the IOLTA account at reasonable intervals to determine whether changed circumstances require further action with respect to the funds of any client or third person.

The determination whether the funds of a client or third person can earn income in excess of costs as provided in (g) above shall rest in the sound judgment of the lawyer or law firm, and no lawyer shall be charged with an ethical impropriety or breach of professional conduct based on the good-faith exercise of such judgment.

Offering IOLTA accounts is voluntary for financial institutions. Lawyers may place trust accounts only in eligible institutions that meet the requirements of this rule, including:

Interest Rates: Eligible institutions shall pay on IOLTA accounts the highest interest rate or dividend the financial institution offers to its non-IOLTA customers when the IOLTA account meets or exceeds the same minimum balance and other eligibility requirements, if any.

A financial institution shall pay on IOLTA accounts the highest interest rate or dividend generally available among the following product types or any comparable product type (if the product type is available from the financial institution to its non-IOLTA customers) by either using the identified product type as an IOLTA account or paying the equivalent interest rate or dividend on the existing IOLTA account in lieu of actually establishing the highest interest rate or dividend product:

1. An interest-bearing checking account such as a negotiable order of withdrawal (NOW) account, or business checking account with interest.

2. A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements or money-market funds as described in the definitions.

3. A government (such as for municipal deposits) interest-bearing checking account.

4. A checking account paying preferred interest rates, such as money-market or indexed rates.

5. Any other suitable interest- or dividend-bearing deposit account offered by the institution to its non-IOLTA customers.

As an alternative, the financial institution may pay:

6. An amount on funds, net of allowable reasonable fees, which would otherwise qualify for investment options described in (1) through (4) above equal to 55% of the Federal Funds Target Rate as of the first business day of the quarter or other IOLTA remitting period.

The following considerations will apply to determinations of comparability:

1. Accounts that have limited check-writing capability required by law or government regulation may not be considered as comparable to IOLTA in Alabama. Such accounts, however, are distinguished from checking accounts that pay money-market interest rates on account balances without the check-writing limitations. Such accounts are included in the option 4 class identified above. Additionally, rates that are not generally available to other account holders, such as special promotional rates used to attract new customers, are not considered for comparability in Alabama.

2. For the purpose of determining compliance with the above provisions, all participating financial institutions shall report in a form and manner prescribed by the Alabama Law Foundation and Alabama Civil Justice Foundation the highest interest or dividend rate for each of the accounts they offer within the above-listed account types. The foundations will certify participating financial institutions' compliance with this rule on an annual basis.

3. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA customers, the eligible institution may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that those factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers and provided further that those factors do not include that the account is an IOLTA account.

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

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.

Allowable reasonable fees, as defined in this rule, are the only service charges or fees permitted to be deducted from interest or dividend earned on IOLTA accounts. Allowable reasonable fees may be deducted from interest or dividends on an IOLTA account only at such rates and under such circumstances as is the eligible institution's customary practice for its non-IOLTA customers. All other fees and charges shall not be assessed against the interest or dividends earned on the 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 or dividend earned on the account for any month or quarter shall not be taken from interest or dividend earned on other IOLTA accounts or from the principal of the account.

Financial institutions may elect to pay higher rates than required by this rule or to waive any or all fees on IOLTA accounts.

A statement should 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, if any, the average account balance for 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) All interest or dividends 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.

(i) All interest or dividends 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.

(j) 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.



# SELECTED ETHICS OPINIONS

## ETHICS OPINION

RO 2008-03

### Lawyers' Trust Account Obligations With Regard to Retainers and Set Fees

#### QUESTION:

Should a flat fee that is received prior to the conclusion of representation be deposited into an attorney's IOLTA account or is it earned at the time of receipt?

#### ANSWER:

In Alabama, a flat fee that is received prior to the conclusion of the representation or prior to the performance of services must be deposited in the attorney's IOLTA account until the fee is actually earned.

#### DISCUSSION:

In RO 1992-17, the Disciplinary Commission previously stated that:

[T]he client has the absolute right to terminate the services of his or her lawyer, with or without cause, and to retain another lawyer of their choice. This right would be substantially limited if the client was required to pay the full amount of the agreed on fee without the services being performed. In Gaines, Gaines and Gaines v. Hare, Wynn, 554 So.2d 445 (Ala. Civ. App. 1989), the Alabama Court of Civil Appeals stated:

"The rule in Alabama is that an attorney discharged without cause or otherwise prevented from full performance, is entitled to be reasonably compensated only for services rendered before such discharge. Mall v. Gunter, 157 Ala. 375, 47 So.2d 144 (1908)."

Likewise, in RO 1993-21, the Disciplinary Commission held that an attorney “may not characterize a fee as non-refundable or use other language in a fee agreement that suggests that any fee paid before services are rendered is not subject to refund or adjustment.”

As in RO 1993-21, the Commission noted that “non-refundable fee language is objectionable because it may chill a client from exercising his or her right to discharge his or her lawyer and, thus, force the client to proceed with a lawyer that the client no longer has confidence in.” As such, the overriding principle of RO 1992-17 and RO 1993-21 is that a non-refundable fee would impinge on the right of the client to change lawyers at any time. Allowing an attorney to keep a fee, regardless of whether any service has been performed for the client, would certainly restrict the ability of a client to terminate the attorney and seek new counsel. In reaching this conclusion, the Commission also made clear that the rule applied to all arrangements where fees are paid in advance of legal services being rendered. As such, all retainers and fees are refundable to the extent that they have not yet been earned. To conclude that a flat fee is earned at the time of receipt, where the contemplated services have yet to be performed or completed, would be in direct contradiction of this long standing principle.

The only exception to the rule that all fees are refundable would be a true availability-only retainer. An availability-only retainer is a payment that is made by a client solely to secure an attorney’s future availability and would necessarily restrict the ability of the attorney to represent other clients. A true availability-only retainer is earned at the time of receipt, must be in writing, and must be approved by the client in advance of the payment. To be clear, an attorney may not characterize a flat fee or other type fee that is being paid for future services as an availability-only retainer fee. Any attempt by an attorney to circumvent the rule that all retainers and fees are refundable by mischaracterizing a fee as an availability-only retainer would be an ethics violation.

Because a flat fee paid in advance of services is subject to being refunded, Rule 1.15(a), Ala. R. Prof. C., requires that the flat fee be deposited into an

attorney's IOLTA account. Rule 1.15, Ala. R. Prof. C., provides in pertinent part, as follows:

### **RULE 1.15 SAFEKEEPING PROPERTY**

(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.

(emphasis added) Because flat fees are not earned at the time of receipt, they are unearned attorney fees that must be held in the attorney's IOLTA account until earned in accordance with Rule 1.15.

However, the entire flat fee is not required to be held in trust until the conclusion of the representation. Rather, an attorney may withdraw portions of the fee from the trust account as the fee is earned. Exactly when and what amount of the fee is earned during the representation is a question of reasonableness. It is generally recognized that the first yardstick used in assessing the reasonableness of an attorney fee is the

time consumed. Peebles v. Miley, 439 So.2d 137 (Ala. 1983). For example, an attorney may withdraw portions of the flat fee that have been earned based on the time the attorney has spent on the matter and his normal hourly rate. In doing so, the attorney should notify the client when portions of the fee are withdrawn from the trust account by sending a statement or invoice to the client stating the date and the amount of the withdrawal.

An attorney may also enter into a written agreement with the client setting forth milestones in the representation that entitle the attorney to receive a specified portion of the fee. The fee agreement may explicitly state that an attorney is entitled to specific portions of the fee after certain stages in the representation have been completed. For example, assume an attorney is representing a client in a criminal matter for a flat fee of \$5,000.00. The fee agreement may provide that the attorney is entitled to \$2,500.00 of the fee after arraignment or after the preliminary hearing has been held. Any such agreement between the attorney and the client should be set out, preferably in writing, at the outset of the representation.

JWM/s

12-5-08

ETHICS OPINION  
1990-08

Unclaimed client trust funds--lawyer's obligation to ascertain true owner, escheatment of unclaimed funds which appear to be lawyer's fees to lawyer

SUMMARY OF THE QUESTION:

I practiced law from 1971 through 1985 and maintained a trust account at a local bank. I assumed a judicial office in 1985 and had a balance remaining in my trust account of \$1,200.00. I continued to receive statements on that account. The account is now dormant. I have some 1,500 files accumulated which are now boxed and stored in my home. My old office has been leased to another attorney who had access to these files and handled inquiries from former clients. That arrangement ceased in October of 1987 and during the period from 1985 to 1987 no inquiries were received relating to any trust funds by that lawyer or by me. The amount accumulated in my account is somewhat confusing because I normally operated a zero balance accounting method disbursing funds from the account upon receipt. I have had several secretaries to work for me over the years and each kept books differently but I cannot reconstruct the various events of many years of practice. I cannot find where the balance came from other than the fact that these are probably attorney's fees and expenses paid into the account but not disbursed to me. I feel that I have made a good faith effort to locate the claimants to these funds including advertising in a local newspaper for three consecutive weeks. No claims or inquiries have been received and I would now like to close out this account and transfer these funds into my personal account. Please advise as to whether I may do so.

ADDITIONAL INFORMATION: Attached to the request is a letter from the attorney that leased the former law office stating that there had been no inquiries as to funds held in the escrow account and also attached is a copy of the trust bank account showing a balance of \$1,224.10 as of December 30, 1989, and a copy of a legal notice published in the local newspaper for three consecutive weeks in November of 1988.

ANSWER:

In addressing a similar situation the Disciplinary Commission opined that where funds cannot be attributed to a particular client, and where a reasonable and good faith effort has been made to determine the ownership of the funds, and where the funds have been held as long as necessary to assure that no unidentified client could make a successful claim against the account, an attorney might distribute those funds to the attorney's estate. (The Alabama Lawyer, January 1989, p. 49). The Commission quoted with favor ethics opinions from several different states holding that after reasonable and good faith attempts to ascertain ownership of the funds and after holding the funds long enough to make sure that no unidentified client could make a claim against the

funds within any applicable statute of limitations, the funds could be distributed to the attorney's personal account or, in the case considered by the Commission, to his estate.

Accordingly, having made a good faith effort and having exercised reasonable care to notify the former clients of the existence of the funds and having established a mechanism for the retrieval of the funds and having allowed sufficient time to expire, the Commission is of the opinion that you may now place these funds in your personal account.

AWJ/vf

3/12/90

ETHICS OPINION  
1988-92

Unclaimed client trust funds - escheat to state

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





# ALABAMA LAW FOUNDATION, INC.

*Making a difference.*

## NOTICE TO FINANCIAL INSTITUTION TO ESTABLISH AN IOLTA ACCOUNT

### ATTORNEY INFORMATION

INSTRUCTIONS TO ATTORNEYS: (1) COMPLETE THIS FORM, (2) TAKE THIS FORM TO A FINANCIAL INSTITUTION ELIGIBLE TO OFFER IOLTA ACCOUNTS, (3) SEND A COPY OF THE COMPLETED FORM TO THE ALABAMA LAW FOUNDATION ALONG WITH A LIST OF ALL LAWYERS IN LAW FIRM.

FIRM NAME: \_\_\_\_\_

ATTORNEY NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

CITY: \_\_\_\_\_ STATE: \_\_\_\_\_ ZIP: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

FINANCIAL INSTITUTION NAME: \_\_\_\_\_

ACCOUNT NUMBER: \_\_\_\_\_

The undersigned hereby enrolls in the Alabama Law Foundation's Interest on Lawyers Trust Account (IOLTA) program established by the Supreme Court of Alabama. Under this program, please open (if new), or change the status of my/our law firm's existing trust account to an interest-bearing account of a type authorized by Rule 1.15 of the Alabama Rules of Professional Conduct.

The IOLTA account must remain in my/our law firm's name. However, the IOLTA account must bear the Alabama Law Foundation's Taxpayer Identification Number, which will be paid interest or dividends from the account. No IRS Form 1099 is required to be filed for IOLTA accounts. IOLTA accounts are NOT subject to back-up withholding.

AUTHORIZED SIGNATORIES: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### FINANCIAL INSTITUTION INFORMATION

Interest in accordance with your standard account disclosure must be remitted monthly or quarterly to:

ALABAMA LAW FOUNDATION, INC

POST OFFICE BOX 671

MONTGOMERY, AL 36101

TAXPAYER I.D. NO. 63-0951482

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**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:**

\_\_\_\_\_  
Name of Lawyer / Law Firm

By: \_\_\_\_\_

Its:

Rev. 07/02/97

**BANK:**

\_\_\_\_\_  
Name of Financial Institution

By: \_\_\_\_\_

Its:

# 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.  
 The sum of the ending balances for all open matters must always equal the ending balance in the Trust Account General Ledger.

# Report of Cash Payments Over \$10,000 Received in a Trade or Business

▶ See instructions for definition of cash.  
 ▶ Use this form for transactions occurring after June 30, 2011. Do not use prior versions after this date.  
 For Privacy Act and Paperwork Reduction Act Notice, see the last page.

1 Check appropriate box(es) if: **a**  Amends prior report; **b**  Suspicious transaction.

### Part I Identity of Individual From Whom the Cash Was Received

2 If more than one individual is involved, check here and see instructions

3 Last name		4 First name		5 M.I.	6 Taxpayer identification number	
7 Address (number, street, and apt. or suite no.)				8 Date of birth (see instructions)		M M D D Y Y Y Y
9 City	10 State	11 ZIP code	12 Country (if not U.S.)		13 Occupation, profession, or business	
14 Identifying document (ID)	a Describe ID ▶ c Number ▶			b Issued by ▶		

### Part II Person on Whose Behalf This Transaction Was Conducted

15 If this transaction was conducted on behalf of more than one person, check here and see instructions

16 Individual's last name or organization's name		17 First name		18 M.I.	19 Taxpayer identification number	
20 Doing business as (DBA) name (see instructions)				Employer identification number		
21 Address (number, street, and apt. or suite no.)				22 Occupation, profession, or business		
23 City	24 State	25 ZIP code	26 Country (if not U.S.)			
27 Alien identification (ID)	a Describe ID ▶ c Number ▶			b Issued by ▶		

### Part III Description of Transaction and Method of Payment

28 Date cash received M M D D Y Y Y Y	29 Total cash received \$ .00	30 If cash was received in more than one payment, check here <input type="checkbox"/>	31 Total price if different from item 29 \$ .00
32 Amount of cash received (in U.S. dollar equivalent) (must equal item 29) (see instructions):			
a U.S. currency	\$ .00	(Amount in \$100 bills or higher \$ .00)	
b Foreign currency	\$ .00	(Country ▶ )	
c Cashier's check(s)	\$ .00	} Issuer's name(s) and serial number(s) of the monetary instrument(s) ▶ ----- -----	
d Money order(s)	\$ .00		
e Bank draft(s)	\$ .00		
f Traveler's check(s)	\$ .00		
33 Type of transaction		34 Specific description of property or service shown in 33. Give serial or registration number, address, docket number, etc. ▶	
a <input type="checkbox"/> Personal property purchased	f <input type="checkbox"/> Debt obligations paid	----- ----- -----	
b <input type="checkbox"/> Real property purchased	g <input type="checkbox"/> Exchange of cash		
c <input type="checkbox"/> Personal services provided	h <input type="checkbox"/> Escrow or trust funds		
d <input type="checkbox"/> Business services provided	i <input type="checkbox"/> Bail received by court clerks		
e <input type="checkbox"/> Intangible property purchased	j <input type="checkbox"/> Other (specify in item 34) ▶		

### Part IV Business That Received Cash

35 Name of business that received cash				36 Employer identification number	
37 Address (number, street, and apt. or suite no.)				Social security number	
38 City	39 State	40 ZIP code	41 Nature of your business		

42 Under penalties of perjury, I declare that to the best of my knowledge the information I have furnished above is true, correct, and complete.

Signature ▶ _____		Authorized official		Title ▶ _____	
43 Date of signature M M D D Y Y Y Y	44 Type or print name of contact person			45 Contact telephone number	

Multiple Parties

(Complete applicable parts below if box 2 or 15 on page 1 is checked)

Part I Continued—Complete if box 2 on page 1 is checked

Form section for Part I, entry 1. Fields include: 3 Last name, 4 First name, 5 M.I., 6 Taxpayer identification number, 7 Address, 8 Date of birth, 9 City, 10 State, 11 ZIP code, 12 Country, 13 Occupation, 14 Identifying document (ID) with sub-fields a, b, and c.

Form section for Part I, entry 2. Fields include: 3 Last name, 4 First name, 5 M.I., 6 Taxpayer identification number, 7 Address, 8 Date of birth, 9 City, 10 State, 11 ZIP code, 12 Country, 13 Occupation, 14 Identifying document (ID) with sub-fields a, b, and c.

Part II Continued—Complete if box 15 on page 1 is checked

Form section for Part II, entry 1. Fields include: 16 Individual's last name or organization's name, 17 First name, 18 M.I., 19 Taxpayer identification number, 20 Doing business as (DBA) name, 21 Address, 22 Occupation, 23 City, 24 State, 25 ZIP code, 26 Country, 27 Alien identification (ID) with sub-fields a, b, and c.

Form section for Part II, entry 2. Fields include: 16 Individual's last name or organization's name, 17 First name, 18 M.I., 19 Taxpayer identification number, 20 Doing business as (DBA) name, 21 Address, 22 Occupation, 23 City, 24 State, 25 ZIP code, 26 Country, 27 Alien identification (ID) with sub-fields a, b, and c.

Comments - Please use the lines provided below to comment on or clarify any information you entered on any line in Parts I, II, III, and IV

Four horizontal lines provided for entering comments.

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

## What's New

**Future Developments.** The IRS has created a page on IRS.gov for information about Form 8300, at [www.irs.gov/form8300](http://www.irs.gov/form8300). Information about any future developments affecting Form 8300 such as legislation enacted after we release it will be posted on that page.

## Important Reminders

- Section 6050I (26 United States Code (U.S.C.) 6050I) 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 *Item 33* under *Part III*, later.
- The meaning of the word “currency” for purposes of 31 U.S.C. 5331 is the same as for the word “cash” (See *Cash* under *Definitions*, later).

## 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 *Item 33* under *Part III*, later.

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 1.6050I-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*, later) 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 104, Currency Transaction Report;
- By a casino required to file (or exempt from filing) Form 103, 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 104, and discloses all the information necessary to complete Part II of Form 8300 or Form 104 to the recipient of the cash in the second transaction;
- In a transaction occurring entirely outside the United States. See Publication 1544, Reporting Cash Payments of Over \$10,000 (Received in a Trade or Business), regarding transactions occurring in Puerto Rico and territories and possessions of the United States; or
- 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 or electronic 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 or foreign organization:*

- Does not have income effectively connected with the conduct of a U.S. trade or business;
- Does not have an office or place of business, or a fiscal or paying agent in the United States;
- Does not furnish a withholding certificate described in §1.1441-1(e)(2) or (3) or §1.1441-5(c)(2)(iv) or (3)(iii) to the extent required under §1.1441-1(e)(4)(vii); or
- Does not have to furnish a TIN on any return, statement, or other document as required by the income tax regulations under section 897 or 1445.

**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; or
- 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 6050I 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 Publication 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 cash for a negotiable instrument, 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 suspicious transaction is 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.

## 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* next.

**Item 1.** If you are amending a report, check box 1a. Complete the form in its entirety (Parts I-IV) and include the amended information. Do not attach a copy of the original report.

To voluntarily report a suspicious transaction (see *Suspicious transaction* above), check box 1b. You may also telephone your local IRS Criminal Investigation Division or call the FinCEN Financial Institution Hotline at 1-866-556-3974.

## 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)*, earlier, 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.

**Note.** You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

## 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 (for example, 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)*, earlier. Enter a description of the type of official document issued to that person in item 27a (for example, a “passport”), the country that issued the document in item 27b, and the document’s number in item 27c.

**Note.** You must complete all three items (a, b, and c) in this line to make sure that Form 8300 will be processed correctly.

### 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*, earlier, 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.

### Comments

Use this section to comment on or clarify anything you may have entered on any line in Parts I, II, III, and IV. For example, if you checked box b (Suspicious transaction) in line 1 above Part I, you may want to explain why you think that the cash transaction you are reporting on Form 8300 may be suspicious.

### Privacy Act and Paperwork Reduction Act Notice.

Except as otherwise noted, the information solicited on this form is required by the IRS and 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 6050I and 31 U.S.C. 5331. Clerks of criminal courts are required to provide the information to the IRS under section 6050I. 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 which 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.

You are not required to provide information as to whether the reported transaction is deemed suspicious. Failure to provide all other requested information, or providing fraudulent information, may result in criminal prosecution and other penalties under 26 U.S.C. and 31 U.S.C.

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 Internal Revenue 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, and U.S. commonwealths and possessions, to carry out their tax laws. We may disclose this information to other persons as necessary to obtain information which we cannot get in any other way. We may disclose this information to 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 provide the records to appropriate state, local, and foreign criminal law enforcement and regulatory personnel in the performance of their official duties. We may also disclose this information to other countries under a tax treaty, or to federal and state agencies to enforce federal nontax criminal laws and to combat terrorism. In addition, FinCEN may provide the information to those officials if they are conducting intelligence or counter-intelligence activities to protect against international terrorism.

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 26 U.S.C. or 31 U.S.C.

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 Internal Revenue Service, Tax Products Coordinating Committee, SE:W:CAR:MP:T:M:S, 1111 Constitution Ave. NW, IR-6526, Washington, DC 20224. Do not send Form 8300 to this address. Instead, see *Where to file*, earlier.

