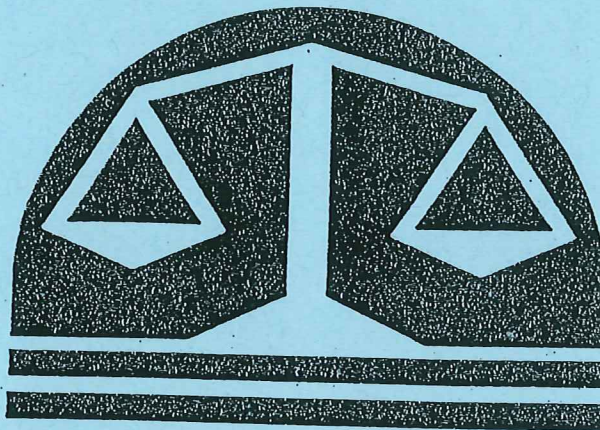


MONEY OF OTHERS
ACCOUNTING FOR LAWYER
TRUST ACCOUNTS



KANSAS BAR FOUNDATION

PUBLISHED BY:
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Dear Kansas Lawyer:

This handbook is provided by The Kansas Bar Foundation 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 acting under the Court's rules.

The Kansas Supreme Court in its "Rules Relating to the Discipline of Attorneys," MRPC 1.15, has set out the ethical requirements of accounting for client and third party funds and property. The lawyers of our state have the responsibility of making lawyer trust account decisions. The Kansas Bar Foundation has developed this handbook as a guide for lawyers in the responsible handling of client trust funds.

The Kansas Bar Foundation appreciates the assistance of Justice Bob Abbott and Bruce Miller in encouraging the development of this manual and in editing the material. The Foundation welcomes your comments on the content of this information in preparation of future editions.

Sincerely,



Mikel Stout, President

The Kansas Bar Foundation

INDEX

Ethical Obligations	1
Definition of Lawyer Trust Account	1
Persons Required to Maintain a Trust Account	2
Purpose of Lawyer Trust Account	2
Definition of a Trust Fund	2
Bank Service Charges	2
Interest on Lawyer Trust Accounts	2
IOLTA (Interest on Lawyer Trust Account)	3
Large Trust Deposits	3
Other Bank Accounts	4
Advance Legal Fees	4
Required Accounting for Trusts	5
Lawyer Trust Account Checkbook	5
Lawyer Trust Account Receipts Journal	6
Lawyer Trust Account Disbursements Journal	6
Lawyer Individual Trust Account Ledger	6
Sample Trust Account Records	8
Other Records to Maintain	9
Reconciliations	9
Accounting to Clients or Third Parties	9
Methods of Safeguarding Client Funds	10
Sample Record Keeping Documents	12
MRPC 1.15	17

What are a lawyer's ethical obligations regarding client funds?

A lawyer in possession of client funds and property is a fiduciary. The lawyer must safeguard and segregate those assets. This obligation also applies to money and property of non-clients coming into a lawyer's possession in the practice of law. They must be preserved and cannot be commingled with the lawyer's personal and/or business assets. These funds must be deposited in a government insured account located in Kansas. All records concerning the funds must be kept for five years after the representation ceases or the possession of funds ends.

A lawyer is obligated to notify a client promptly when client funds or property are received; provide the client with appropriate accountings; and disburse promptly to the client or third party all funds and property to which each person is entitled. Non-cash property like bonds and securities should be clearly identified as client property and secured in the lawyer's safe or safe deposit box. The court's ethical rules reflect a fiduciary's key duties of notification, segregation, delivery and accounting.

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. It is better practice that all signatories on trust accounts be lawyers.

The record keeping requirements involve sound procedures for recording cash coming in (the cash receipts journal), cash going out (the cash disbursement journal) and a consistent, reliable, and separate system for recording all trust account transactions for each individual client (subsidiary ledger). The cash receipts journal and the cash disbursement journal can be nothing more than regular check book entries which identify the date and amount of funds deposited and the client whose behalf the funds were received.

What is a lawyer trust account?

A lawyer trust account is a "special" bank account, usually a checking or savings account, which must be maintained in an insured account located within the State of Kansas. A lawyer may have none, one or several trust accounts depending on need. Typically trust accounts will be one of four varieties.

- 1) A "pooled" interest earning IOLTA (Interest on Lawyer Trust Account) account. Client funds that are nominal in amount or expected to be held for a short period of time may be deposited therein. IOLTA pays the net interest earned on the account to the Kansas Bar Foundation as provided for in MRPC 1.15(3)
- 2) A "pooled" interest bearing account with subaccounting performed by the lawyer or financial institution which provides for computation of interest earned by each client's funds and the payment thereof to each client. Client funds that are substantial in amount or expected to be held for a longer time may be deposited therein.
- 3) A "pooled" non-interest bearing account. If a lawyer chooses not to participate in the IOLTA program, MRPC 1.15(3), client funds that are nominal in amount or expected to be held for a short period of time may be deposited therein.

- 4) An individual interest bearing account which provides for the payment of the earned interest to the client. Client funds that are substantial in amount or expected to be held for a longer time may be deposited therein.

Withdrawals from a lawyer trust account must be made to named payees, not to cash. Lawyer trust accounts must be maintained separately from the lawyer's personal and business accounts. The account should be designated, **Lawyer Trust Account**, with the checks and deposit slips imprinted with that title. This helps segregate these funds from attorney funds which might be attachable. A lawyer should not benefit either directly or indirectly from the handling of trust funds or property of others. Multiple trust accounts may be required if deposits exceed government insurance limits presently set at \$100,000.00.

Who must maintain a lawyer trust account?

Every licensed Kansas 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. Lawyers who do not hold clients' or third party funds need not establish a trust account.

What is the purpose of a lawyer trust account?

The purpose is to safeguard clients' funds from loss, and to avoid the appearance of impropriety. The lawyer trust account is a depository for all funds coming into a lawyer's possession which belong to a client and/or other persons. Funds belonging partly to a client and partly to a lawyer, presently or potentially, must also be deposited in the attorney trust account. The lawyer's portion may be withdrawn only after "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." MRPC 1.15(c). The portion not in dispute should be promptly distributed.

What funds are trust funds?

All funds received by a lawyer in connection with a representation in which a client or a third person has an interest are trust funds and should be deposited in a trust account. Among the funds which are to be treated as trust funds are advances for fees received from clients, until they are actually earned by the lawyer; funds of others that are being held for disbursement at a later time; 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 belong in the trust account.

What about bank service charges?

A lawyer may deposit funds into the lawyer trust account to pay bank service charges, and other fees incurred in connection with the account. Arrangements can sometimes be made with financial institutions to bill the lawyer directly for the expenses of a pooled non-interest bearing account. The latter course is better practice. In an IOLTA account the bank's service charges or fees associated with participating in the IOLTA program are paid by the Kansas Bar Foundation, Inc.

What about interest on a lawyer trust account?

A lawyer as a fiduciary cannot benefit from the administration of a trust account. All interest or other income earned on a client trust account belongs to the client or person whose money generated the interest.

[K.B.A. Ethical Opinion 80-52 (2-13-81)]. Canon 11 of the A.B.A. 1908 Canons of Professional Ethics succinctly stated the applicable ethical considerations when it said:

Canon 11 — Dealing with Trust Property. The lawyer should refrain from any action whereby for his personal benefit or gain he abuses or takes advantage of the confidence reposed in him by his client.

Money of the client or collected for the client or other trust property coming into the possession of the lawyer should be reported and accounted for promptly, and should not under any circumstances be commingled with his own or be used by him.

This Canon is why trust accounts have traditionally been required to be opened as non-interest bearing accounts. The concepts of Canon 11 have been carried forward into the Rules of Professional Conduct.

The theory behind the IOLTA program is that non-interest bearing accounts do produce income which is being kept as a windfall by the financial institution. This windfall is diverted by the IOLTA program from the bank to the Kansas Bar Foundation, Inc. where it is spent to fund legal aid services and other law-related programs.

What is IOLTA?

IOLTA is the acronym for the Interest On Lawyer Trust Account program, which was established by court rule in 1984. Under the IOLTA program, a lawyer is permitted — indeed encouraged — to make the lawyer trust account productive for the profession. An IOLTA account is designed for short-term and nominal deposits of client funds that would ordinarily be pooled together in a non-interest bearing checking account. The Kansas Bar Foundation, Inc. collects the interest on these accounts statewide. This revenue is used by the IOLTA Commission to fund civil legal services for the poor, and legal programs to improve the administration of justice. IOLTA also assumes bank service charges and fees on the account which result from the establishment of an IOLTA account. The IOLTA program is administered by the Kansas Bar Foundation.

As of June 1, 1992, the Kansas Supreme Court has ruled that all lawyers who practice in Kansas and hold client funds in trust must indicate whether they choose to place their nominal and/or short term non-interest bearing trust account in an interest-bearing IOLTA account. Those who do not affirmatively “opt-out” will be enrolled in the program.

How should large trust deposits be handled?

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. When the amount of trust funds of an individual client and the length of time those trust funds are to be kept indicate that the interest earned would substantially exceed the administrative costs and bank charges, the lawyer should invest the funds in an interest bearing account for the benefit of the client. The definition of “substantially exceed” 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. A lawyer may consult the client or third party before investing and follow their instructions as to investing the funds. The lawyer should be mindful of applicable income tax reporting requirements and advise the client or third party of the requirements. “In the case of an extreme violation of the lawyer's fiduciary duty to invest a client's funds amounting to gross neglect of a client's matter, moreover, the model code would provide a basis for professional discipline.” A.B.A. Formal Opinion 348, “Placing Client's Funds at Interest,” July 23, 1982, (the IOLTA opinion).

In determining what funds should go into a pooled trust account, lawyers should exercise good faith judgments. Some factors which should be considered in making this determination are the:

1. directions of the client or third party;
2. amount of the funds;
3. period of time funds are expected to be held;
4. likelihood of delay in the transactions and proceedings;
5. cost of establishing and maintaining an interest-bearing account;
6. minimum balance requirements and service charges or fees imposed;
7. and administrative costs of preparing tax reports for interest accruing to a client or third party's benefit.

Lawyers are expected and encouraged to continue the customary practice of establishing separate, interest-bearing accounts for individual clients' funds where the sum is large enough or when the time of the deposit is of sufficient duration to justify the costs of opening, closing and administering the account. For your information the table below shows the number of days a specified amount of money takes to produce \$50.00 in interest income at 5 1/4% compounded daily.

Amount/Days Needed to Produce \$50 Interest at 5 1/4%

PRINCIPAL	NO. OF DAYS
\$ 500	654
1,000	335
2,000	169
5,000	69
10,000	34
20,000	17
30,000	12

Another consideration in making the determination as to where to deposit trust funds is to ensure that all trust funds are adequately protected by government insurance coverage. (\$100,000.00 limit on trust funds because of present limit on government insurance.) As an alternative, the lawyer may require the financial institution to pledge assets in order to protect the funds within the accounts.

The IOLTA program has the ability to refund interest on request of a participating lawyer on any funds improperly held in an IOLTA account.

Are other bank accounts required?

Yes. A lawyer needs at least one business account as a depository for legal fees, and to pay operating expenses. The checks on these accounts should designate the account, "Jones & Smith Business Account"; or "Jones & Smith Professional Account"; or "Jones & Smith Office Account"; etc. Whereas the trust account should be designated as "Jones & Smith Lawyer Trust Account." Consideration should also be given to establishing trust account(s) at an institution other than that where the lawyer's or law firm's operating account is located and to selecting checks of a different color and/or size than those of the lawyer's operating account.

Where are advanced legal fees deposited?

MRPC 1.5(b) requires the conditions and rate of an attorney's fee to be communicated to a client preferably in writing in all cases except contingent fee cases where the fee agreement must be in writing.

Whether a retainer fee is deposited in the trust account or the lawyer's business account depends upon the lawyer's fee agreement with the client. If the advance fee becomes the lawyer's property when it is paid by the client (i.e. a 'flat fee' agreement), the fee should be deposited in the firm's business account not in the lawyer trust account. If, on the other hand, the advance fee is to remain client property until it is earned by the lawyer (i.e. a 'retainer' or 'advanced fee' agreement), it should be deposited in the lawyer trust account, to be withdrawn by the lawyer after accounting, notification and severance of interest without dispute all pursuant to MRPC 1.15. In either event, a lawyer has a professional obligation to refund unearned legal fees to a client whenever the lawyer completes or withdraws from a representation, or the lawyer is discharged by the client.

What accounting of lawyer trust accounts is required?

The accounting system that documents the trust funds can be as uncomplicated as the minimal approach described in this manual or as sophisticated as necessary within an integrated software program of a computerized accounting package. 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 of funds within the trust account at all times;
2. the amounts within the trust account belonging to each subaccount (client or third party); and
3. how each transaction was 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. The cash receipts journal and the cash disbursement journal can be nothing more than regular check book entries which identify the date and amount of funds deposited and the client whose behalf the funds were received. While no specific accounting system is mandated, a lawyer should maintain all law firm financial records in accordance with generally accepted accounting practices.

A basic trust accounting system could consist of a trust account checkbook; a trust account receipts journal; a trust account disbursements journal; and an individual trust account ledger containing the individual ledger accounts for recording each financial transaction affecting that client's funds. A description of the significance of each separate component of this system and how they work together follows.

Lawyer 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 deposit transaction should show:

- a. the date,
- b. source of funds or name of person with an interest in the account, if different,
- c. a brief explanation,
- d. amount of deposit,
- e. balance on hand in trust account.

Likewise, each disbursement transaction should show:

- a. the check number,
- b. date,
- c. payee,

- d. brief explanation of purpose of the transaction,
- e. amount of the check, and
- f. balance on hand in trust account.

Good internal control dictates that access to the trust account checkbook be limited to only the authorized signatories. This part of the accounting system by itself does not keep track of individual records as to each client or third party within the pooled lawyer trust account.

Lawyer Trust Account Receipts Journal.

This is nothing more than a chronological listing of all funds received. This journal contains the same information required to be maintained in the checkbook register or stub for a receipt-deposit transaction plus a running total of receipts. This would include:

- a. the date,
- b. source of funds or name of person with an interest in the account, if different,
- c. a brief explanation including client file or case number,
- d. amount received,
- e. a running total of receipts.

Lawyer Trust Account Disbursements Journal.

This is a chronological listing of every disbursement made from the trust account. This journal contains the same information required to be kept in the checkbook register or stub plus a running total of disbursements. These items are:

- a. the check number,
- b. date,
- c. payee,
- d. brief explanation of purpose of the transaction,
- e. amount of the check,
- f. a running total of disbursements.

The use of these two journals (receipts and disbursements) provides the double entry accounting system which builds integrity and reliability into the accounting system because everything must stay in balance as proven by the reconciliations discussed later.

Lawyer Individual Trust Account Ledger.

Each individual client or third person's account could be maintained as a separate page in the lawyer's individual trust account ledger. This ledger sheet documents the chronological activity for each person's account. Entries on this sheet are posted from the activity originating in the checkbook register with the balances kept up to date so an accurate accounting all trust funds can be provided immediately upon request of the client or the third party involved by simply making a copy of the lawyer individual trust account ledger sheet and providing it to the client or third party.

At a minimum, each individual trust account ledger sheet should reflect:

- a. the date funds were received or dispersed,

- b. a description of each transaction including to whom the funds were received from or paid to,
- c. check number,
- d. amount of funds received or paid out,
- e. balance of account at end of transaction.

Under no circumstances should the lawyer ever disburse more funds than received in a matter, nor at the end of the representation involved should there be any monies left on the individual trust account ledger.

These separate individual trust account ledger sheets can be organized alphabetically in two three-ring binders. The first binder would be labeled as the "Open Account" ledger. Within this binder all of the separate individual trust account 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 individual trust account ledger sheets on closed matters.

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 person's individual trust account ledger sheet before authorizing disbursement of trust funds.

Whether it be a lawyer trust account or the lawyer's business account, each should be maintained daily and accurately. All source documents like duplicate deposit slips, bank statements, cancelled checks, and check stubs should be preserved for five years after termination of representation or cessation of possession of funds, whichever occurs later. A lawyer should also preserve copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with a client.

There are computer software packages for law office trust accounting which easily meet the minimum accounting standards outlined herein.

SAMPLE FORMAT OF TRUST ACCOUNT RECORDS

Lawyer Trust Account Checkbook Register

Check No.	Date	Payee or Deposit Source	Explanation	Amount of Check	Deposit Amount	Balance

(this is just a normal check book register)

Lawyer Trust Account Receipts Journal
Trust Bank Account No. _____

Month of _____ 19____
Page No. _____

Date	Receipt No.	Source/Client/Case No.	Explanation	Deposit Amount	Running Total

Lawyer Trust Account Disbursements Journal
Trust Bank Account No. _____

Month of _____ 19____
Page No. _____

Check No.	Date	Payee	Explanation	Amount of Check	Running Total

Lawyer Individual Trust Account Ledger

Name of Client or Third Party _____
Legal Matter or Adverse Party: _____
File or Case Number: _____

Date	Description of Transaction	Check No.	Funds Paid	Funds Received	Balance

What other records must be maintained?

In addition to records previously mentioned every lawyer should maintain for five years after termination of representation or possession of funds, the original or copies of all client retainer and fee agreements; statements to clients showing disbursements of funds; receipts; bills rendered to clients; records showing payments to other lawyers or non-employees for services rendered; and retainer, settlement and closing statements. In the event of a dissolution of a law firm, appropriate arrangements must be made for the maintenance of the firm's records, either by a former partner or the successor law firm.

How often must a reconciliation be made?

It is recommended that on a monthly basis, depending upon the size of the account or the amount of usage, there are several reconciliations that should be made. The lawyer trust account checkbook register balance must match the combined balance of the lawyer trust account receipts and disbursements journals which must match the total balance of all the lawyer trust account ledger sheets which must in turn match the reconciled monthly bank statement balance.

In other words at the end of each regular accounting period the trust fund account(s) should be reconciled. A trial balance of the entire lawyer individual trust account ledger showing the name of each subaccount, should agree with the end checkbook register's running balance of the trust account. This figure is computed by taking the beginning balance, adding the total of funds received for the period and deducting the total of funds disbursed. When the 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 individual trust account ledger trial balance total. This reconciliation should also include 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. A document similar to the Lawyer Trust Account Reconciliation Sheet as shown herein may be used to make the necessary reconciliations.

When should there be an accounting to clients or third parties?

Periodically, the lawyer should advise each person whose funds are held of the status of those funds. An adequate description or a copy of the person's lawyer individual trust account ledger sheet 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 resolution of the dispute.

What are some methods of safeguarding client funds?

The security of a trust account can be measured by the interest/attention the attorney devotes to the operation of the account. The following safeguards are suggested:

- An Attorney should try not to sign checks to be disbursed or deposited in haste.
- Use pre-numbered checks and periodically examine the sequential order of blank, void, and canceled checks and question any unexplained break in numbers. For this reason, it is suggested voided checks be retained. Keeping blank checks under someone's control during the day, secured at night, and insuring the checks are all accounted for when someone resigns or is terminated can help reduce theft.
- When the client indicate she has paid in cash, ask if a receipt was provided. The receipt book can be examined periodically to determine if any copies of the receipts have been removed or voided, which should be questioned.
- If possible, posting, depositing, and disbursing trust account funds should be done by different personnel in the office. If this is not possible due to limited staff, an attorney may want to reconcile the trust account periodically or have an independent party do so. Do not sign blank checks and do not make a check out to cash or bearer. Check to see if the client's file contains documentation supporting disbursements.

- Ensure deposits are made in a timely manner, daily if possible. Control who opens bank statements and correspondence regarding the trust account and review periodically.
- Estate accounting should be verified. Old or inactive estates become a prime target for embezzlement.
- Require supporting documentation of accounting reports/reconciliations. (bank statements, canceled checks, deposit slips, correspondence, etc.) Check periodically to determine if only designated personnel in the office have had access to office mail. Prohibit or at least restrict removal of trust account records from the office. Question lifestyle changes of individuals with access to the trust account. (increase of social activities/travel, new wardrobe, new car, etc.) Examine signature(s) on trust account checks to short stop forgery attempts.
- 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 in to the trust fund account on behalf of the person or entity names in the voucher or receipt. Written communication avoids later arguments regarding deposit instructions and provides a needed audit trail.
- 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 if practical 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 lawyer individual trust account ledger should reflect the availability of the trust funds. Disbursement procedures should be clearly stated in established rules for the firm.

Lawyer Trust Account Checkbook Register

Check No.	Date	Payee or Deposit Source	Explanation	Amount of Check	Deposit Amount	Balance

Lawyer Trust Account Receipts Journal
 Trust Bank Account No. _____

Month of _____ 19____
 Page No. _____

Receipt
 Date No. Source/Client/Case No.

Deposit Running
 Amount Total

Date	No.	Source/Client/Case No.	Explanation	Deposit Amount	Running Total

LAWYER TRUST ACCOUNT RECONCILIATION SHEET

As of the Month Ended

_____ 19 ____

Lawyer Individual Trust Account Ledger Balances

Amounts

\$ _____

Note: Need separate line for each person's account as shown in the lawyer individual trust account ledger.

Attorney Funds for Bank Charges, if any

\$ _____ *

1. Total Lawyer Individual Trust Account Ledger Balances

\$ _____ *

2. Balance of Lawyer Trust Account Receipts Journal and Lawyer Trust Account Disbursements Journal

\$ _____ *

3. Lawyer Trust Account Checkbook Register Balance

Bank Statement Balance \$ _____

less: outstanding checks _____

add: in transit deposits _____

4. Reconciled Bank Statement Balance \$ _____ *

*These amounts (1, 2, 3, and 4) must be identical to each other.

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 a separate account maintained in the State of Kansas. 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.

(d) Preserving identity of funds and property of a client.

- (1) All funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited in one or more identifiable accounts maintained in the State of Kansas with a federal or state chartered or licensed financial institution and insured by an agency of the federal or state government, and no funds belonging to the lawyer or law firm shall be deposited therein except as follows:
 - (i) Funds reasonably sufficient to pay bank charges may be deposited therein.
 - (ii) Funds belonging in part to a client and in part presently or potentially to the lawyer or law firm must be deposited therein, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (2) The lawyer shall:
 - (i) Promptly notify a client of the receipt of the client's funds, securities, or other properties.
 - (ii) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.
 - (iii) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer and render appropriate accountings to the client regarding them.
 - (iv) Promptly pay or deliver to the client as requested by a client the funds, securities, or other properties in the possession of the lawyer which the client is entitled to receive.
- (3) Except as provided in subsection (3)(iv), any lawyer or law firm that creates or maintains an account for funds of clients or third persons, that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons shall comply with the following provisions:

- (i) Such an account shall be established and maintained with a federal or state chartered or licensed financial institution located in Kansas and insured by an agency of the federal or state government. Funds shall be subject to withdrawal upon request and without delay.
- (ii) If the account bears interest, the rate of interest payable shall not be less than the rate paid by the institution to regular, non-attorney 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 a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately.
- (iii) If the account bears interest, lawyers or law firms that deposit client funds in such an account shall direct the depository institution:
 - (aa) to remit at least quarterly, to the Kansas Bar Foundation, Inc., interest or dividends, as the case may be, on the average monthly balance in the account or as otherwise computed in accordance with the institution's standard accounting practice; and
 - (bb) 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 the interest applied; and
 - (cc) 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.
- (iv) A lawyer or law firm that elects not to comply with Rule 1.15(d)(3)(iii):
 - (aa) shall file a Notice of Declination with the Clerk of the Appellate Courts on or before the beginning of the next annual registration period under Supreme Court Rule 208; or
 - (bb) Notwithstanding the foregoing, may file a Notice of Declination with the Clerk of the Appellate Courts at such other time, after July 1, 1992, that a decision to decline is effected.
- (v) Every lawyer who has not previously registered or who is required to register under Supreme Court Rule 208 shall be provided the opportunity, at the time of initially registering, to elect or decline to comply with Rule 1.15(d)(3)(iii) (the IOLTA program) on such forms as the Clerk of the Appellate Courts may prescribe.

COMMENT

A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. 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 of Kansas. Interest earned on client's funds shall not be retained by an attorney. The lawyer or law firm must deposit trust funds in one

or more of the following insured accounts:

1. a separate interest-bearing account for each matter, on which the interest will be paid to the client or third party; or
2. a pooled noninterest-bearing account for the deposit of all trust funds that are not invested for the benefit of the client or third person if the lawyer or law firm elects to decline under Rule 1.15(d)(3)(iv); or
3. a pooled interest-bearing account for the deposit of all trust funds that are nominal in amount or that are expected to be held for a short period of time, with interest earnings paid to the Kansas Bar Foundation under the IOLTA program (Interest on Lawyer Trust Account); or
4. 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 credited proportionately to the client or third party for the benefit of whom the funds are held.

Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

Lawyers often receive funds from third parties from which the lawyer's fees will be paid. If there is a risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client and accordingly, may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

The obligations of a lawyer under this rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct by a lawyer. Where such a fund has been established, a lawyer should participate.