



# Lawyer Trust Funds Guidelines

published by



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THE MISSISSIPPI BAR

This handbook is provided by The Mississippi Bar as a public service only. It is designed as a practical non-authoritative guide in making trust account decisions which remain the ultimate responsibility of the individual lawyer.



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# Lawyer Trust Funds Guidelines

## Ethical Obligations

Mississippi's Rules of Professional Conduct impose strict fiduciary standards on any Mississippi lawyer who holds the property of others. These rules prohibit a lawyer from placing client or third party funds at interest for the lawyer or firm's benefit. Responsibility for compliance with these rules cannot be delegated to others. Many of these rules are absolute, and a lawyer's intent will not excuse a violation. Violations can result in professional disciplinary proceedings including disbarment. Therefore, it is in the lawyer's and the client's best interest that the lawyer thoroughly understand these fiduciary standards and rules.

The fiduciary nature of the attorney's duty and the need for public confidence in the legal profession places several burdens on a lawyer. First, in handling trust funds or property of others, the lawyer must act properly.

The lawyer is obligated to utilize certain protective procedures to minimize the possibility of wrongdoing and under no circumstances can the lawyer benefit either directly or indirectly from the handling of trust funds or property of others.

1. All property that is the property of clients or third parties must be kept separate and apart from the lawyer's business and personal property. See Rule 1.15(a), MRPC.
2. All monies must be placed in one or more trust accounts. Separate trust accounts may be warranted when administering money from estates or acting in similar fiduciary capacities.
3. All securities and properties of a client or third party shall be identified, labeled and promptly safeguarded. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances.

Each lawyer is personally responsible for the proper deposit and maintenance of trust funds. While necessity often requires delegation of administrative duties within a law practice, the lawyer still must establish, be familiar with and ensure the proper operation of adequate procedures for the handling of trust funds. Specifically, lawyers who delegate any part of their trust fund account responsibilities to staff must provide effective guidelines for the proper handling and maintenance of these accounts and supervise staff activities.

## Who Must Maintain A Trust Account

Every licensed Mississippi attorney who is engaged in the private practice of law, whether full-time or part-time and who, in that capacity, holds funds in which a client or third party has an interest must maintain a trust account for the deposit of those funds.

## What Funds Are Trust Funds

Mississippi Rule of Professional Conduct 1.15, entitled "Safekeeping Property," defines trust funds as funds in a lawyer's possession in which a client or third party has an interest.

Among the funds which are to be treated as trust funds are:

1. advances for fees received from clients, until they are actually earned by the attorney and
2. funds of clients or third parties that are being held for disbursement at a later time, such as personal injury awards, support payments, real estate conveyancing funds and litigation settlements.

It is the lawyer's responsibility to exercise good judgment in determining what funds shall be deposited in the trust account.

## Where to Deposit Trust Funds

Rule 1.15(a) requires that trust funds be deposited in an account separate and apart from the lawyer's, at a financial institution in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third party.

The lawyer or law firm should deposit trust funds in one of, or when necessary a combination of, the following insured checking accounts which provide for:

1. a separate interest-bearing account for each matter, on which the interest will be paid to the client or a third party;
2. a pooled interest-bearing account containing the funds from several matters, with subaccounting that will provide for computation of interest earned in each matter and payment thereof to the proper person or entity.
3. a pooled interest-bearing account for the deposit of all trust funds that are nominal in amount or expected to be held for a short period of time, with interest earnings paid to the Mississippi Bar Foundation, Inc. or
4. a pooled noninterest-bearing account for the deposit of all trust funds that are not invested for the benefit of the client or third party.

As a practical matter, it is the lawyer's responsibility to exercise good judgment in determining how trust funds are to be deposited or invested. Usually, when a lawyer holds a substantial amount of funds clearly identifiable to a client or third party for a long period of time, the lawyer should deposit those funds in a separate interest-bearing account for the benefit of the client or third party. The definition of "substantial" depends on the circumstances of each case—the larger the amount of funds, the shorter the period of time needed to justify the establishment of separate accounts for the funds and vice versa. Another option is the lawyer may pool such trust funds in a single account if and only if the lawyer can subaccount for all of the interest attributable to each party's funds and see that such interest is applied to that client or third party's balance.

In making the determination as to where to deposit trust funds, the lawyer should consider the costs of establishing and administering these types of accounts, including the cost of the lawyer and staff service and the cost of preparing any tax reports for interest accruing to a client or third party's benefit.

Another consideration in making the determination as to where to deposit trust funds is to ensure that all trust funds are adequately protected by FDIC coverage. The FDIC will impose a \$100,000 limit on any bank account, irrespective of the apparent number of owners or beneficiaries, **UNLESS** there is proper evidence of the fiduciary nature of the account from the deposit account records at the institution and the ongoing office records maintained by the attorney on behalf of the owner(s) of the money on deposit at the institution. As an alternative, the lawyer may require the financial institution to pledge assets in order to protect the funds within the accounts.

As a general rule of thumb, trust funds that are not invested for the benefit of a client or third party must be deposited in an interest-bearing account(s), with the interest being paid to the Mississippi Bar Foundation, Inc. To enroll the lawyer or law firm's trust account in this charitable program, the lawyer or law firm should obtain and complete a "Notice to Financial Institutions" form. The interest generated on such funds is taxable to the Mississippi Bar Foundation, Inc.—not to the lawyer, the client or third party.

There is an exception to the requirements stated in the immediate foregoing paragraph. The exception involves the lawyer or law firm that is exempt from the requirements of Rule 1.15(d) by virtue of the provision of Rule 1.15(g). Under these provisions, the lawyer or law firm declines to participate in the IOLTA program by notifying the Mississippi Bar within ninety (90) days after admission to the Bar.

## Opening A Trust Checking Account

When a lawyer or law firm opens a trust checking account(s), it is recommended that consideration be given to:

1. establishing the trust account at an institution other than that where the lawyer's or law firm's operating account is located;
2. including "Trust Account" in the title of the account to ensure evidencing the fiduciary nature of the account;
3. selecting checks of a different color than those of the operating account and
4. depositing a reasonable, small amount of funds in the trust account to handle bank charges. See section "Handling Bank Charges," on page 5.

The lawyer or law firm may not open an interest-bearing trust account, for the deposit of trust funds, for the benefit of that particular lawyer or law firm. This practice is unethical and will subject the lawyer or law firm to professional disciplinary proceedings. See Rule 1.15(d)(1), MRPC.

## General Accounting Procedures

The accounting system that documents the trust funds can be as uncomplicated as the manual approach described in this pamphlet or as sophisticated as necessary using a computerized accounting package.<sup>1</sup>

However, a lawyer need not be an accountant to keep proper trust account records. The lawyer should establish and maintain a system which ensures that the lawyer can document:

1. the amount on deposit in the trust account at all times;
2. the amounts on deposit in the trust account belonging to each client or third party; and,
3. how each transaction is processed.

A system that incorporates internal controls and properly documents the activity occurring in the trust account should be adequate for these record-keeping requirements.

A recommended accounting system should consist of the preparation and maintenance of a Trust Account Checkbook, Trust Account Receipts Journal, Trust Account Disbursements Journal and a Trust Ledger.

A description of the significance of each separate component of this system and how they work together follows.

**Trust Account Checkbook.** Utilizing the checkbook register or stub, a lawyer can easily maintain an accurate record of the running balance within the trust account by maintaining a chronological journal of the receipt and disbursement activity. Each receipt or deposit transaction should show the date, source of funds, name of person with an interest in the account and a brief explanation. Likewise, each disbursement transaction should show the date, check number, payee, and a brief explanation of purpose or person for whose benefit the money is paid and the amount.

Good internal control dictates that access to the trust account checkbook be limited to only the authorized signatories.

**Trust Account Receipts Journal.** This is nothing more than a chronological listing of all funds received. This journal is a recapitulation of the same information required to be maintained in the checkbook register or stub. This would include the date, source of funds, name of person with an interest in the account and a brief explanation (see Trust Account Receipts Journal Sheet, page 8).

**Trust Account Disbursements Journal.** This is a chronological listing of every disbursement made from the trust account. This journal is a recapitulation of the same information required to be maintained on the checkbook register or stub and reflects the date, check number, payee, purpose or person for whose benefit the money is paid and the amount (see Trust Account Disbursements Journal Sheet page 9).

**Trust Ledger.** A separate page or sheet should be prepared for each pending matter. This ledger sheet documents the chronological activity for each client or third party's funds. Entries on this sheet are posted from the activity originating in the checkbook register whereby funds have been received in trust showing the date received or the amounts of any disbursements, and any unexpended balance, with the balances kept up to date and properly organized so that accurate accounting of all trust funds can be provided immediately on request (see Trust Ledger Sheet, page 10). Under no circumstances should the lawyer ever disburse more funds than received in a matter. These separate subsidiary sheets can be organized in two three-ring binders. The first binder would be labeled as the "Open Account" ledger. Within this binder all of the separate subsidiary ledger sheets should be filed and maintained. The second binder would be labeled as the "Closed Account" ledger. This binder would be for the purpose of keeping all subsidiary ledger sheets on closed matters.

**Monthly Reconciliation.** At the end of each month the trust fund account(s) should be reconciled. A monthly trial balance of the entire subsidiary ledger, also showing the name of each client or third party's subaccount, should agree with the month-end checkbook register's running balance of the trust account. This figure is computed by taking the beginning balance, adding the

1. Since there are many different types of hardware and software capable of performing the tasks and functions described herein, the Bar will not recommend nor endorse any specific program but refers anyone who is interested in this topic to contact The Mississippi Bar's Resource Center or the American Bar Association's Resource Center.

total of funds received for the month and deducting the total of funds disbursed for the month (see Receipts/Disbursements Control Sheet, page 11).

**Bank Reconciliation.** When the month-end bank statements are received, a written reconciliation should be made among the trust account bank balance, the receipts and disbursements journals' totals, the checkbook balance, and the subsidiary ledger trial balance total (see Trust Account Reconciliation Sheet, page 12). This reconciliation should also include month end deposits which do not appear on the bank statements and a listing of all outstanding checks. All reconciliations should be saved with the bank records for future references. If possible, a person who is not normally involved in the client fund bookkeeping activities should perform the reconciliation.

**Accounting to Clients or Third Parties.** Periodically the lawyer should advise each person whose funds are held of the status of those funds. Adequate description should be provided indicating what receipts and disbursements have occurred and any unexpended balance. If there is objection to any proposed disbursement, such as for earned fees, those funds must remain in the trust account pending the resolution for the dispute.

## Deposits to the Trust Accounts

**Which Funds?** All funds that qualify as trust funds, as defined, shall be deposited into a trust fund account. The law firm should have a clearly expressed written policy, applicable to all attorneys and staff, specifying what funds are deposited into the trust account(s).

**When?** Promptly. Deposit of funds should be made daily.

**Where?** Trust funds should be deposited in one or more insured interest-bearing accounts unless the lawyer, or law firm with which the lawyer is associated is exempt from the requirements of Rule 1.15.

**How?** Sound accounting advice is to never transmit money without written communication. A voucher or other documentation for receipt and instruction should be prepared by the attorney instructing the person performing the bookkeeping function to deposit the funds into the trust fund account on behalf of the person or entity named in the voucher or receipt. Written communication avoids later arguments regarding deposit instructions and provides a needed audit trail.

**Notification.** Rule 1.15(b) requires that the client or third party be notified promptly of the receipt of their funds, securities, or other properties. Compliance avoids misunderstanding, mistakes and mistrust.

**Funds Availability.** A sound business practice dictates that before disbursement of trust funds, the client's or third party's check must clear through the banking process and be available for disbursement. If this precaution is not taken, and the initially receipted check or draft is returned for insufficient funds or a stop payment order is issued, the trust funds of other clients or third parties will be disbursed wrongfully. Since even cashier checks and certified checks are occasionally dishonored, the best policy is to be assured that the initial receipts clear the banking process.

**Disbursed Amounts.** Trust fund disbursements from a particular ledger must not exceed the funds received from or on behalf of that person. Otherwise, a wrongful taking of other client trust funds occurs, resulting in both civil and disciplinary liability. As a precautionary measure, the individual signing the check should have a photocopy of the particular subsidiary ledger sheet of the client or third party before authorizing disbursement of trust funds.

Disbursement procedures should be clearly stated in established rules for the firm.

**Transaction Authority.** Each disbursement transaction should be based upon a written voucher or other documentation, which provides the identity of the client or third party's account to be charged, the reason for the transaction, authority and approval for issuance of a trust account check by the lawyer.

**Authorized Signatures.** A determination as to the proper person(s) to sign trust checks is probably best left for each firm to decide. Generally, the person who prepares the checks should not have sole signatory authority. Good internal control dictates that access to the trust account checkbook be limited to authorized signatories, and that two signatures be required on all trust account checks. Regardless, no individual should sign a check unless presented with written documentation that the disbursement is proper, along with notice that the original receipted funds have cleared the banking process and are available for disbursement. The subsidiary ledger account should reflect the availability of the trust funds.

**Internal Audit Controls.** The reconciliation process should be performed entirely by personnel who are not involved in the bookkeeping process. The lawyer or firm administrator also should be involved in the process.

Internal controls are weakened when the same person who prepares the check also signs the check. Ideally, these functions should be separated, preferably between staff personnel and professional or management personnel. Also, bonding of the individuals who are signatories on the trust account is recommended.

**Handling Bank Charges.** The lawyer or law firm should consider depositing a small amount of funds in the trust account to cover bank charges for the costs of printing checks; deposit tickets; monthly service charges; a returned deposit item or some special charge. This practice might appear to be the commingling of the lawyer's personal funds with that of others. Although not specifically authorized, this practice is a recognized exception to the general rule of commingling since the funds are deposited with the purpose of being consumed rather than being disbursed and such funds will prevent the misappropriation of a client's or third party's funds. The lawyer or law firm properly accounts for such funds in the trust account, as with any other matter, by preparing a Trust Ledger sheet and calling it "Bank Charges." Charges are then recorded as they are incurred. When the balance on the ledger sheet becomes low, a new small deposit of funds is made to bring the balance up to a comfortable level.

**Record Retention.** All records of trust account funds and other property shall be kept by the lawyer and should be preserved for a period of seven (7) years after the termination of the representation. See Rule 1.15 (a), MRPC.

## Rule 1.15 "Safekeeping Property" of Mississippi's Rules of Professional Conduct

### Rule 1.15.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. 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 seven (7) 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.

(d) Nothing in these Rules shall prohibit a lawyer or law firm from placing clients' funds which are nominal in amount or to be held for a short period of time in one or more interest-bearing accounts for the benefit of the charitable purposes of a court-approved Interest on Lawyer Trust Accounts (IOLTA) program.

(e) Unless an election not to do so is submitted in accordance with the procedures set forth in subsection (g) of this Rule, a lawyer or law firm with which the lawyer is associated who receives client funds shall maintain a pooled interest-bearing depository account for the deposit of client funds that are nominal in amount or expected to be held for a short period of time. Such an account shall comply with the following provisions:

- (1) No earnings from such an account shall be made available to a lawyer or firm.
- (2) The account shall include all clients' funds which are nominal in amount or to be held for a short period of time.
- (3) An interest-bearing trust account may be established with any bank or savings and loan association authorized by federal or state law to do business in Mississippi and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any successor thereof. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.
- (4) The rate of interest payable on any interest-bearing trust account shall not be less than the rate paid by the depository institution to regular, nonlawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minima, such as those offered in the form of certificates of deposit, may be obtained by the lawyer or law firm on some or all of deposit funds so long as there is no impairment of the right to withdraw or transfer principal immediately.
- (f) Lawyers or law firms depositing clients' funds which are nominal in amount or to be held for a short period of time in an interest-bearing depository account under subsection (e) of this Rule shall direct that a depository institution:
  - (1) To remit interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with an institution's standard accounting practice, at least quarterly, to the Mississippi Bar Foundation, Inc.;
  - (2) To transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent and the rate of interest applied; and
  - (3) To transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.
- (g) A lawyer or law firm that elects not to maintain the account described by subsection (e) of this Rule shall, on or before November 1, 1993, make such election on a Notice of Election form provided by The Mississippi Bar. A lawyer admitted to The Mississippi Bar after August 1, 1993, who elects not to maintain such an account shall submit an appropriate Notice of Election within ninety (90) days after admission to the Bar.
  - (1) If a Notice of Election is not submitted within the applicable time, the lawyer or law firm shall be required to maintain the account described in subsection (e) of this Rule.
  - (2) Any lawyer or law firm may withdraw from participation in the program effective August 1 of any year by submitting an appropriate Notice of Election during the preceding month of July. A lawyer who wishes to change a previous election not to participate may do so at any time by notifying the Executive Director of The Mississippi Bar.
  - (3) Notwithstanding any provisions to the contrary herein, The Mississippi Bar may for good cause permit withdrawal from participation in the program at any time.

# MISSISSIPPI BAR FOUNDATION IOLTA PROGRAM NOTICE OF ELECTION

*This is an official notice. Your response is required to be in compliance with the Mississippi Rules of Professional Conduct Rule 1.15 as amended by the Supreme Court of Mississippi, June 10, 1993.*

The Supreme Court of Mississippi adopted an Opt Out Interest On Lawyers Trust Accounts (IOLTA) Program effective August 1, 1993. The undersigned attorney hereby declares compliance with the IOLTA rules by completing Parts I, II and if applicable Part III.

## **Part #1 (All attorneys must complete).**

Name \_\_\_\_\_ Bar # \_\_\_\_\_

Firm \_\_\_\_\_

Mailing Address \_\_\_\_\_

Street Address (if different from above) \_\_\_\_\_

City, State & Zip Code \_\_\_\_\_

Telephone ( ) \_\_\_\_\_ Fax ( ) \_\_\_\_\_

Date: \_\_\_\_\_ Signature \_\_\_\_\_

Name (type or print) of person signing \_\_\_\_\_

NOTE: If you are a member of a firm of two or more, please provide the names of all lawyers in the firm. A firm letterhead listing all the lawyers may be enclosed to provide the names.

## **Part II (All attorneys must complete).**

- 1. I presently have a non-interest bearing account(s) with the financial institution(s) listed below and hereby direct said instruction(s) to convert the non-interest bearing client trust account(s) listed below to an IOLTA account governed by the customary rules and procedures governing NOW (negotiable orders withdrawal) accounts with interest payable to the Mississippi Bar Foundation, Taxpayer ID #64-6029087. (See Part III)
- 2. I am currently a member of the Mississippi Bar Foundation IOLTA Program, having heretofore elected to participate. My current interest bearing trust account with interest payable to the Mississippi Bar Foundation is listed below. (See Part III)
- 3. I certify that I do not have a client trust account containing nominal or short term funds which is subject to the IOLTA Rule because of my professional activities (retired, judiciary, not in the practice of law, no legal activities in Mississippi, public sector attorney, other). I further attest I will notify The Mississippi Bar at such time as I establish a trust account containing nominal or short term client funds which is properly subject to the IOLTA Rule. (Do not complete Part III)
- 4. I hereby opt out of participation in the Mississippi IOLTA Program. My non-interest bearing client trust account information is listed below. (Do not complete Part III)

## **Part III (Complete only if you checked items 1 or 2 in Part II).**

Name of Account \_\_\_\_\_ Account Number(s) \_\_\_\_\_

Name & Branch of Financial Institution \_\_\_\_\_

Name of Account \_\_\_\_\_ Account Number(s) \_\_\_\_\_

Name & Branch of Financial Institution \_\_\_\_\_

Authorized Signature(s): \_\_\_\_\_

Please keep a copy for your records and return a copy to:

**Mississippi Bar Foundation  
Iolta Program  
P O Box 2168, Jackson MS 39225-2168**

Thank you for your cooperation. For additional information or assistance in completing this form, contact the IOLTA Coordinator at 1-800-682-6423.



# Trust Account Disbursements Journal

Month of \_\_\_\_\_ 19\_\_\_\_

Date	Check No.	Payee	Purpose	Person or Entity With Interest in Funds	Case or File No.	Amount



# Trust Account Reconciliation Sheet

As of the Month Ended \_\_\_\_\_, 19 \_\_\_\_

**Trust Ledger Balances**

**Amounts**

\$ \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Attorney Funds (Bank Charges)

**Total Trust Ledger Balances**

\$ \_\_\_\_\_ \*

**Receipts/Disbursements Control Sheet Balance**

\$ \_\_\_\_\_ \*

**Trust Account Checkbook Balance**

\$ \_\_\_\_\_ \*

Bank Statement Balance

\$ \_\_\_\_\_

Less: outstanding checks

\$ \_\_\_\_\_

Add: outstanding checks

\$ \_\_\_\_\_

**Reconciled Bank Statement Balance**

\$ \_\_\_\_\_ \*

\*These amounts must be identical to each other.

# Trust Account Receipts/Disbursements Control Sheet

for 19\_\_

Trust Funds			
Month	Received	Disbursed	Balance*
////////	////////	////////	\$
January	\$	\$	\$
February			
March			
April			
May			
June			
July			
August			
September			
October			
November			
December			
TOTAL			////////

\*This amount should agree with the Trust Account Checkbook register's running balance.

