

KEEPING TRACK OF OTHER PEOPLE'S MONEY



*Massachusetts
Rule of Prof. Conduct
1.15*

Updated March 2025

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)
- Requires Rule 1.15(f)(1) records (check register, bank fees ledger if applicable, reconciliation reports)

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 a 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.

- This is a 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 any fees charged by your bank)
- 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 (wire fees, charges for checks, any required opening deposit). Generally no more than \$200 unless special circumstances warrant.**
- Settlement checks consisting of your fee and your client's settlement must be deposited to a trust account, and upon the settlement check clearing, you must promptly withdraw your portion from the trust account.

The “How” of Keeping IOLTA Records

- Records must be kept CONTEMPORANEOUSLY
- The following records must be maintained:
 - ❖ IOLTA Account Check register
 - ❖ Individual Client Ledgers for each client matter, AND
 - ❖ Bank Fees and Charges Ledger for any personal / firm funds to cover bank fees, and to track interest
 - ❖ A three-way reconciliation at least every 60 days.

Requirement One: Account Check Register

- ALL transactions must be recorded in your check register
- Each transaction must be recorded contemporaneously and in chronological order
 - Date, amount and client identifier for every deposit
 - Date, check #, payee, amount and client identifier for every withdrawal.
 - Running balance after each transaction
 - Update cleared transactions each month upon receipt of monthly bank statement

Check Register Example:

DATE	TRANS TYPE / CHECK NUMBER	CHECK WHEN CLEARED	PAYEE of CHECK Or SOURCE of DEPOSIT	DEPOSIT	WITHDRAWAL	BALANCE	CLIENT MATTER
7/1/24	Check deposit		Attorney & Victoria, Queen	\$10,000		\$10,000	Victoria, Queen
7/1/24	Check		Attorney	\$10,000		\$20,000.00	Arthur, King
7/6/24	1001		Attorney		\$3,333.33	\$16,666.67	Victoria, Queen
7/6/24	1002		Attorney		\$750.00	\$15,916.67	Victoria, Queen
7/6/24	1003		Victoria, Queen		\$5,916.67	\$10,000.00	Victoria, Queen
7/7/24	1004		Attorney		\$2,500.00	\$7,500.00	Arthur, King
7/10/24	Deposit		Attorney	\$100.00		\$7,600.00	Firm Funds
7/30/24	Bank Withdrawal		Bank (check order)		85.00	\$7,515.00	Firm Funds
7/30/24	1005		Attorney		\$1,500.00	\$6,015.00	Arthur, King
7/31/24	Interest			.14		\$6,015.14	Interest Earned
7/31/24	Interest				.14	\$6,015.00	Interest Remitted
7/31/24	Deposit		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:
 - Identify 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	CHECK WHEN CLEARED	PAYEE	DEPOSIT	WITHDRAWAL	RUNNING BALANCE	NOTES
7/1/24	Check deposit		Attorney & Queen Victoria	\$10,000		\$10,000	Settlement check
7/6/24	1001		Attorney		\$3,333.33	\$6,666.67	attorney fee
7/6/24	1002		Attorney		\$750	\$5,916.67	expenses reimbursement
7/6/24	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	CHECK WHEN CLEARED	PAYEE	DEPOSIT	WITHDRAWAL	BALANCE	NOTES
7/1/24	Check deposit		Attorney	\$10,000		\$10,000	Retainer check
7/7/24	1004		Attorney		\$2,500.00	\$7,500.00	Attorney fee
7/30/24	1005		Attorney		\$1,500.00	\$6,000.00	Attorney fee

Important Points

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

No individual client ledger should ever have a negative balance!

Ledger for Bank Fees (Firm Funds)

The funds a lawyer deposits to pay for “reasonably expected” fees charged by the bank 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. incurring multiple wiring fees each month)

The Bank Fees ledger should also be updated upon receipt of each bank statement 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

- Upon receipt of each month's bank statement, update your check register and client ledgers to reflect transactions that have cleared the IOLTA account as reflected on the bank statement.
- After updating your records, prepare your three-way reconciliation report.

Check Register

Example updated to show cleared items per bank statement

DATE	TRANS TYPE / CHECK NUMBER	CHECK WHEN CLEARED	PAYEE of CHECK Or SOURCE of DEPOSIT	DEPOSIT	WITHDRAWAL	BALANCE	CLIENT MATTER
7/1/24	Check deposit	X	Attorney & Victoria, Queen	\$10,000		\$10,000	Victoria, Queen
7/1/24	Check	X	Attorney	\$10,000		\$20,000.00	Arthur, King
7/6/24	1001	X	Attorney		\$3,333.33	\$16,666.67	Victoria, Queen
7/6/24	1002	X	Attorney		\$750.00	\$15,916.67	Victoria, Queen
7/6/24	1003	X	Victoria, Queen		\$5,916.67	\$10,000.00	Victoria, Queen
7/7/24	1004	X	Attorney		\$2,500.00	\$7,500.00	Arthur, King
7/10/24	Deposit	X	Attorney	\$100.00		\$7,600.00	Firm Funds
7/30/24	Bank Withdrawal	X	Bank (check order)		85.00	\$7,515.00	Firm Funds
7/30/24	1005		Attorney		\$1,500.00	\$6,015.00	Arthur, King
7/31/24	Interest	X		.14		\$6,015.14	Interest Earned
7/31/24	Interest	X			.14	\$6,015.00	Interest Remitted
7/31/24	Deposit	X	Attorney	\$85.00		\$6,100.00	Firm Funds

Requirement Three: IOLTA Three Way Reconciliation Report

RECONCILIATION WORKSHEET

As of Date: July 31, 2024

Individual Client Ledger Balances

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

Reviewing The Reconciliation Report

- An attorney must promptly REVIEW each 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 any corrections you make, both on the check register and on the applicable ledger.

Identify and ADDRESS Uncashed Checks and Aging Positive Balances with each Reconciliation

- 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
- Aging Positive Balances:
 - Real estate holdbacks
 - Unused retainer balances

Helpful Resources

- The IOLTA Resources page at the Board of Bar Overseers website (massbbo.org), located under the Resources tab of the main page
 - Sample record-keeping templates
 - Information about trust account trainings
- The Massachusetts IOLTA Committee website (maiolta.org)
 - Client Funds Manual with comprehensive information about IOLTA, including sample record-keeping templates
 - Information and Instructions for transferring unidentified and unclaimed funds to the IOLTA Committee

Unidentified and Unclaimed Funds - New Rules 1.15(h) and 1.15(i) Effective September 1, 2024

- Matter of Olchowski, 485 Mass. 807 (2020)
 - IOLTA funds cannot escheat to the Treasurer.
 - If you have such funds, they must be transferred to the IOLTA Committee. (Go to MAIOLTA.Org for instructions.)
 - For background, see the OBC articles at massbbo.org:
“Olchowski Decision and the Disposition of Unidentified and Unclaimed IOLTA Funds” and *“Unidentified and Unclaimed Funds in IOLTAs May Result in Public Discipline”*

Unidentified and Unclaimed Funds - New Rules 1.15(h) and 1.15(i) Effective September 1, 2024

- Rule 1.15(h) general provisions:
 - Lawyers must only open IOLTA accounts at approved banks that have agreed to send notices to the Board of Bar Overseers of (1) dishonored checks and (2) IOLTA accounts that have been dormant (exclusive of interest transactions) for more than three years.
 - If a lawyer receives and does not respond within one year to a bank's notice of a dormant IOLTA account, the bank will close the account and disburse the balance to the IOLTA Committee.

Unidentified and Unclaimed Funds - New Rules 1.15(h) and 1.15(i) Effective September 1, 2024

- New Rule 1.15(i) “Disposition of unidentified and unclaimed funds in IOLTA accounts” main provisions:
 - A lawyer who discovers that an IOLTA account contains unidentified or unclaimed funds must promptly make reasonable and diligent efforts to address those funds.
 - Funds that cannot be identified or disbursed despite such efforts must be transferred by the lawyer to the IOLTA Committee within three years of the discovery of such funds.
 - If a lawyer transfers unclaimed funds of a client to the IOLTA Committee, the lawyer must retain that client’s file for a period of ten years following the transfer. See Mass. R. Prof. C. 1.15A(e)(4).

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 software programs. The Office of Bar Counsel cannot recommend or verify the accuracy or utility of any particular program, and has not formally vetted any products.
- 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.

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 each bank statement upon receipt for any issues.

TIPS

- If you have an IOLTA account that 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

ADDITIONAL RULES

- As required by Rule 1.15(e):
 - 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.

Deposited Funds Must Clear Before They are Disbursed

- A lawyer must verify that deposited funds have **cleared** before disbursing against them.
 - Available does not mean cleared.
 - 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**, not the IOLTA account
 - Chargebacks should be withdrawn from your **OPERATING ACCOUNT**, not the IOLTA account.
 - For further information, see the OBC article at 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.* Make sure that what you're seeing on your screen is what gets printed out.

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.

BACK UP YOUR FILES!

Account Documentation

- Keep it all
 - Examples:
 - Bank statements and copies of checks
 - All transactions returned by the bank including cancelled checks and records of electronic transactions
 - Records of deposits separately listing each deposited item and the client or third person for whom the deposit is being made.
- Required Accounting and Records

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

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

Massachusetts
IOLTA Committee
Client Funds Manual 2018