

# KEEPING TRACK OF OTHER PEOPLE'S MONEY



*Massachusetts  
Rule of Prof. Conduct  
1.15*

2022

# Rule 1.15 “Safekeeping Property”

- Rule 1.15(a)(1): “Trust property’ means property of clients or third persons that is in a lawyer's possession in connection with a representation and includes property held in any fiduciary capacity in connection with a representation, whether as trustee, agent, escrow agent, guardian, executor, or otherwise.”

# A simple summary:

If you hold any client funds, you are required to:

1. Maintain them in a compliant Trust Account (a pooled IOLTA or an individual account).
2. Create and maintain the records set forth in Mass. Rule of Professional Conduct 1.15.
3. Conduct a Reconciliation of each such Trust Account at least every 60 days.

# Trust Accounts- Two types

Mass. R. Prof. C. 1.15(e)(6):

"Each lawyer ... who holds trust funds shall deposit such funds, as appropriate, in one of two types of interest-bearing accounts: **either** (i) **a pooled account ("IOLTA account")** for all trust funds which in the judgment of the lawyer are nominal in amount, or are to be held for a short period of time, **or** (ii) for all other trust funds, **an individual account** with interest payable as directed by the client or third person on whose behalf the trust property is held."

# Type One

## Individual Trust Account

- Set up for a designated client/ matter where you are holding a large sum and/ or are holding the sum for a longer time period, such that the funds will accrue appreciable interest that goes to client/ owner (account is opened in client's SSN or TIN)
- Requires standard (two-way) reconciliation (check register must match adjusted bank statement balance)
- Rule 1.15 records are required for this type of account, as well as for a pooled IOLTA account

# Type Two

## IOLTA (“Interest on Lawyers’ Trust Accounts”)

- The focus of today's discussion.
- A pooled trust account holding funds for multiple clients.
- It is set up under IOLTA's TIN, and the accrued interest is sent by your bank to the IOLTA Committee to be used to fund legal services.
- Used for funds that, in the lawyer's judgment, are “nominal in amount,” or are “to be held for a short period of time,” such that a separate account would not be warranted, i.e. the cost of administration would outweigh any interest earned for the client.
- No bright line for choosing between individual or IOLTA. Consult your client in close cases.

# The “Why” behind the Required Records

- You must keep track of how much money is in the trust account (via the main check register with a running balance.)
- In a pooled (IOLTA) account, you must keep track of how much of the total balance belongs to each individual client/matter (via the individual client ledgers with balances).
- In a pooled (IOLTA) account, you must avoid misusing client funds (writing a check for Client A that uses Client B’s money.)
- Maintaining these documents and conducting the required reconciliation at least every 60 days allows you to identify and correct mistakes quickly.

# Client funds are NOT fungible.

- Fundamental concept of pooled trust accounts, and a core purpose of Rule 1.15 records.
- You cannot disburse funds unless you have sufficient funds **FOR THAT CLIENT** in the account.



# All Client Funds Must be Held in a Trust Account

## What are “Client Funds”

- Retainers for fees
- Advances from clients for costs and expenses
- Settlement Checks or any other funds claimed by both client and attorney
- Any funds held subject to a third-party claim

# Non-Client Funds

- Non-client funds are
  - Earned fees
  - CPCS checks
  - Any other personal funds (except those to cover bank fees)
- Storing your personal funds with your clients' funds in a trust account is impermissible.

# Segregation of trust funds from lawyer's funds

- That means no depositing personal / firm funds into the IOLTA account, and no holding personal / firm funds in the IOLTA account.
- **One exception: personal/ firm funds sufficient to pay “reasonably anticipated” bank charges (generally \$100 - \$200; may be higher if special circumstances warrant).**
- Settlement checks consisting of your fee and your client's settlement must be deposited to a trust account, and upon the check clearing, you must promptly withdraw your portion from the trust account.

# The “How” of Keeping IOLTA Records

- You must keep CONTEMPORANEOUS records in THREE locations:
  - ❖ IOLTA Account Check register
  - ❖ Individual Client Ledgers for each client matter, AND
  - ❖ Bank Ledger for any personal / firm funds to cover bank fees (and to track interest)
- You must conduct a three-way reconciliation at least every 60 days

## Requirement One: Account Check Register

- The primary check register. All transactions must be recorded contemporaneously in chronological order
  - Date, amount and client identifier for every deposit
  - Date, check #, payee, amount and client identifier for every withdrawal
  - Date and amount of every interest debit and credit
  - Includes all types of transactions (check, wire, EFT)
  - Specific, consistent client identifier for each transaction
  - Running balance after each transaction

# Check Register Example:

DATE	TRANS TYPE / CHECK NUMBER	PAYEE	DEPOSIT	WITHDRAWAL	BALANCE	CLIENT MATTER
7/1/21	check	Attorney & Victoria, Queen	\$10,000		\$10,000	Victoria, Queen
7/1/21	check	Attorney	\$10,000		\$20,000.00	Arthur, King
7/6/21	1001	Attorney		\$3,333.33	\$16,666.67	Victoria, Queen
7/6/21	1002	Attorney		\$750.00	\$15,916.67	Victoria, Queen
7/6/21	1003	Victoria, Queen		\$5,916.67	\$10,000.00	Victoria, Queen
7/7/21	1004	Attorney		\$2,500.00	\$7,500.00	Arthur, King
7/10/21	Check	Attorney	\$100.00		\$7,600.00	Firm Funds
07/30/21	Interest		.14		\$7,600.14	Interest Earned
7/30/21	Bank Withdrawal	Bank		85.00	\$7,515.14	Firm Funds
7/30/21	1005	Attorney		\$1,500.00	\$6,015.14	Arthur, King
7/31/21	Interest			.14	\$6,015.00	Interest Remitted
7/31/21	Check	Attorney	\$85.00		\$6,100.00	Firm Funds

## A note on client identifiers:

- The **client identifier** can be any system the lawyer wants to use, provided it is used consistently throughout the register. Consistency is especially important if you use software.
- Examples of frequently used client identifiers are client name, file number, case number, docket number, claim number, and street address.

## Requirement Two: Individual Client Ledgers (The bundles that make up the whole)

### IOLTA ACCOUNT

Client Queen  
Victoria

Client King  
Arthur

Bank Fees/  
Firm Funds



# Ledgers for Each Client Matter

- Each individual client ledger must:
  - Name the client matter
  - Document all the funds received or disbursed within the IOLTA account for that client matter (date, source, payee)
  - Reflect the balance held following every transaction for the client matter
- This allows you to (1) look at any client ledger and instantly know the client's balance and (2) avoid making a disbursement on a client matter for which the account does not contain sufficient funds.
- The client ledger reflects money for the client held in that IOLTA account. Don't include other funds – like advanced expenses from your operating account – on the IOLTA client ledger.

# Example: Individual Client Ledger for Queen Victoria

## CLIENT LEDGER

**CLIENT MATTER: Queen Victoria**

DATE	TRANS TYPE / CHECK NUMBER	PAYEE	DEPOSIT	WITHDRAWAL	RUNNING BALANCE	NOTES
7/1/21	Check	Attorney & Queen Victoria	\$10,000		\$10,000	Settlement check
7/6/21	1001	Attorney		\$3,333.33	\$6,666.67	attorney fee
7/6/21	1002	Attorney		\$750	\$5,916.67	expenses reimbursement
7/6/21	1003	Queen Victoria		\$5,916.67	\$0	client payout

# Example: Individual Client Ledger for King Arthur

## CLIENT LEDGER

**CLIENT MATTER: King Arthur**

DATE	TRANS TYPE / CHECK NUMBER	PAYEE	DEPOSIT	WITHDRAWAL	BALANCE	NOTES
7/1/21	Check	Attorney	\$10,000		\$10,000	Retainer check
7/7/21	1004	Attorney		\$2,500.00	\$7,500.00	Attorney fee
7/30/21	1005	Attorney		\$1,500.00	\$6,000.00	Attorney fee

# Important Points

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Each client ledger must always start with a deposit for that client!

No individual client ledger should ever have a negative balance!

# Example: Bank Fees (Firm Funds) Ledger (and interest ledger)

## CLIENT LEDGER

**CLIENT MATTER:**

**Firm Funds (should not exceed \$200)**

DATE	TRANS TYPE / CHECK NUMBER	PAYEE	DEPOSIT	WITH- DRAWAL	BALANCE	NOTES
7/10/21	Check	Attorney	\$100		\$100	Personal funds deposit
7/30/21	Bank withdrawal	Bank		\$85	\$15	New check order
7/30/21	Interest		.14		\$15.14	Interest Earned
7/31/21	Interest			.14	\$15.00	Interest Remitted
7/31/21	Check	Attorney	\$85		\$100	Personal funds deposit

# Ledger for Bank Fees (Firm Funds)

The funds deposited to pay for “reasonably expected” bank fees and charges are the *only* personal funds a lawyer is permitted to hold in an IOLTA account

Do not hold more than \$200.00 unless circumstances warrant doing so (e.g. multiple wiring fees each month)

The Bank Fees ledger is also a convenient place to record interest earned and disbursed to IOLTA, especially if your bank does not credit and debit the monthly interest on the same day.

# Requirement Three: IOLTA Three Way Reconciliation Report

## RECONCILIATION WORKSHEET Individual Client Ledger Balances

As of Date: July 31, 2021

Name or Client ID:

Amount

1. \_\_\_\_\_ Firm Funds
2. \_\_\_\_\_ Queen Victoria
3. \_\_\_\_\_ King Arthur
4. \_\_\_\_\_

\$ \_\_\_\_\_ \$100.00  
\$ \_\_\_\_\_ \$ 0  
\$ \_\_\_\_\_ \$6,000.00  
\$ \_\_\_\_\_  
\$ \_\_\_\_\_ **\$6,100.00** \*

**Total of all Client Ledger Balances**

**Check Register Balance**

\$ \_\_\_\_\_ **\$6,100.00** \*

Bank Statement Balance: \$7,600.00 +  
Add: Outstanding Deposits \$0 -  
Subtract: Outstanding Disbursements \$1,500.00 =

**Adjusted Bank Statement Balance**

\$ \_\_\_\_\_ **\$6,100.00** \*

\* These three numbers must be identical

# **IOLTA Three Way Reconciliation Report Success!**

**Total Client Ledger Balances = \$6,100**

**=**

**Check Register Balance = \$6,100**

**=**

**Adjusted Bank Statement Balance = \$6,100**



# Helpful Resource

- The Massachusetts IOLTA Committee Manual
  - Found at [MAIOLTA.ORG](http://MAIOLTA.ORG)
  - Contains comprehensive info on IOLTA
  - Contains sample templates for the check register, the client ledgers and the reconciliation worksheet

# Reconciliation Report

- An attorney must REVIEW the reconciliation report.
- Reconciliation should identify inconsistencies between what the bank records show and what the lawyer's records show.
- Errors and inconsistencies identified in the reconciliation report must be corrected immediately. Be sure to document where and how you made any corrections.

# Watch Out for and ADDRESS Uncashed Checks and Positive Balances

- Mass. R. Prof. C. 1.15(c): “**Prompt** Notice and Delivery of Trust Property to Client or Third Person”
- Mass. R. Prof. C. 1.3: “Diligence”
- Uncashed checks:
  - High volume PI and Real Estate practices: recording fees, discharge fees, liens, real estate taxes
  - Personal injury settlements
  - Unused retainer balances

# Unidentified and Unclaimed Funds

- Matter of Olchowski, 485 Mass. 807 (2020)
  - IOLTA funds cannot escheat to the Treasurer
  - If you have such funds, they will be transferred to the IOLTA Committee upon bar counsel's motion to the SJC
  - See the OBC article at [massbbo.org](https://massbbo.org): "*Olchowski Decision and the Disposition of Unidentified and Unclaimed IOLTA Funds*"

# Compliance with Rule 1.15 is a Non-Delegable Duty

- Hiring a bookkeeper or office manager to maintain billing and/or financial records does not absolve the lawyer of the responsibility to comply with Mass. R. Prof. C. 1.15.
- Many title insurance companies audit their agents' accounts for compliance with their requirements. This does not mean the records are compliant with Mass. R. Prof. C. 1.15.

# Software Programs

- There are many different programs.
- Convenience of one-time input of information.
- BUT they generally do not produce the required records “out of the box.”
- You must ensure that the records generated contain the specific requirements enumerated in Rule 1.15(f)(1)(B),(C),(D) and (E). Your program’s “Reconciliation” may not be compliant.
- You may need to contact the software provider to determine how to produce the records you are required to maintain.

## More on Software Options

- The Office of Bar Counsel cannot recommend or verify the accuracy or utility of any particular software program, and has not formally vetted any products. The below list resulted from a search of Amazon.com. It is offered merely as an example of some of the available options that a practitioner may wish to review:
- Keeping Clients' Trust Accounts with QuickBooks Desktop 2018 Pro (\$4.99 kindle/19.99 softcover)
- Maintaining Client Trust Accounts with QuickBooks Online Essentials (2017) (\$4.99 kindle/19.99 softcover)
- Other People's Money: Keeping Trust Accounts Using CosmoLex (2016) (\$4.99 kindle/17.99 softcover)
- Maintaining Your Client Trust Accounts with Tabs3 (\$4.99 kindle/17.99 softcover)
- Maintaining Your Client Trust Accounts with TrustBooks (\$4.99 kindle/17.99 softcover)
- Keeping More Than One Trust Account Using Xero (\$3.99)
- Keeping a Single IOLTA Trust Account Using Xero (\$3.99)

# TIPS

- IOLTA checks should be distinctive in color or size to prevent you from mistakenly writing checks from the wrong account.
- Only the account holder should sign checks.
- The account holder should review the bank statement and checks.



# TIPS

- If the account cannot be reconciled, let it wind down
  - Start a new account with compliant records
  - Don't transfer money from the old account – keep it clean!
  - As the old account balance decreases, it may be easier to identify and address the remaining funds.
- Consider hiring a bookkeeper or accountant
  - Confirm that they understand the specific Rule 1.15 requirements
  - Massachusetts Society of CPAs [www.ms CPAonline.org](http://www.ms CPAonline.org)

# ADDITIONAL RULES

- Clearly identify the account as IOLTA or TRUST account
- No withdrawals from trust accounts via ATM and no checks payable to “Cash”
- Use pre-numbered checks only
- Never pay personal / business expenses directly from an IOLTA account. Transfer to personal / operating, then disburse.

# Funds Must Clear Before They are Disbursed

- A lawyer must verify that funds have cleared before disbursing funds.
  - Available and cleared are different. The lawyer must verify the funds have **CLEARED** before authorizing any disbursement.
  - Contact a senior officer at your bank and determine the bank's rules and policies on deposited items, holds, etc.
  - DO NOT give out post-dated checks.

# Credit Card & Payment Service Providers

- When accepting credit card payments or payments from processors such as Venmo, Square, PayPal, etc. there are some caveats:
  - Any processing fees should be addressed in your fee agreement as to whether the attorney or the client is responsible for them.
  - Processing fees should be withdrawn from your **OPERATING ACCOUNT**
  - Chargebacks should be withdrawn from your **OPERATING ACCOUNT** and not the IOLTA account.
  - For further information, see the OBC article at [massbbo.org](http://massbbo.org): “*No Easy Credit*”

# Keeping records by computer

A lawyer is responsible for creating and maintaining ALL RECORDS required by Mass. R. Prof. C. 1.15, regardless of what computer program is used.

Rule 1.15(f)(1)(G): *Electronic Record Retention. A lawyer... must maintain the check register, client ledgers, and reconciliation reports in a form that can be reproduced in printed hard copy. Electronic records must be regularly backed up by an appropriate storage device.*

It is recommended that Ledgers and Reconciliation Reports be printed. Older versions of some software may not function after a system failure. Make sure your software is up-to-date. Make sure that what you're seeing on your screen is what gets printed out.

**BACK UP YOUR FILES!**

# Account Documentation

- Keep it all

- Examples:

- Bank statements
    - All transaction records returned by the bank
    - Records of electronic transactions
    - Deposit receipts

- For Six Years

Rule 1.15 (f) requires keeping trust account records for **six years** after termination of the representation and the funds are paid out.

# How to Make Money

## Accounting to the Client When Money is Due

- Before withdrawing fees from IOLTA account
  - Send itemized invoice to client
  - Include amount and date of withdrawal
  - Include statement of account balance after withdrawal
- Final distribution
  - Lawyer must render full written account to the client

# Rule 1.15(h) Dishonored Check Notification

## Common problems that cause bounced checks:

- “I grabbed the wrong checkbook.”
- “My client begged me for a post-dated check.”
- “I deposited a settlement check and disbursed against it before it cleared.”
- “My banking app showed the funds as ‘available.’ ”
- “I / my secretary / the bank teller deposited the funds to the wrong account.”
- “I made a mistake and wrote a check for \$1550 instead of \$1500.”
- “I ordered checks but I hadn’t deposited personal funds into the account to pay for them.”
- “The bank made a mistake!” This might be true, but do you have the required records that would ensure that you caught the error?



# Resources



Ethics Hot Line  
617-728-8750  
MWF 2-4 pm  
[Massbbo.org](http://Massbbo.org)

Massachusetts  
IOLTA Committee

[Client Funds Manual 2018](#)

# QUESTIONS

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