

**CLIENT
TRUST ACCOUNT
MANUAL**

September, 2008

**LAWYERS' FUND FOR CLIENT
PROTECTION**

STATE BAR OF MONTANA

CLIENT TRUST ACCOUNT MANUAL

September, 2008

FORWARD

This Trust Account Manual was compiled by the Lawyers' Fund for Client Protection Board of the State Bar of Montana. It has not been adopted or approved by the Board of Trustees of the State Bar and does not constitute the official position of the State Bar. It is advisory only and is not binding upon the Montana Supreme Court, the District Courts or the Commission on Practice.

PURPOSE

This Manual is intended to supplement the actual Rules and case law which govern the handling of client funds by attorneys and to consolidate in one place the primary rules applicable to client trust accounts. It is not a substitute for careful reading of the rules, common sense or independent legal research or for obtaining competent professional advice with respect to a specific legal question, problem or issue.

SCOPE

This Manual includes the Rules of Professional Conduct applicable to client trust funds and the Montana Supreme Court Rules on Client Trust Account Overdrafts and on Trust Account Maintenance and Audit Requirements. It also contains detailed examples of the record keeping necessary to properly maintain a client trust account. This Manual does not contain extensive commentary or narrative discussions of the Rules themselves.

ACKNOWLEDGMENTS

The Manual was first published in 1998. The Lawyers' Fund for Client Protection expresses its appreciation to the States of New Jersey, Illinois, Minnesota and California for providing copies of their manuals which were relied upon as samples and guides in creating the original 1998 version. The Manual was updated and revised in September, 2008.

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INTRODUCTION

Trust account mismanagement is the top reason given when lawyers are disciplined, according to the American Bar Association. This manual is offered to aid you in the proper management of your client trust account and to forewarn you of the most common errors made.

Lawyers routinely receive client funds which they place in a bank account for future disbursement. Since the funds are being held for the benefit of the client, lawyers must separate these funds from funds placed in their general operating account. If the funds can generate interest income sufficient to offset administrative expenses, the lawyer should invest the funds for the client. However, if the funds are small or short term, it is impractical to establish a separate interest bearing account for the client.

Historically, lawyers deposited small and short term client funds in a common, non-interest bearing checking account. In 1985, with the adoption of Rule 1.15 of the Rules of Professional Conduct, Montana adopted the Interest on Lawyer Trust Accounts (IOLTA) program. The IOLTA program directs interest on small deposits of client funds to the Montana Law Foundation, which distributes the funds through grants to entities that provide legal services to low income people with low income, improve the administration of justice and promote knowledge and awareness of the law. In 1996, the IOLTA program became mandatory with the adoption of Rule 1.18 of the Rules of Professional Conduct.

Protection of client funds is the focus of two other rules adopted by the Montana Supreme Court: the Trust Account Maintenance and Audit Requirements and the Trust Account Overdraft Notification Rule. These rules are found in the body of this material. Also found in this manual are a summary of the lawyer's responsibilities toward client trust funds and property, a summary of the required records for client trust accounts and a listing of some of the common mistakes that lead to trust account overdrafts.

The rules are straightforward and self-explanatory. Most trust account questions can probably be answered by a careful study of the rules. The final portion of this manual includes some of the case law and ethics opinions dealing with client trust funds or property.

Also included, as Appendix A, is an IOLTA sign up form to present to the financial institution when setting up a client trust account. Appendix B contains sample trust account records and record keeping procedures.

In the event you have questions concerning this material, please contact the Chair of the Lawyers' Fund for Client Protection Board, whose name and phone number can be found in the State Bar of Montana's Lawyers' Deskbook & Directory, or by calling the State Bar IOLTA Coordinator at (406) 442-7660.

1. SUMMARY OF ATTORNEY'S DUTIES

- a. Keep client and third-party funds and property separate from funds and property of the attorney.
- b. Client funds must be kept in a separate account identified as a "Trust Account" on all documents. Other property must be identified as trust property and properly safeguarded.
- c. Trust Accounts must be placed in approved financial institutions.
- d. Maintain complete records of the funds and other property and retain the records for five (5) years after termination of the representation.
- e. Promptly notify the client or third party upon receipt of property.
- f. Promptly deliver funds or property to the client or third party which the client or third party is entitled to receive.
- g. Upon request of the client or third party, render a complete accounting.
- h. Client funds which are nominal in amount or which are expected to be held for a short period of time may be deposited into an appropriate pooled IOLTA account.
- i. Reconcile the trust account register at least quarterly and do monthly bank statement reconciliations with all discrepancies noted, explained and made a part of the reconciliation.
- j. Cooperate fully with any auditor appointed by State Bar Trustees at the request of the Lawyers' Fund for Client Protection Board.

2. SUMMARY OF REQUIRED RECORDS FOR CLIENT TRUST ACCOUNTS

- a. Check Register reflecting every deposit and disbursement affecting the Trust Account, and the current balance in the Trust Account.
- b. Cash receipts journal itemizing all funds deposited into the Trust Account entered as a separate line item for each source, amount, description of source and date.
- c. Cash disbursements journal reflecting each disbursement by date, payee and description of use.
- d. Client ledger containing a separate record of all receipts and disbursements related to each client or transaction setting forth the date of the transaction, a notation as to the nature of the transaction, the client's or transaction's balance of funds remaining in the Trust subsequent to the transaction and the name and address of the client.
- e. Note that separate cash receipts and cash disbursements journals are not necessary if the same information is reflected in the Check Register.

3. MOST COMMON CAUSES OF TRUST ACCOUNT OVERDRAFTS

- a. Failure to consider and provide for payment of bank charges in client trust accounts.
- b. Disbursing deposited funds to the client or attorney before the deposited check has cleared the payor bank. A deposited check can be returned for any number of reasons including but not limited to missing, insufficient or incorrect endorsement, insufficient funds, sight draft, bank error, bankruptcy, etc.
- c. Using the trust account for regular and ordinary business disbursements of the attorney or firm.
- d. Disbursing funds to client without first reconciling individual client trust account ledgers which should clearly show whether sufficient funds are being held in the account for that client to cover the check being written.
- e. Inadvertent use of a check or deposit slip from the wrong account.

4. MONTANA RULES OF PROFESSIONAL CONDUCT

RULE 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in accordance with Rule 1.18 and this Rule. 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 a period of five years after termination of the representation.

(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(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 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.

RULE 1.18 Interest On Lawyer Trust Accounts (IOLTA) Program

(a) Purpose. The purpose of the Interest on Lawyer Trust Accounts (IOLTA) program is to provide funds for the Montana Justice Foundation to pay the reasonable costs of administering the program and to make grants to entities with missions within the following general categories:

(1) Providing legal services, through both paid staff program(s) and pro bono program(s), to Montana's low income citizens who would otherwise be unable to obtain legal assistance;

(2) promoting a knowledge and awareness of the law; and

(3) improving the administration of justice.

(b) Required participation. IOLTA program participation is mandatory, except as provided in subsection (d), below. Every non-exempt lawyer admitted to practice in Montana, and/or every law firm composed of any such lawyers, which receives client funds, shall establish and maintain an interest-bearing trust account for pooled client funds, termed an "IOLTA Trust

Account." Each lawyer/firm shall also establish separate interest-bearing trust accounts for individual clients, termed "Client Trust Accounts," when appropriate pursuant to this Rule.

(c) Administration.

(1) Deposits of clients' funds.

(A) All client funds paid to a lawyer/firm, including advances for costs and expenses, shall be deposited and maintained in one or more identifiable interest-bearing trust accounts (Trust Accounts) in the State of Montana. No funds belonging to the lawyer/firm shall be deposited into a Trust Account except:

(i) funds reasonably sufficient to pay account charges not offset by interest;

(ii) an amount to meet a minimum balance requirement for the waiver of service charges; and/or

(iii) funds belonging in part to a client and in part presently or potentially to the lawyer/firm, but the portion belonging to the lawyer/firm shall be withdrawn when due unless the right of the lawyer/firm to such funds is disputed by the client, in which event the disputed portion shall remain in the account until the dispute is resolved.

(B) The lawyer/firm shall comply with all Rules relating to preserving the identity of clients' funds and property.

(C) Every Trust Account shall be established with a federally-insured and state or federally regulated financial institution authorized by federal or state law to do business in Montana. Funds in each Trust Account shall be subject to immediate withdrawal.

(D) The interest rate payable on a Trust Account shall not be less than the rate paid to non-lawyer depositors. Higher rates offered for deposits meeting certain criteria, such as certificates of deposit, may be obtained on Trust Account funds if immediate withdrawal is available.

(E) Every Trust Account shall bear the name of the lawyer/firm and be clearly designated as either an IOLTA Trust Account or a Client Trust Account established under this Rule.

(2) IOLTA Trust Accounts. Every IOLTA Trust Account shall comply with the following provisions:

(A) The lawyer/firm shall maintain all client funds that are either nominal in amount or to be held for a short period of time in an IOLTA Trust Account.

(B) No client may elect whether his/her funds should be deposited in an IOLTA Trust Account, receive interest or dividends earned on funds in an IOLTA Trust Account, or compel a lawyer/firm to invest funds that are nominal in amount or to be held for a short period of time in a Client Trust Account.

(C) The determination of whether a client's funds are nominal in amount or to be held for a short period of time rests solely in the sound judgment of each lawyer/firm. No charge of professional misconduct or ethical impropriety shall result from a lawyer's exercise of good faith judgment in that regard.

(D) To determine if a client's funds should be deposited in an IOLTA Trust Account, a lawyer/firm may be guided by considering:

(i) the amount of interest the funds would earn during the period they are expected to be deposited;

(ii) the costs of establishing and administering the account, including the lawyer's/firm's fees, accounting fees and tax reporting requirements;

(iii) the amount of funds involved, the period of time they are expected to be held and the financial institution's minimum balance requirements and service charges;

(iv) the financial institution's ability to calculate and pay interest to individual clients; and

(v) the likelihood of delay in the relevant transaction or proceeding.

(E) The lawyer/firm shall require the financial institution in which the IOLTA Trust Account is established to:

(i) remit to the Montana Justice Foundation, at least quarterly, all interest or dividends on the average monthly balance in the IOLTA Trust Account, or as otherwise computed according to the institution's standard accounting practices, less reasonable service fees, if any;

(ii) with each remittance, provide the Montana Justice Foundation and the lawyer/firm with a statement showing for which lawyer/firm the remittance is sent, the period covered, the rate of interest applied, the total amount of interest earned, any service fees assessed against the account

and the net amount of interest remitted;

(iii) charge no fees against an IOLTA Trust Account greater than fees charged to non-lawyer depositors for similar accounts, or which are otherwise unreasonable; and

(iv) collect no fees from the principal deposited in the IOLTA Trust Account.

(F) Annually the Montana Justice Foundation shall make available a list of all financial institutions offering IOLTA accounts and meeting this Rule's IOLTA depository qualifying requirements. Lawyers/firms shall be entitled to rely on the most recently published list for purposes of IOLTA Rule compliance. The Montana Justice Foundation shall pay all service charges incurred in operating an IOLTA Trust Account from IOLTA funds, to the extent the charges exceed those incurred in operating non-interest-bearing checking accounts at the same financial institution.

(G) Confidentiality. The Montana Justice Foundation shall protect the confidentiality of information regarding Trust Accounts pursuant to this Rule.

(3) Non-IOLTA client Trust Accounts. All client funds shall be deposited in an IOLTA Trust Account, unless they are deposited in a separate interest-bearing account for a particular client's matter with the net interest paid to the client. Such interest must be held in trust as the property of the client as provided in this Rule for the principal funds of the client.

(d) A lawyer/firm is exempt from this Rule's requirements if:

(1) the nature of their practice is such that no client funds are ever received requiring a Trust Account;

(2) the lawyer practices law in another jurisdiction and not in Montana;

(3) the lawyer is a full-time judge, or government, military or inactive lawyer; or

(4) the Montana Justice Foundation's Board of Directors, on its own motion, exempts the lawyer/firm from participation in the program for a period of no more than two years when:

(A) service charges on the lawyer's/firm's Trust Account equal or exceed any interest generated; or

(B) no financial institution in the county where the lawyer/firm does

business will accept IOLTA accounts.

(e) Lawyer filings and records.

(1) Filings. Each lawyer/firm shall file an annual certificate of compliance with or exemption from this Rule with the Montana Justice Foundation. The certification must include the name of the lawyer/firm listed on the account, the account number, and the financial institution name and address. The certification may be made in conjunction with the annual dues billing process. Failure to provide the certification may result in suspension from the practice of law in this state until the lawyer complies with the requirements of this Rule.

(2) Records. Lawyer trust accounts shall be maintained as prescribed by the Montana Supreme Court in the "Trust Account Maintenance and Audit Requirements" (adopted February 27, 1989).

(f) Implementation. Implementation will be effected through this Rule and the Rules of the State Bar of Montana, all as amended and approved by the Montana Supreme Court.

5. MONTANA SUPREME COURT RULE ON TRUST ACCOUNT MAINTENANCE AND AUDIT REQUIREMENTS

SECTION I. TRUST ACCOUNT MAINTENANCE

A. Trust Account.

1. Each lawyer or business entity comprised of lawyers ("Lawyer"), practicing law in the State of Montana who holds client funds, shall maintain a trust account or accounts ("Account") in Montana based financial institutions for the segregation and separation of client funds held by Lawyer. Such Account shall be separate from the Lawyer's business and personal accounts. The name of the Account and any checks, drafts or deposit slips shall include the words "Trust Account."

2. All funds entrusted to the care of the Lawyer will be immediately deposited into the Trust Account. A separate ledger or account record ("Ledger") shall be maintained for each client and transaction as hereinafter provided.

3. All transactions within the Account are to be accomplished by check, draft, electronic funds transfer, deposit slip or other negotiable order.

B. Trust Account Records.

1. Each Trust Account maintained by a Lawyer shall have its own supporting documentation. Such documentation shall include:

a. Financial Institution Account Register (e.g., "Check Register"). This register is to reflect every deposit and disbursement affecting the Trust Account, and the current balance in the Trust Account.

b. Cash Receipts Journal. This journal shall itemize all funds deposited into the Trust Account. These funds are to be entered in the register as a separate line item for each source, amount, description of source and date.

c. Cash Disbursements Journal. This journal shall reflect each disbursement by date, payee, and description of use.

d. The cash receipts and disbursement journals may be combined with the financial institutions account register, provided all necessary information is reflected.

e. Client Ledger. This ledger will contain a separate record of all receipts and disbursements related to each client or transaction. Each record is to be kept from the date of initial deposit to the date of final disbursement. Each entry is to contain the date of the transaction, a notation as to the nature of the transaction, and the client or transaction's balance of funds remaining in the Trust subsequent to the transaction. Each ledger shall contain the name and address of the client. Financial institution receipts, duplicates of the deposit slips, and all cancelled checks or drafts must be retained in the Trust Account permanent records.

2. Trust Account records are to be held for a period of not less than five (5) years.

C. Records Reconciliation.

1. All Trust Account Ledgers and Accounts will be reconciled to one another at least quarterly. Such reconciliations to include:

a. A reconciliation of total disbursements for the period (months, quarter, etc.) as recorded in the cash disbursements journal and Check Register; all discrepancies to be noted, explained and made a part of the reconciliation.

b. A reconciliation of total deposits for the period as recorded in the cash receipts journal and Check Register; all discrepancies to be noted, explained and made a part of the reconciliation.

c. Reconciliation of the check register balance to the total of the separate records in the source ledger; all discrepancies to be noted, explained and made a part of the reconciliation.

2. On a monthly basis, the check register balance shall be reconciled to the account statement forwarded to the Lawyer from the financial institution; all discrepancies to be noted, explained and made a part of the reconciliation.

SECTION II. AUDIT PROCEDURES

A. Review by Client Security Board.

1. Upon receipt of an oral or written complaint, regarding the potential Trust Account discrepancies of a particular Lawyer, the Chairman of the Client Security Board ("Chairman") shall conduct a preliminary review of the allegations and relevant facts and determine if there exists sufficient basis to conduct an audit.

2. If in the judgment of the Chairman an audit is warranted, he shall consult with the Chairman of the Commission on Practice and report to the Executive Committee of the Board of Trustees of the State Bar of Montana ("Executive Committee"). In making his report, the Chairman shall be bound by the confidentiality rules of the Commission on Practice and shall not disclose to the Executive Committee, or others, the name of the Lawyer, the city or town in which the Lawyer practices, or any other facts which will tend to disclose the identity of the Lawyer. Provided, however, that the confidentiality requirements will not preclude the inclusion of facts, names of places which have been made public by any form of media dissemination.

3. Upon direction of the Executive Committee the Chairman shall engage an auditor to examine the Trust Account in question. An auditor selected by the Chairman is to be an independent Certified Public Accountant or Certified Public Accounting firm, licensed in the State of Montana.

4. The Chairman will notify the Lawyer of the decision to conduct an audit and the name of the auditor in charge. Additionally, the Chairman shall provide the auditor with a Letter of Authority indicating the extent of the examination. The auditor shall present the Lawyer with a copy of this Letter of Authority.

5. As a part of the engagement, the Chairman will advise the auditor of the time period in question, and the Commission on Practice rules of confidentiality. Such audit is to be performed at the office of the Lawyer in question or such other place as the auditor and the Lawyer agree, so as to minimize the disruption of the Lawyer's practice. If any records, or copies thereof, are removed from the Lawyer's office, the auditor shall keep them under lock and key in the work area of his choice. Only personnel directly related to the audit may have access to these records.

B. Cooperation.

1. The Lawyer in question shall cooperate fully with and provide all documents and records requested by the auditor. Failure to cooperate with the auditor will result in immediate notification to the Commission on Practice.

C. Auditor's Duties.

1. The auditor in charge shall be a Certified Public Accountant. The auditor shall:

a. Prepare reconciliation of all ledgers, journals, check registers and bank statements for the period in question.

b. Examine and compare a sample of individual entries in ledgers, journals and check registers for consistencies related to a single transaction.

c. Examine and compare amounts, dates and payors/payees on cancelled deposit slips and checks to entries in the journals, ledgers and check registers.

d. Review ledgers, journals and check registers for business, personal and/or inconsistent use of Trust Account funds.

e. Provide to the Chairman a written report of the audit, with separate schedules for each Ledger where any discrepancies and inconsistent use of funds appear.

D. Audit.

1. On receipt of the auditor's final written report and the Lawyer's records, the Chairman will review the report and determine if it reveals any material discrepancy in the Account.

2. If a material discrepancy in the Account exists, the Chairman shall release to the Commission on Practice copies of the Lawyer's records, audit report and other pertinent information. At the same time, the Chairman shall notify the members of the Client Security Board of the result of the audit and convene a meeting of the Board to discuss what actions by the Board, if any, are appropriate.

3. If the audit discloses no material discrepancies, the Commission on Practice shall be advised and the records will be released to the Lawyer, as well as a copy of the auditor's report. The auditor's reports supplied to the Chairman by the auditor will be placed in confidential files and the files and matter closed.

E. Cost of Examination.

1. The cost of each audit shall be borne by the Client Security Fund of the State Bar of Montana until the results are known. In the event the audit leads to action by the Commission on Practice, or the Supreme Court of the State of Montana, the costs may be assessed against the offending Lawyer.

6. MONTANA SUPREME COURT RULE ON TRUST ACCOUNT OVERDRAFT NOTIFICATION

A. Clearly Identified Trust Accounts Required. Attorneys who practice law in this jurisdiction shall deposit all funds held in trust as the result of the practice of law in this jurisdiction in an account clearly identified as a "trust account," and shall take all steps necessary to inform the depository institution of the purpose and identity of such accounts. Attorney trust accounts shall be maintained only in financial institutions approved by the Client Security Board of the State Bar of Montana.

B. Overdraft Notification Agreement Required. A financial institution shall be approved as a depository for attorney trust accounts if it shall file with the Client Security Board of the State Bar of Montana an agreement, in a form provided by the State Bar, to report to the Client Security Board in the event any instrument in properly payable form is presented against an attorney trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The State Bar of Montana may establish rules governing approval and termination of approved status for financial institutions and shall annually publish a list of approved financial institutions.

No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the court.

C. Overdraft Reports. The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and shall include a copy of the dishonored instrument, if such a copy is normally provided to depositors;

(2) In the case of instruments that are presented against insufficient funds, but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment and the date paid, as well as the amount of the overdraft created thereby.

(3) Such reports shall be sent to the Client Security Board [Lawyers' Fund for Client

Protection] of the State of Montana at P.O. Box 577, Helena, MT 59624, in all cases.

D. Financial Institution Cooperation. In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Client Security Board and to produce any attorney trust account or attorney business account records upon receipt of a subpoena therefor. Every attorney or law firm shall be conclusively deemed to have consented to the reporting and production requirements mandated by this rule.

E. Costs. Nothing herein shall preclude a financial institution from charging a particular attorney or law firm for the reasonable costs of producing the reports and records required by this rule. Any costs incurred by the State Bar of Montana in investigating overdrafts reported under this rule shall be borne by the State Bar of Montana Client Security Fund in accordance with the Trust Account Maintenance and Verification Rule promulgated by the Montana Supreme Court.

7. MONTANA CASE LAW AND ETHICAL OPINIONS RELATING TO CLIENT TRUST ACCOUNTS AND FUNDS.

In the Matter of Joseph Engel, III, 2007 MT 172, 338 Mont. 179, 169 P.3d 345, 351.

Attorney's conduct in depositing retainers into his operating account violated rules of professional conduct governing retainer fees (Rules 1.15 and 1.18, MRPC). *See also, In the Matter of Joseph Engel*, 2008 MT 42, 341 Mont. 360, 177 P.3d 502.

State v. Craig W. Holt, 2006 MT 151, 332 Mont. 426, 139 P.3d 819.

An attorney's felony criminal conviction for theft of clients' funds held in a client trust account was upheld by the Montana Supreme Court.

Eatinger v. Robert L. Johnson, 269 Mont. 99, 887 P.2d 231 (1995).

Client sued lawyer for conversion of personal injury settlement funds. No written fee agreement and parties disputed terms of engagement for probate and for personal injury action. Personal injury settlement check deposited into trust account contrary to express written instructions from clients and disbursements made to lawyer without consent or agreement of clients. Supreme Court upheld jury verdict in favor of clients, including compensatory damages, punitive damages and costs.

In the Matter of Charles A. Gravely, 246 Mont. 58, 805 P.2d 1263 (1990).

Attorney censured for, among other things, failure to deliver funds to a third party.

In the Matter of William R. Morse, 245 Mont. 49, 798 P.2d 75 (1990).

Attorney disbarred for, among other things, failure to pay client amount received from adverse party in excess of fee payable by client, failure to hold client's funds separate and to account for disbursement of funds, and failure to make full accounting of all settlement money.

In the Matter of Neil Halprin, 244 Mont. 363, 798 P.2d 80 (1990).

Attorney disbarred for, among other things, failing to account to client as to application and disposition of payment made in wrongful discharge action and failure to keep records of trust account funds.

Wild West Motors, Inc., v. Lingle, 224 Mont. 76, 728 P.2d 412 (1986).

Once attorney was given funds by client for delivery to client's former wife in settlement of division of marital property dispute, attorney had duty to deliver funds to former wife promptly, and violated that duty by arranging for attachment of funds on behalf of another client, who was seeking to recover debt from former wife. Attorney held the funds from August 31 to March of the following year when the execution writ was issued.

“Ellingson's duty under the foregoing rule was upon receiving the monies in trust for Marcellamae to deliver the monies to her promptly. Ellingson's client, Robert Lingle, Sr. owed those monies to Marcellamae, in a marital matter entirely separate from the vehicle purchase. Ellingson could not properly ‘by agreement with his client’ frustrate the payment to Marcellamae. If his agreement with Robert Lingle, Sr. interfered with his duty of prompt payment as trustee, Ellingson as an attorney should not have accepted the trust. Having accepted the money in trust, it was his duty to transmit it promptly to Marcellamae. Instead he withheld the funds from Marcellamae from August 31, 1984, when he received the funds in trust, to March 8, 1985, when the prejudgment writ of attachment was ordered. The distribution of funds to Marcellamae is still subject to his signature and control today.

...

Even though here the trustor, Robert Lingle, Sr., authorized the self-dealing of the trustee, Ellingson as trustee was required to renounce all self-interest and to act in finest loyalty to the beneficiary within the terms of the trust. 76 Am.Jur.2d Trusts, 538-539, § 319. If the terms of the trust make loyalty to the beneficiary impossible, the trustee should decline the trust.

...

Ellingson. Once Ellingson received in trust possession of the legal payment for transfer to Marcellamae, his trust relationship barred his acting in any way disadvantageously to Marcellamae.”

State of Montana v. Oskar O. Lympus, 147 Mont. 68, 410 P.2d 445 (1966).

Attorney disbarred for failure to account for clients' funds held in trust account and failure to produce records regarding those funds.

Ethics Opinion 910226

May the balance of unpaid attorney's fees be withheld from funds held by the attorney for the client? No. An attorney does not have the authority to unilaterally determine the amount of the fee and withhold it from the funds held for the client over the client's objection.

“The majority view, however, is that, upon termination of representation, a lawyer may not withdraw funds from client trust accounts as a lawyer's fees or reimbursement for expenses without the consent of the client. *ABA/BNA Lawyers' Manual on Professional Conduct* (1987) at 45:1202, citations omitted. The client must agree on the right of the lawyer to make the withdrawal, the amount to which the lawyer is entitled, and the time of the withdrawal. *Id.*, citations omitted.”

<http://www.montanabar.org/displaycommon.cfm?an=1&subarticlenbr=108>

CONCLUSION

This Manual is intended to aid all Montana attorneys in fulfilling their fiduciary obligations to clients and third parties relative to funds held in trust. Proper handling of trust funds and property is not only an ethical and legal obligation to clients and third parties, it is essential to the trust and confidence the public has for the bar in general. Improper handling of trust funds or property can lead to embarrassment, disciplinary actions, loss of license and legal liability.

**Lawyers' Fund for Client Protection Board
State Bar of Montana
September, 2008**

APPENDIX A

IOLTA Information

The listings of IOLTA eligible financial institutions can be found at the Montana Justice Foundation website at:

<http://www.mtjustice.org/iolta.htm>

The Notice to Financial Institution of IOLTA Participation form shown on the next page is also available from the State Bar of Montana website at the following link:

[http://www.montanabar.org/associations/7121/files/IOLTA Form.pdf](http://www.montanabar.org/associations/7121/files/IOLTA%20Form.pdf)

NOTICE TO FINANCIAL INSTITUTION OF IOLTA PARTICIPATION

Send This Form To Your Bank or Savings & Loan

TO: _____
(Depository Institution)

FROM: _____
(Name of Lawyer or Law Firm)

RE: *Interest On Lawyers' Trust Accounts Program*

We are required to participate in the Interest On Lawyers Trust Accounts [IOLTA] Program established by the Supreme Court of Montana, under which a law firm or individual lawyer must deposit client funds in an interest-bearing checking account with the interest payable to the Montana Justice Foundation, a qualified charitable organization.

- We presently have a non interest-bearing client trust account, Account No. _____ which we request that you convert to an interest-bearing IOLTA checking account bearing the same number, so we can continue to use our existing checks. No change is made in the authorized signatures on file with your institution.
- We presently do not have a checking account for our client trust funds and must establish an IOLTA checking account for those funds.

We understand that you may require the completion of new signature cards and other documentation. Please advise us as to what you need in addition to our agreeing to the following terms and conditions governing our IOLTA account.

1. Taxpayer Identification Number certifications (IRS Form W-9s and 1099 information returns), if required, will show the Montana Justice Foundation, **Tax I.D. No. 81-0391131**, as the recipient of the interest. Such forms should be mailed to the Montana Justice Foundation.
2. Interest earned will be remitted monthly to the Montana Justice Foundation.
3. Please include with each remittance to the Montana Justice Foundation as follows:
 - (a) the name of the law firm or individual lawyer's trust account
 - (b) the account number
 - (c) the amount of interest earned on that particular account
 - (d) the amount of service charge deducted from the interest, if any
4. If your institution has IOLTA accounts for more than one participant, you may find it more convenient to send a single remittance check for all at the same time, but if you do so, please ensure that the statements applicable to all participants are forwarded at the same time so the Foundation can determine the exact allocation of the lump sum payment among the firms involved.
5. The Montana Justice Foundation will also transmit funds electronically via the Automated Clearing House which greatly reduces bank administrative costs associated with IOLTA.

The establishment of NOW trust accounts by law firms, including professional associations, to implement this program has been approved by the appropriate federal regulatory agencies. Copies of their opinions are available on request from the Montana Justice Foundation. Inquiries concerning the IOLTA program may be directed to the Montana Justice Foundation, P.O. Box 577, Helena, MT 59624, telephone (406) 442-7660.

Account Name: _____ Authorized Signatory: _____

APPENDIX B

SAMPLE TRUST ACCOUNT RECORDS

Financial Institution Account Register (“Check Register”)

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE

Cash Receipts Journal
Trust Account No. _____

DATE	CLIENT	SOURCE & DESCRIPTION	AMOUNT

Cash Disbursements Journal
Trust Account No. _____

DATE	CLIENT	CHECK	PAYEE	PURPOSE	AMOUNT

Client Ledger
Trust Account No. 123456

Name of Client: _____

Legal Matter or Adverse Party: _____

File or Case Number: _____

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE

Note: in the example transactions that follow, the Cash Receipts Journal and the Cash Disbursements Journal are not used because all of the required information is included in the Check Register as specifically permitted by Rule 1.d. of the Trust Account Maintenance rule.

Handling a Trust Account Transaction

DEPOSITS: Deposit the client funds in the appropriate trust account promptly upon receipt. Generate the following:

1. Deposit slip, (or a receipt for cash) which identifies the client and file for which the deposit is being made.
2. Check Register deposit entry.
3. Client Ledger entry.

DISBURSEMENTS: When making disbursements from the trust account, remember the following:

1. All disbursements should be made by check.
2. Prepare check with details of client and purpose.
3. Trust account checks must be signed by attorney or authorized personnel of the firm.
4. Record in Check Register.
5. Record in Client Ledger.

Sample Trust Account Transactions

Sally R. Leagle is a solo practitioner. On September 30, 2007, the bank statement balance for Leagle's IOLTA trust account is \$10,221.66. These funds are identified as follows:

1. \$10,000 represents escrow money which was deposited into Leagle's trust account on September 1, 2007, on behalf of her client Clint C. Klient.
2. \$200 represents funds of Sally R. Leagle which were deposited into the trust account in order to maintain a minimum balance necessary to avoid bank service charges.
3. \$21.66 represents the interest credited for the month of September which had yet to be paid by the bank to the Montana Justice Foundation.

The only subsidiary client ledgers with outstanding balances on September 30, 2007, are Klient, Leagle, and Montana Justice Foundation (interest). The following samples illustrate the status of attorney Leagle's trust account records.

Client Ledger
Trust Account No. 123456

Name of Client: Clint C. Klient

Legal Matter or Adverse Party: Real Estate Escrow – Hadley

File or Case Number: 07-161

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
9/1/07	DEP	Hadley escrow funds for Clint C. Klient		\$10,000.00	\$10,000.00

Client Ledger
Trust Account No. 123456

Name of Client: Interest for Montana Justice Foundation IOLTA Program

Legal Matter or Adverse Party: None

File or Case Number: None

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
8/31/07	Nominal deposit – bank min. balance			\$200.00	\$200.00

Client Ledger
Trust Account No. 123456

Name of Client: Sally R. Leagle, Attorney at Law

Legal Matter or Adverse Party: None

File or Case Number: None

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
9/30/07	September IOLTA interest credit			\$21.66	\$21.66

**Sally R. Leagle
Attorney at Law
Trust Account No. 123456**

Check Register

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
8/31/07		Nominal deposit – bank min. balance		\$200.00	\$200.00
9/1/07		Hadley escrow funds for Clint C. Klient		10,000.00	10,200.00
9/30/07		September IOLTA interest credit		21.66	10,221.66

On October 1, 2007, new client Lindsey J. Smith gives attorney Leagle a \$1,000 retainer for future legal services to be performed in the formation of a professional corporation. The retainer is to be placed in the trust account and withdrawn after it is earned.

**Client Ledger
Trust Account No. 123456**

Name of Client: Lindsey J. Smith
Legal Matter or Adverse Party: P.C. Formation
File or Case Number: 06-1057

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/1/07	Retainer from Lindsey Smith for P.C.			\$1,000.00	\$1,000.00

On October 5, 2007, client James Johnson is Court ordered to endorse his federal and state income tax refunds and deposit them into Leagle's trust account. The refunds will be distributed upon further order of the Court.

Client Ledger
Trust Account No. 123456

Name of Client: James Johnson
Legal Matter or Adverse Party: Marital Dissolution
File or Case Number: 06-1058

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/5/07	2006 federal & state income tax refunds			\$2,000.00	\$2,000.00

Sally R. Leagle
Attorney at Law
Trust Account No. 123456

Check Register

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
8/31/07	DEP	Nominal deposit – bank min. balance		\$200.00	\$200.00
9/1/07	DEP	Hadley escrow funds for Clint C. Klient		10,000.00	10,200.00
10/1/07	DEP	Retainer from Lindsey Smith for P.C.		1,000.00	11,200.00
10/5/07	DEP	James Johnson income tax refunds		2,000.00	13,200.00

On October 6, 2007, Leagle receives a settlement check from Ace Insurance Company for her client Bill Grey. Leagle prepares a written settlement statement, in accordance with the terms of the written contingent fee agreement:

Personal Injury
Settlement Statement
Bill Grey vs. Ace Insurance Company

Settlement Amount from Ace Insurance Company		\$ 15,000.00
Court Reporter, Inc.	\$ 400.00	
Process Server, Inc.	60.00	
Dr. George Bailey, Expert	<u>340.00</u>	
Total Expenses		800.00
Attorney Fees (per written fee agreement, 1/3 of gross received)		\$ <u>5,000.00</u>
Amount Due Bill Grey		\$ 9,200.00

On October 20, 2007, Leagle makes the disbursements from the Trust Account in accordance with the settlement statement after allowing ten business days for the insurance company check to clear.

Client Ledger
Trust Account No. 123456

Name of Client: Bill Grey
Legal Matter or Adverse Party: Grey v. Ace Insurance Co.
File or Case Number: 06-1002

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/6/07	Ace Insurance Co., settlement check			\$15,000.00	\$15,000.00
10/20/07	Court Reporter, Inc.	1005	400.00		14,600.00
10/20/07	Process Server, Inc.	1006	60.00		14,540.00
10/20/07	Dr. George Bailey	1007	340.00		14,200.00
10/20/07	Bill Grey – net settlement proceeds	1008	9,200.00		5,000.00
10/20/07	Sally R. Leagle – contingency fee - Grey	1009	5,000.00		0.00

**Sally R. Leagle
Attorney at Law
Trust Account No. 123456**

Check Register

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
8/31/07	DEP	Nominal deposit – bank min. balance		\$200.00	\$200.00
9/1/07	DEP	Hadley escrow funds for Clint C. Klient		10,000.00	10,200.00
10/1/07	DEP	Retainer from Lindsey Smith for P.C.		1,000.00	11,200.00
10/5/07	DEP	James Johnson income tax refunds		2,000.00	13,200.00
10/6/07	DEP	Ace Insurance settlement check - Grey		15,000.00	28,200.00
9/30/07	DEP	September IOLTA interest credit		21.66	10,221.66
10/20/07	1005	Court Reporter, Inc. – Grey settlement	400.00		27,821.66
10/20/07	1006	Process Server, Inc. – Grey settlement	60.00		27,760.66
10/20/07	1007	Dr. George Bailey– Grey settlement	340.00		27,420.66
10/20/07	1008	Bill Grey – net settlement proceeds	9,200.00		18,221.66
10/20/07	1009	Sally R. Leagle– contingency fee - Grey	5,000.00		13,221.66

On October 21, 2007, the court orders that \$1,500 be paid to Johnson’s wife from the escrowed income tax refunds.

**Client Ledger
Trust Account No. 123456**

Name of Client: James Johnson
Legal Matter or Adverse Party: Marital Dissolution
File or Case Number: 06-1058

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/5/07	2006 federal & state income tax refunds			\$2,000.00	\$2,000.00
10/21/07	Mrs. J. Johnson court ordered distribution	1010	1,500.00		500.00

On October 31, 2007, Leagle is retained by Sam Spade for a commercial litigation matter and paid a \$5,000 retainer which is to be withdrawn after earned.

Client Ledger
Trust Account No. 123456

Name of Client: Sam Spade
Legal Matter or Adverse Party: Spade v. Acme Properites, LLC
File or Case Number: 07-1096

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/31/07	Retainer from Sam Spade for Acme case			\$5,000.00	\$5,000.00

On November 1, 2007, Leagle sends a bill to Lindsey Smith \$250 for work during October on the professional corporation formation and on November 10, 2007 issues a trust account check for that amount to herself.

Client Ledger
Trust Account No. 123456

Name of Client: Lindsey J. Smith
Legal Matter or Adverse Party: P.C. Formation
File or Case Number: 06-1057

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
10/1/07	Retainer from Lindsey Smith for P.C.			\$1,000.00	\$1,000.00
11/10/07	Sally R. Leagle - Lindsey Smith Oct. fees	1011	250.00		750.00

Sample Trust Account Reconciliation

On November 12, 2007, Leagle receives her trust account bank statement for October, 2007. Before Leagle's IOLTA trust account can be reconciled, the check register and the client ledgers must be updated with the interest transactions and then balanced against each other.

1. **Check Register Balance.** On November 12, 2007, when the October bank statement is received and after the interest transactions are entered, attorney Leagle's trust account Check Register balance is \$16,472.50.

Check Register

DATE	CHECK	PAYEE OR DEPOSIT SOURCE & DESCRIPTION	AMOUNT OF CHECK	DEPOSIT AMOUNT	BALANCE
8/31/07	DEP	Nominal deposit – bank min. balance		\$200.00	\$200.00
9/1/07	DEP	Hadley escrow funds for Clint C. Klient		10,000.00	10,200.00
10/1/07	DEP	Retainer from Joan Smith for dissolution		1,000.00	11,200.00
10/5/07	DEP	2006 federal & state income tax refunds		2,000.00	13,200.00
10/6/07	DEP	Ace Insurance Co., settlement check		15,000.00	28,200.00
9/30/07	DEP	September IOLTA interest		21.66	10,221.66
10/20/07	1005	Court Reporter, Inc. – Grey settlement	400.00		27,821.66
10/20/07	1006	Process Server, Inc. – Grey settlement	60.00		27,760.66
10/20/07	1007	Dr. George Bailey– Grey settlement	340.00		27,420.66
10/20/07	1008	Bill Grey – net settlement proceeds	9,200.00		18,221.66
10/20/07	1009	Sally R. Leagle– contingency fee - Grey	5,000.00		13,221.66
10/21/07	1010	Mrs. J. Johnson court ordered distribution	1,500.00		11,721.66
10/31/07	DEP	Retainer from Sam Spade for Acme case		5,000.00	16,721.66
11/10/07	1011	Sally R. Leagle - Lindsey Smith Oct. fees	250.00		16,471.66
10/31/07	TRNSFR	Sept. interest to MT Justice Foundation	21.66		16,450.00
10/31/07	DEP	October IOLTA interest		22.50	16,472.50

Client Ledger
Trust Account No. 123456

Name of Client: Sally R. Leagle, Attorney at Law

Legal Matter or Adverse Party: None

File or Case Number: None

DATE	DESCRIPTION OF TRANSACTION	CHECK	FUNDS PAID	FUNDS RECEIVED	BALANCE
9/30/07	September IOLTA interest credit	DEP		\$21.66	\$21.66
10/31/07	Sept. interest to MT Justice Foundation	TRNSFR	\$21.66		0.00
10/31/07	October IOLTA interest	DEP		22.50	22.50

2. **Client Ledgers Trial Balance.** Leagle's Client Ledgers trial balance through November 12 is calculated by totaling all of the Client Ledgers that have an outstanding balance on November 12, 2007.

Client Ledgers
Trial Balance for October Reconciliation
 Trust Account No. 123456

CLIENT	BALANCE ON 11/12/07
Sally R. Leagle	200.00
Clint C. Klient	10,000.00
Joan Smith	750.00
James Johnson	500.00
Sam Spade	5,000.00
MT Justice Foundation	22.50
Trial Balance Total	<u>16,472.50</u>

3. **Trial Balances.** The Check Register balance and Client Ledger trial balance must be identical.

Check Register	\$16,472.50
Client Ledgers Trial Balance	\$16,472.50

Sample Monthly Trust Account Reconciliation

After the Check Register and Client Ledgers have been updated and balanced against each other, the October bank statement is reconciled with the trial balance figure of \$16,472.50. Here's a sample bank statement:

SALLY R. LEAGLE
 ATTORNEY AT LAW
 IOLTA TRUST ACCOUNT
 123 PRACTICE AVENUE
 JUSTICE, MT 59000

ACCOUNT NUMBER: 123456

CHECKING ACCOUNT SUMMARY FOR 10/01/07 THRU 11/12/07

<u>OPENING</u> <u>BALANCE</u>	<u>DEPOSITS</u>	<u>INTEREST</u>	<u>WITHDRAWALS</u> <u>AND CHECKS</u>	<u>SERVICE</u> <u>CHARGE</u>	<u>CLOSING</u> <u>BALANCE</u>
\$10,221.66	\$18,000.00	\$22.50	\$16,181.66	\$0.00	\$12,062.50

CHECKING ACCOUNT TRANSACTIONS

<u>DEPOSITS</u>	<u>DATE</u>	<u>AMOUNT</u>
50062	10/01/07	\$ 1,000.00
50145	10/05/07	2,000.00
62001	10/13/07	15,000.00
Interest	11/12/07	22.50

<u>WITHDRAWALS</u>	<u>DATE</u>	<u>AMOUNT</u>
Net Interest paid to MT Justice Foundation for September	11/5/07	21.66

<u>CHECKS</u>		
<u>ITEM</u>	<u>DATE</u>	<u>AMOUNT</u>
1005	10/25/07	\$ 400.00
1006	10/24/07	60.00
1008*	10/21/07	9,200.00
1009	10/23/07	5,000.00
1010	10/26/07	1,500.00

*denotes gap in check sequence

The bank statement balance is reconciled with the trial balances figure by adding: (1) the monthly service charge amount, if any; and (2) any outstanding deposits; and by subtracting: (3) any outstanding checks. In this example, the bank statement and the checkbook register reflect that check number 1007 in the amount of \$340 and check number 1011 for \$250 are still outstanding and that the \$5,000 Spade deposit has not yet been credited (deposited after 3:00 p.m. on October 31, 2007). There are no monthly service charges and the interest figure is taken from the bank statement.

MONTHLY RECONCILIATION

Period of 10/01/07 - 10/31/07

Trust Account No. 123456

Checkbook Balance		\$ 16,472.50
Client Ledger Trial Balance		\$ 16,472.50
Bank Statement Balance on 11/12/07	\$12,062.50	
Plus monthly service charge	0.00	
Plus outstanding deposits	5,000.00	
Less outstanding checks:		
Check 1007	\$340.00	
Check 1011	250.00	
Total outstanding checks	<u>(590.00)</u>	
Adjusted Bank Statement Balance		<u>\$16,472.50</u>

All of the records discussed above must be kept for a period of five years after termination of the representation. The above examples are used to illustrate some typical ongoing procedures necessary to maintain proper client trust account records. Lawyers may wish to consult with a reputable accountant to help them set up an accounting system which they and their staff can understand and follow.

The current rules do not reference use of computer software to maintain the required trust account records. The LFCP Board believes use of computer records is permissible provided hard copy records can be printed at any time for review or audits and provided an appropriate computer data backup system is in place and regularly utilized by the lawyer.