
**THE STATE BAR OF SOUTH DAKOTA,
THE COMMITTEE ON CONTINUING LEGAL EDUCATION,
THE COMMITTEE ON LAW PRACTICE MANAGEMENT,
THE DISCIPLINARY BOARD OF THE STATE BAR,
and ATTORNEYS LIABILITY PROTECTION SOCIETY**

present

**CLIENT TRUST ACCOUNTS
AND TRUST ACCOUNTING
FOR SOUTH DAKOTA LAWYERS**

**June 17, 1998
Washington Room
Ramkota Inn
Sioux Falls, South Dakota**

STATE BAR OF SOUTH DAKOTA OFFICERS 1997-98

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**Please take a moment at the close of this program to evaluate this program.
Your input is important to the CLE Committee.
Thank you.**

I. ESTABLISHING A CLIENT TRUST ACCOUNT

Presented by

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I. ESTABLISHING A CLIENT TRUST ACCOUNT

Presented by
Ms. Patricia A. Meyers

I. *The Rules for Client Trust Accounts.*

- A. Rules of Professional Conduct 1.15(a) provides:
“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.”
- B. Rules of Professional Conduct 1.15(d)(1) provides:
“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 bank accounts maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm shall be deposited therein ...”
- C. SDCL 16-18-20.2(1) provides:
“The minimum trust accounting records which shall be maintained are ... [a] separate bank account or accounts and, if utilized, a separate savings and loan association account or accounts. Such accounts shall be located in South Dakota unless the client otherwise directs in writing. The account or accounts shall be in the name of the lawyer or law firm and clearly labeled and designated as a ‘trust account.’”
- D. The trust account Certificate of Compliance ¶6 (SDCL 16-18-20.2) requires that each year a lawyer certify:
“During the fiscal period ended _____, I, or the firm of which I am a member, as the case may be, maintained books, records and accounts to record all money and trust property received and disbursed in connection with my/our practice, and as a minimum I/we maintained: ...
(e) A separate bank account or accounts located in South Dakota, in the name of the lawyer or law firm and clearly labeled and designated a ‘trust account.’”
- E. In *State v. Myers*, 88 SD 378, 389, 220 NW2d 535 (1974) Justice Dunn, concurring, said:
“The intermingling of a client’s funds with his own by an attorney is a serious breach of trust I am sure that most attorneys have trust accounts for their clients’ funds, but to those few who don’t ... this charge of embezzlement should be a red alert; a trust account for clients’ funds becomes imperative... .”

II. *Setting Up the Client Trust Account.*

- A. Obtain the name of the bank representative who supervises the client trust account.
1. Ask bank for notice of any change in the bank representative.
2. Check periodically for change in representative.
- B. Obtain the bank charge schedule and check periodically for changes.
1. Lawyer must always have sufficient funds in the account to cover charges.

- Note:** Unless the bank agrees to assess trust account charges against the office account.
2. Rule 1.15 allows deposit of lawyer's funds for this purpose.
 - a. The cost of the check blanks.
 - b. Deposit at least that amount immediately.
- C. Bank forms the lawyer must have:
1. Signature card.
 2. Account agreement.
 3. Deposit slips.
 4. Check blanks.
 - a. Checks must be consecutively numbered,
 - b. Clearly denominated as "trust account" checks, and
 - c. For individual clients, account must be denominated by client's name,
- Note:** SDCL 16-18-20.1 requires "records be preserved for 5 years."
- D. Basic banking procedures the lawyer should know.
1. Timing of banking procedures.
 - a. Bank's schedule for clearing deposits:
 - (1) Checks on same bank – next day.
 - (2) Checks on other local banks – 3 to 5 days.
 - (3) Checks on other banks in the same Federal Reserve District – 5 to 7 days.
 - (4) Checks on other banks in a different Federal Reserve District – 7 to 10 days.
 - b. Verification of electronic funds transfers.
 - (1) When an electronic transfer is made, the sending and receiving banks generate a computer printout with details of date, time, accounts, and amounts.

Note: Always obtain a copy for records when EFT is used.
 - (2) Some banks have a Wire/Funds Transfer Activity Record which they will provide to document outgoing and incoming electronic transfers.
 2. Method of bank's reporting of canceled checks.
 - a. SDCL 16-18-20.2 requires:
 - (1) Original cancelled checks, or
 - (2) Copies of both sides of the original checks by:
 - (a) Truncation, or
 - (b) Check imaging, or
 - (c) The equivalent.
 3. Bank statement information and date.
 - a. Rule 1.15(c) requires monthly reconciliations to make sure that office records match the bank's records.
 - b. A monthly reconciliation date can be scheduled if the receipt date of the bank statement is known.
 - c. Knowledge of the receipt date of the bank statement can guard against theft by an associate or an employee. (Beware of the lost bank statement!)

III. *The Requirements for Client Trust Accounts.*

- A. The Rule 1.15 applies to funds and property coming into a lawyer's possession.
1. The rule applies to funds and property of a client or third person.
 2. The rule requires an **account** separate from lawyer's property.
CAVEAT: DO NOT use substitutes for a bank account, *e.g.*:
 - (1) Do not buy cashier's checks with client funds,
Discipline of Tidball, 503 NW2d 850 (SD 1993)
 - (2) Do not put cash in envelope in office safe,
Louisiana State Bar v. Williams, 512 So2d 404 (LA 1987)
 - (3) Do not use promissory note to client,
Attorney Grievance Com'n v. Powell, 614 A2d 102 (MD 1992)
 - (4) Do not use a "cash management account" at the lawyer's stockbroker,
In re Lochow, 469 NW2d 91 (MN 1991)
 3. The rule includes advances for costs and expenses be deposited in a client trust account.
 4. The rule allows one or more client trust accounts.
 - (1) Only one common client trust account is recommended.
 - (a) Record keeping will be less complicated.
 - (b) Exceptions: lawyer or firm with multiple locations.
 - (c) Caution: office-sharing lawyers with the appearance of a partnership may be responsible. *See e.g., Myers v. Aragona*, 318 A2d 263 (MD App 1974)
 - (2) Multiple individual interest-bearing client trust accounts.
 5. The rule requires client funds be kept in the state where the office is situated.
 - a. Lawyers practicing in South Dakota: common client trust bank account must be maintained in South Dakota.
 - b. Lawyers practicing in South Dakota: client funds may be kept in a separate client trust account out of South Dakota only with the consent of the client.
See also SDCL 16-18-20.2 which requires client consent be **in writing**.
 - c. Lawyers licensed in South Dakota but maintaining practice in another state: when representing a South Dakota resident, it is recommended that lawyer have client give written consent to keep their funds out of South Dakota.
- B. Account and documents must identified as a client trust bank account.
1. The name of any client trust account must clearly tell the bank, clients, employees, the payees, and the State Bar that it is a "trust account."
 - a. Common client trust account documents must be clearly identified as such.
e.g.:

**Larry Lawyer
Trust Account**
 - b. It is recommended that client trust account documents be different than those relating to personal or office account.
E.g., have the client trust bank account checks printed on paper that's a different size, design, or color than other checks.

2. Separate client trust account documents must clearly identify the client's name.
 - a. Individual client account must be denominated by client's name,

e.g.: **Loretta Lawyer**
 Vivian Viktum Trust Account
3. Trust Account Certificate of Compliance covers all accounts denominated as "trust account."
4. SDCL 16-18-20.1 requires complete records be preserved for a period of five years after final distribution of trust funds and properties.

IV. **Common-sense Requirements for Client Trust Accounts.**

- A. Limit accessibility of funds.
 1. Lawyer should be only person authorized to sign client trust bank account checks
 - a. If secretaries, bookkeepers, office managers, associates or managing partner are authorized signatories:
 - (1) Lawyer is personally accountable for all client funds received or held in trust,
 - (2) Lawyer's responsibility can't be delegated to anyone else,
 - (3) Malpractice insurance may not cover employee's intentional acts.
 - b. Lawyer's children should not be given signatory rights to trust account.
See e.g., Matter of Gambino, 619 NYS2d 305 (NY AD2 1994)
 - c. Lawyer's secretaries, bookkeepers, and spouses should not be given signatory rights to trust account. *See e.g., Matter of Stransky*, 612 A2d 373 (NJ 1992).
 2. Lawyer should not use a signature block check writer or a signature stamp.
 3. Lawyer should not pre-sign client trust bank account checks for employees to issue.
See e.g. Matter of Struthers, 877 P2d 789 (AZ 1994).
- B. NO ATM access.
 1. ATM access makes it possible for anyone with the account code to withdraw clients' funds in cash.
 - a. ATM withdrawals are an audit trail disaster.
 - (1) There is nothing to show which client's money was withdrawn.
 - (2) There is nothing to show who withdrew the money.
 - (3) There is nothing to show who the money was paid to.
 - b. An ATM receipt won't prove to clients or the Disciplinary Board what happened to the money.
See e.g. In re Lochow, 469 NW2d 91 (MN 1991)
 2. Most banks do not offer ATM for business accounts; if this service is offered make sure the correct type of account has been established.
- C. NO automatic overdraft protection.
 1. "Automatic overdraft protection" means the bank automatically makes a personal loan to cover the amount of insufficient funds.
 - a. The account should never have insufficient funds.
 - b. A lawyer can't deposit personal funds into the client trust account.
But see Matter of Chariff, 633 NYS2d 618 (NY AD3 1995) for deposits to correct errors.
 2. The "instant credit" arrangements are also a violation of the rules.

3. Regardless of overdraft protection, an insufficient funds check on a client trust bank account must be reported on the Certificate of Compliance.
- D. FDIC coverage.
1. Rule 1.15(d)(3)(c) requires IOLTA accounts to be in “[a] bank ... insured by the Federal Deposit Insurance Corporation.”
 - a. FDIC insurance only covers \$150,000 per client, and \$100,000 per client trust bank account.
 - b. The per-client limit includes all money the client has on deposit at that bank.
 2. Even when covered by FDIC, clients may miss a business opportunity for which the lawyer may be liable.

V. *Separate Interest Bearing Client Trust Accounts.*

- A. Separate client trust accounts are required:
1. When a client’s money is more than a “nominal” amount.
 2. When a client’s money is held for more than a “short period of time.”
 3. Lawyer’s discretion to deposit in common account or separate account.
 - a. Rule 1.15(e)(3)(d) applies to attorneys with IOLTA accounts:

“The determination of whether clients’ funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each attorney or law firm. Such judgment is not subject to review.”

 - (1) Discretion in deposit to IOLTA accounts **IS NOT** subject to review.
 - (2) New York has ruled that a *good faith* decision absolves lawyer from liability for interest on funds placed in IOLTA account. *See e.g., Takayama v. Schaefer*, NY SupCt AppDiv, ABA/BNA *Lawyers Manual on Professional Conduct*, Current Reports, Vol. 14, No 5, p. 119.
 - b. Rule 1.15(e)(4)(d) applies to attorneys who do NOT have IOLTA accounts:

“The determination of whether clients’ funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each attorney or law firm.”

 - (1) Discretion in deposit to non-IOLTA accounts **IS** subject to review.
 - (2) Will a lawyer who does not use sound discretion be liable for lost interest.
 - (a) Rule of Professional Conduct 1.15(e)(4)(b) provides for non-IOLTA accounts “[t]raditional attorney-client relationships do not compel attorneys either to invest clients’ funds or to advise clients to make their funds productive.”
 - (b) *Cf., Wangsness v. Berdahl*, 69 SD 586, 13 NW2d 293 (1944) on civil liability for handling client funds.
 - c. Advising clients of deposit to non-IOLTA account.
 - (1) Client has the right to elect to pay for the cost of separate *interest-bearing* client trust account.
 - (a) Add notice to fee agreement or engagement letter that “client funds will be kept in non-interest bearing trust account.”
 - (b) Advising client will eliminate “nominal in amount” or “short period of time” and issues if “exercise of discretion” proves wrong.

- (2) Advising clients of cost of separate interest-bearing client trust account.
 - (a) Get exact figures for bank charges (fixed and monthly), checks, and transaction charges.
 - (b) Determine time and cost for office bookkeeping (fixed and monthly).
 - i) Use the same figures for all clients.
 - ii) Document file with signed acknowledgment.
 - (c) Determine the current rate of interest charged by the bank.
- (3) Client has the right to elect to pay for the cost of separate *interest-bearing* account.

VI. “*IOLTA*” Accounts – Interest On Lawyers Trust Accounts.

A. Rules of Professional Conduct 1.15(d)(3) provide:

“A lawyer may elect to create and maintain an interest-bearing account for clients’ funds which are nominal in amount or to be held for a short period of time ...”

1. Rationale:

- a. Clients funds are often so small or held for such short periods of time that the interest earned for the client in a separate interest-bearing account would be less than the costs involved in opening or accounting for the interest.
- b. Collectively the funds can generate substantial interest which would otherwise benefit only the bank.
- c. Funds can be utilized for public benefit and education through Bar Foundation.

2. Rules of Professional Conduct 1.15(e)(1)

“[IOLTA] is a voluntary program based upon the willing participation by attorneys and law firms, whether proprietorships, partnerships or professional corporations.”

3. Advice to clients.

- a. Rule of Professional Conduct 1.15(e)(3)(e) provides for IOLTA accounts:

“Notification of clients whose funds are nominal in amount or to be held for a short period of time is unnecessary for those attorneys and firms who choose to participate in the program. This is not to suggest that many attorneys will not want to notify their clients of their participation in the program in some fashion. ...”
- b. Client has the right to request to pay for the cost of separate *interest-bearing* account.
 - (1) Add notice to fee agreement or engagement letter that funds will be kept in interest bearing IOLTA account.
 - (2) Notice should eliminate “nominal in amount” or “short period of time” issues.

B. Rules of Professional Conduct 1.15(d)(3)(a) provides:

“No earnings from the funds may be made available to any attorney or law firm.”

1. It *must* be set up so that the interest the account earns will be paid to the State Bar for the State Bar Foundation, or

2. It *must* be set up so that the interest the account earns will be paid to the client.
See e.g., ***Matter of Gambino***, 619 NYS2d 305 (NY AD2 1994)
- C. Setting up an “IOLTA” account.
1. Rule 1.15(d)(3)(c) provides:
“An interest-bearing trust account may be established with any bank authorized by federal or state law to do business in South Dakota and insured by the Federal Deposit Insurance Corporation. Funds in each interest-bearing trust account shall be subject to withdrawal upon request and without delay.”
 2. Provide the bank with the IOLTA “Notice to Financial Institution.” *See* Form 1.
 3. Send the “Notice to State Bar Foundation” to the State Bar office. *See* Form 2.
 - a. Attach a blank deposit slip or a voided blank check for the account.
 - b. Attach a list of the names of all the attorneys using the account.
 - c. Mail form to:
State Bar of South Dakota
222 East Capitol Avenue
Pierre, SD 57501-2596
 4. The account will have State Bar Foundation’s taxpayer identification number.
 - a. 1099s will be sent to the State Bar Foundation.
 5. The bank automatically transmits the interest to the State Bar Foundation.
 6. The bank handles the reporting requirements. *See* Form 3.
 7. The bank’s fee for IOLTA services is paid out of the interest the account earns.
 - a. When the monthly service fee is greater than the interest earned, the unpaid portion of the service fee is deducted from the interest earned on other IOLTA accounts.
 - b. The State Bar Foundation may request that the lawyer revoke participation if costs consistently exceed interest.
- NOTE:** Lawyer is still responsible for paying check printing and other charges.

VII. Other Property.

- A. Rules of Professional Conduct 1.15(a) provides:
“A lawyer shall hold property of clients or third persons ... separate from the lawyer’s own property ... [and] other property shall be identified as such and appropriately safeguarded.”
- B. What are appropriate safeguards for other properties?
 1. Safe deposit box and storage facilities.
 - a. Client property must be stored separate from lawyer’s property.
 - b. Property must be clearly identified as client property.
 - c. Restricted Access.
 - (1) Lawyer’s responsibility is the same as for funds.
 - (2) Bank is not keeping record of contents.
 - d. Appropriately safeguard.
 - (1) Lawyer is held to the standards of fiduciary.
 - (2) Lawyer is also subject to discipline for lack of safekeeping.
 - (a) *See e.g., In re Becker*, 504 NW2d 303 (ND 1993) where lawyer disciplined when client’s jewelry stolen from lawyer’s car.

- (b) *See e.g., In re Borden*, 582 A2d 1000 (NJ 1990) where lawyer disciplined when original of contract lost.
- (c) *See e.g., In re Cowan*, 540 NW2d 825 (MN 1991) where lawyer disciplined when abstracts not delivered to purchaser.
- (d) *See e.g., South Carolina Ethics Opinion 95-18* where lawyer advised to have freezer for client's contaminated food exhibit.
- e. Removal and restoration.
 - (1) *In re Grubb*, 663 P2d 1346 (WA 1983)
Lawyer disciplined for losing client's ring when he took it home to show his wife.
- f. Insurance coverage for loss.
 - (1) Check property loss and professional malpractice carrier for coverage.
 - (2) Inventory and reporting may be required to be filed for coverage.
- 2. Record keeping for other properties.
 - a. Records are required to show receipt and delivery.
 - b. Records must be kept and retained for five years.

VIII. Trust Account Certificate of Compliance.

- A. SDCL 16-18-20.2(4) provides:
 "The lawyer shall file with The State Bar of South Dakota a trust accounting certificate showing compliance with these rules annually, which certificate shall be filed annually between December 1 and January 31 on a form approved by the Disciplinary Board."
- B. The Certificate of Compliance form (effective July 1, 1998) provides the following certification:
 "I am a member of The State Bar of South Dakota filing this report, and to the best of my knowledge and belief the facts as reported herein are accurate, and **I certify that I have at all material times been in compliance with Rule 1.15** of the Rules of Professional Conduct entitled Safekeeping Property **and SDCL 16-18-20.1 and 16-18-20.2.**" *See* Form 4.
 - 1. *In re Porter*, 449 NW2d 713 (MN 1990):
Attorneys are charged with knowledge of requirements regulating handling of client funds and duty to certify that they have complied with those requirements.
 - 2. *Iowa Bd. of Professional Ethics v. Gottschalk*, 553 NW2d 332 (IA 1996):
Lawyer falsely certified that he reconciled his trust account checkbook balance with ledger balances on monthly basis since \$1,000 shortage in trust account made reconciliation impossible.

II. REQUIREMENTS AND RESTRICTIONS OF RULE 1.15

presented by

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Materials by Laurence Zastrow, Disciplinary Board Counsel, State Bar of South Dakota

II. REQUIREMENTS AND RESTRICTIONS OF RULE 1.15

presented by
Mr. Thomas J. Welk

Client Funds and Property

I. *What's at Stake?*

A. Violations of Rules of Professional Responsibility on Trust Accounts

1. Individual's violation of rules
See V. ISSUES OF NON-COMPLIANCE
2. Partner or associate's violation of rules
 - a. **7 AmJur2d, Attorneys at Law**, §84
“[O]ne member of a law firm is not subject to disbarment or other discipline because of misconduct of [a] partner which occurred without [the partner's] knowledge, consent, or participation. ... [but] courts, under the facts involved, have held that the [lawyer] was involved in the misconduct of the partner to such extent as to justify discipline.”
 - b. **Matter of Falanga**, 583 NYS2d 472 (NY AD 1992)
Falanga publicly censured for “failure to oversee or review the books, records, and bookkeeping practices of his law firm” when partner converted \$180,000 of funds from the firm “escrow account.”
 - c. **In re Pollack**, 536 NYS2d 437 (NY AD1 1989)
Public censure for lawyer who allowed associate/brother to control client funds which were commingled with attorney's funds.
 - d. **In re Sykes**, 546 NYS2d 376 (NY AD2 1989)
Public censure for lawyer who failed to monitor firm trust account from which partner commingled and converted funds.

B. Criminal sanctions for violations, *e.g.*:

1. **State v. Myers**, 88 SD 378, 389, 220 NW2d 535(1974)
(2 years for embezzlement)
2. **Discipline of Coacher**, 438 NW2d 549 (SD 1989)
(8 years, 6 suspended, for embezzlement)
3. **Christie v. Dold**, 524 NW2d 866 (SD 1994)
(8 years for embezzlement)

C. Civil Liabilities for acts of lawyer, partners, employees, third parties, etc.

1. **Wangness v. Berdahl**, 69 SD 586, 13 NW2d 293 (1944)
Berdahl had collected funds for client and deposited in First State Bank. Berdahl sent the client a check for \$4,098.67 but First State failed. “This case involves no claim of negligence. An attorney who has collected money for his client holds the same as trustee, and ... he is liable much the same as any other trustee. ... [W]here a trustee deposits trust funds in his own name, thereby vesting himself with title, he is liable for any loss of the funds. ... It is entirely immaterial that defendant acted in good faith and that the loss would have occurred [if] the deposit [had been] in the name of his client.”

2. ***Duggins v. Guardianship of Washington***, 632 So2d 420 (Miss 1993)
Duggins, retained to bring a medical malpractice, associated with Barfield agreeing to split the fee. Barfield negotiated the structured settlement and deposited the funds in his trust account. Barfield converted the funds, was convicted and imprisoned. Duggin was sued for \$53,000 converted. The court held the lawyers arrangement was a joint venture and that where the wrongful act of any partner causes loss to any person the partnership is liable. Duggin also liable for punitive damages on the theory of “vicarious liability” and attorney fees under the theory of “bad faith.”
3. ***Tormo v. Yormack***, 398 Fsupp 1159 (DNJ 1975)
The Wendels retained Devlin to represent them in a personal injury action. Devlin worked referred them to NJ attorney Yormack. Yormack negotiated a settlement, forged Wendels endorsement and converted the funds to his own use. Yormack went to prison for his efforts. Wendels sue Devlin and Yormack’s trust account Bank and are granted summary judgment. Devlin can be liable for contribution for failure to supervise his associate counsel.
4. ***Continental Casualty Co. v. Grossman***, 648 NE2d 175 (Ill App 1995)
Attorney Ellis represented Springdale Corporation. Grossman and others gave Ellis \$80,000 to purchase Springdale shares; the funds were placed in separate trust accounts. Ellis paid the funds to the corporation president without receiving prior authorization. The president used the funds for personal expenses and the corporation ended up being worthless. The failure to obtain authorization from the investor’s and failure to maintain adequate records could constitute legal malpractice.
5. ***Blackmon v. Hale***, 463 P2d 418 (CA 1970)
Blackmon gave Adams \$24,500 which was placed in Hale & Adams trust account. When the partnership dissolved, Adams asked for and received a trust account check for \$21,000. Adams converted those funds to his own use. Hale did not have records and could not explain what the \$21,000 represented. Hale was liable for \$24,500 because “a fiduciary who ... surrenders assets to the exclusive possession or control of a co-fiduciary has ... burden of explanation if he is to avoid liability ... Where there is negligent failure to keep true accounts all presumptions are against [the fiduciary] ...”
6. ***Husted v. Gwin***, 446 NE2d 1361 (IN App 1983)
Husted v. McCloud, 436 NE2d 341 (IN App 1983)
Husted v. McCloud, 450 NE2d 491 (IN 1983)
Son in father-son law partnership converted \$78,800 of client funds. Deceased father/partner estate held liable “Even though fraud and conversion ... are not part of the ordinary course of business ... the partnership is responsible ...” 436 NE2d at 494, because “nowhere in the [Uniform Partnership Act] is the knowledge of the partners required before the partnership can be held liable. ... [In receiving client funds] Edgar Husted was acting in the ordinary course of the business of the partnership ... [and] both the partnership and the deceased partner ... are liable ... [for its conversion].” 446 NE2d at 1363.

7. **Myers v. Aragona**, 318 A2d 263 (MD App 1974)

The Gordon & Myers had common “escrow” account was used by Gordon for handling “vast sums of money” from client’s real estate transactions. Gordon went to prison after an investigation revealed \$300,000+ missing. Myers claimed that Gordon’s real estate closings were a separate business, but the court held that “even if no actual partnership existed ... Myers is [liable as a partner], by virtue of his using or allowing the use of the name ‘Gordon & Myers, Attorneys at Law’ on the ‘Settlement Statement[s]’ and ‘Law Offices Gordon & Myers’ on letterhead of the partnership. ... [T]hat relationship is as much a partnership, insofar as third parties are concerned, as if there had been formal Articles of Partnership subscribed to by both ...”

Aragona v. St. Paul Fire & Marine Ins. Co., 378 A2d 1346 (MD App 1977)

The client then sought to recover his \$300,000+ judgment from Myers malpractice carrier claiming the loss was caused by Myers “negligent failure to inspect the financial records of the partnership and discover Gordon’s misappropriation.” The court denied recovery because “the dishonest and criminal act of Myers’ partner ... was the direct and precipitating cause of the loss ... [and although] Myers may be liable [to the client] for his negligence ... the language used in the insurance contract ... that ‘any loss which resulted from any dishonest or criminal act ... [is] excluded from coverage’” applied to Gordon’s acts.

Deposits to a Client Trust Account

II. Funds that MAY Go into A Client Trust Account

A. Bank charges for common accounts.

1. The lawyer may deposit lawyer or law firm “funds reasonably sufficient to pay bank charges.”
 - a. How much is a reasonably sufficient amount?
 - (1) The Disciplinary Board rule of thumb, “an amount equal to one years expected monthly charges and check expenses, not to exceed \$200.”
 - (a) If expected to exceed \$200, the lawyer will have to make semi-annual, quarterly, or monthly deposits as needed.
 - (b) The “Bank Charges” ledger card should be monitored monthly with reconciliation.
 - (2) What kind of bank charges the lawyer expect?
 - (a) Charge to open account.
 - (b) Monthly service charge.
 - (c) Check printing.
 - (d) Type of transfers, e.g., wire or electronic transfers.

NOTE: Although IOLTA transfer and service charges are paid from the interest, check printing and monthly service charges are not.
 - (3) How often the lawyer expect to incur bank charges.
 - (a) Number of checks written.

- (b) Check imaging charges.
 - (c) Transaction charges, wire transfer charges.
 - b. The bank representative can give estimate of what will be charged for services.
 - 2. Rule doesn't require the lawyer to deposit funds for charges
e.g., The bank may agree to assess charges for the trust account against the office account.
 - 3. Record keeping.
 - a. Make proper record in the trust account journal.
 - b. Make proper record in a special "bank charges" ledger.
(Refer to **III. Record keeping Requirements of SDCL 16-18-20.2.**)
- B. IOLTA, Interest on Lawyer Trust Accounts Deposits.**
- 1. Bank will show interest credit (deposit) and simultaneous debit (withdrawal)
 - a. Make proper record in the trust account journal.
 - b. Make proper record in a special "IOLTA" ledger card.
 - 2. IOLTA service fees on an IOLTA account are taken out of the interest the account earns.
- NOTE:**
- (1) IOLTA interest does NOT cover charges for printing checks.
 - (2) IOLTA interest does NOT cover charges for checks that are deposited in the account and returned for insufficient funds.
 - (3) IOLTA interest does NOT cover charges for transferring money by wire.

III. Funds that MUST Go into a Client Trust Account.

- A. Money "received or held for the benefit of a client" includes:**
- 1. Funds that belong to the client outright.
E.g., Funds from the sale of the client's property.
 - 2. Funds in which lawyer and client have a joint interest.
E.g., Settlement proceeds that include lawyer's contingency fee.
 - 3. Funds in which a client and a third party have a joint interest.
E.g., Money the lawyer hold for a partnership of which client is a partner.
E.g., Funds from the sale of a client's jointly held property.
 - 4. Funds advanced by client for costs and expenses.
 - a. All money from a client given to pay for the expected cost and expenses to be incurred during legal representation, *e.g.*, filing fees, deposition costs, witness fees, etc.
 - b. ***Louisiana State Bar v. Williams***, 512 So2d 404 (LA 1987)
Payments be a client for specific costs and expenses "already incurred" *i.e.*, already paid by the lawyer, need not be deposited in the trust account; however, client's advances for unspecified costs and expenses that may be due in the future must be deposited in the client trust account.
 - 5. Funds advanced by client for fees.
 - a. An "advance fee" is money a client paid in advance for the expected cost of attorney's service to be provided during legal representation.

- (1) Advance fees don't belong to the lawyer until the services have been performed for that client.
 - (2) The lawyer must hold advance fees in a client trust bank account and draw them out as they are earned and billed.
 - (3) The lawyer must withdraw earned fees on a regular basis, either:
 - (a) Simultaneous with or after the final bill has been prepared and sent to the client.
 - i) An estimation of fees is not sufficient
 - ii) The lawyer must keep the bill as part of record-keeping requirements.
 - (b) Send accounting of advance fee balance with monthly bill.
 - (c) **Note:** Making withdrawals after the monthly trust account reconciliation will help prevent any chance of overdraft.
 - (4) Fee agreement or engagement letter should describe when withdrawal will be made.
 - b. If dispute arises over fees withdrawn, the amount in dispute must be returned in the trust account. *See Discipline of Tidball*, 503 NW2d 850 (SD 1993)
 - c. If the services are not performed or are less than the advanced fee, the lawyer has to refund the unearned money "promptly." *See infra*.
- B. Retainers, non-refundable retainers, and hybrids fee agreements.
1. Rule 1.15(d)(1) provides: "[a]ll funds of clients paid to a lawyer or law firm, including advances for costs and expenses, shall be deposited" in a client trust account.
 - a. The present rule, adopted in **1987**, is that "all funds received" of a client and any money that a client has an interest in must be **deposited** into the client trust bank account.
 - b. Rule 1.15(d)(1)(b) provides: "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"
 2. The Confusion.
 - a. DR 9-102(A), which was in effect in South Dakota from 1970 to 1987, was provided:

"All funds of a client paid to a lawyer or law firm, **other than** advances for costs and expenses, shall be deposited in one or more identifiable bank accounts ..."
 - (1) DR 9-110(A)(3) (which was not adopted by South Dakota⁽¹⁾) provided that "advance fees" not earned were required to be promptly returned to the client.

1. Current South Dakota Rule 1.16(d), which adopted much of the DR 9-110 language, states:

"Upon termination of representation, a lawyer shall ... [refund] any advance payment of fee that has not been earned... ."

The Comment to current Rule 1.5 states:

"A lawyer may require advance payment of a fee, but is obliged to return any unearned portion."

- (2) Some Ethics opinions interpreted the exclusion of “costs and expenses” in DR 9-102(A) also excluded “advance fees.”
- b. Even if this was a correct interpretation of the old rule and it is no longer an acceptable interpretation because the rules provides client funds “**including** advances for costs and expenses” must go into the trust account.
3. The New York solution:
- a. General retainers (a/k/a true retainers, classic retainers) are earned on receipt.
See Kelly v. MD Buyline Inc., (SDNY 1998) April 1, 1998
 The District Court upheld Kelly’s three-year contract to perform legal services as needed by MD Buyline at \$180,000 per year which contained a six-month termination notice. Judge Kimba Wood notes the distinction between agreements where “an attorney is employed under a general retainer for a fixed period of time to perform legal services ... that may arise during the period of the contract” from “‘special’ retainer agreements [where] the attorney is hired to handle a specific case or matter.”
Cf. Cohen v. Radio-Electronics Officers Union, 679 A2d 1188 (NJ 1996) which held general retainer agreement with a six-month notice of termination provision “intolerable burden on client’s right to ... discharge its lawyer.”
- b. Special or non-refundable retainers are prohibited as unethical.
See In re Cooperman, 591 NYS2d 855 (NY AD2 1993)
 Lawyers are fiduciaries of their clients; therefore, their clients may discharge them at any time for any reason. No penalty may be imposed upon the exercise of the exercise of this right. Since a “non-refundable retainer” imposes a penalty for discharge, it is unethical because it is “inconsistent with the trust-based quality of the unfettered discharge right.”
4. Other states require that special and non-refundable retainer agreements be in writing:
- a. *In re Biggs*, 864 P2d 1310 (OR 1994)
 “Without **clear written agreement** between the lawyer and a client that fees paid in advance constitute a non-refundable retainer earned on receipt, such funds **must be considered client property**” and deposited in a client trust account.
See also In re Hedges, 836 P2d 119 (OR 1993)
- b. *In re Lochow*, 469 NW2d 91 (MN 1991)
 “[A] retainer fee, if reasonable, may be immediately earned. However, the purpose of the retainer fee and the consent of the client must be reduced to writing and approved by the client.”
See also, St. Cloud Nat’l Bank v. Brutger, 488 NW2d 852 (MN App 1992)
- c. *Utah Ethics Opinion 118* (1992)
 Funds for unearned fees and future cost and expenses must be deposited in trust account “unless lawyer and client have written

- agreement for other disposition.” Reported in ABA/BNA *Lawyers’ Manual on Professional Conduct* 45:110
- d. **Tennessee Ethics Opinion 92-F-128(a)**
If a “flat fee” for routine legal service is to be deemed earned upon receipt there must be “clear understanding with client that the fee is not refundable.” Reported in ABA/BNA *Lawyers’ Manual on Professional Conduct* 45:110
5. Hybrid retainer fee agreements.
 - a. Most “retainers” consist of part special or non-refundable retainer AND part advance fees, costs, and expenses.
 - b. Hybrid fee agreement are not a violation if it provides for:
 - (1) A reasonable non-refundable retainer,
 - (2) An hourly rate for specified future services, and
 - (3) Payments for the unearned services are deposited in the trust account.
 - (a) **In re Lochow**, 469 NW2d 91 (MN 1991)
“[A] retainer fee, if reasonable, may be immediately earned ... [if in] writing [but] attorneys fees for payment of services to be performed in the future must be placed in a trust account and removed ... [after] a complete [written] accounting.”
 - (b) **Louisiana State Bar v. Williams**, 512 So2d 404 (LA 1987)
“Advances ... for costs and expenses need not be deposited in [the trust] account ... when ... already incurred ... [but] [a]n advance of client’s funds for unspecified costs and expenses that may become due in the future must be deposited in a trust account”
6. **South Dakota:**
 - a. The Disciplinary Board believes the Supreme Court will recognize **general retainer** agreements under the following circumstances:
 - (1) The agreement is in writing,
 - (a) Signed by the attorney,
 - (b) Acknowledged and signed by the client, and
 - (c) Copy provided to the client.
 - (2) AND there must be an agreement that there exists a continuing attorney-client relationship where payment will be made:
 - (a) On regular basis regardless of pending matters
(*e.g.*, corporate client, insurance company, governmental agencies, etc.),
 - (b) To ensure lawyer’s continuing availability to the client,
 - (c) Fees are earned in full at the time the lawyer receive them, and
 - (d) Any pre-termination notice is reasonable.
 - b. South Dakota does not have a specific rule or court opinion prohibiting “special” or “non-refundable retainers” nor a requirement that such agreements be in writing.

- (1) *Cf., Egan v. Burnight*, 34 SD 473, 149 NW 176 (1914)
Although not a trust account case and the “flat fee” agreement was voided on other grounds, the South Dakota Supreme Court did cite the New York progeny of *Cooperman*, *supra*, with approval:
“The [Field] Code, in extending the rights of attorneys by allowing them to contract with their clients as to compensation beyond the allowance given by statute [to prevailing parties] relieved attorneys from a disability which before existed, but did not relieve their dealings with clients from the supervision which the courts have at all times exercised. The reasons for that supervision exist as strongly as ever, and the [Field] Code has in no respects changed or interfered with them. *Whenever a contract between an attorney and client gives benefits or advantages to the attorney, the court will scrutinize it with great care. All presumptions are in favor of the client, and against the propriety of the transaction, and the burden of proof is upon the attorney to show, by extrinsic evidence, that all was fair and just, and that the client act understandingly.*”
 - (2) *And Ritz v. Carpenter*, 43 SD 236, 178 NW 877 (1920)
Although not a trust account case, the Supreme Court held a “flat fee” of \$7,500 in a criminal case could be recovered when the client discharged the lawyer because the “fee [was] too exorbitant to admit of argument as to its reasonableness [and] was not merely for the services contemplated, but the ignominy that would rest upon [the lawyer] for defending plaintiff owing to the nature of the charge.” The Court again cited the New York progeny of *Cooperman*, *supra*, with approval:
“The discharge of the attorney does not constitute a breach of contract, because it is a term of such contract, implied from the peculiar relationship which the contract calls into existence, that the client may terminate the contract at any time with or without cause. ... And it follows from this rule, by necessary implication, that if the client has the right to terminate the contract he cannot be made liable in damages for doing that which under the contract he has a right to do.”
 - (3) *See also* Comment to Rule 1.16:
“Discharge. A client has a right to discharge a lawyer at any time, with or without cause, subject to liability for payment for the lawyer's services.”
- c. The Disciplinary Board’s believes that the Supreme Court would uphold a “special” or “non-refundable retainer” under the following circumstances:
- (1) The agreement is in writing:
 - (a) Signed by the attorney,
 - (b) Acknowledged and signed by the client,
 - (c) Copy provided to the client, and
 - (d) Receipt of the copy acknowledged by the client
 - (2) The attorney-client relationship arises in a situation where payment is made:

- (a) To secure the attorney's immediate availability (*e.g.*, criminal charges; injunction; domestic protection order),
 - (b) The services to be completed is clearly identified,
 - (c) Representation requires attorney to forego pending matters or other employment opportunities to provide service, and
 - (d) The non-refundable retainer is reasonably related to the loss opportunity to earn fees from other clients (factors such as "ignominy" *Ritz, supra*, or a "pot of gold" necessary to overcome the lawyers professional pride, *Egan, supra*, are not acceptable reasons.)
- (3) The amount of the special retainer for the services to be provided must be reasonable under the factors set forth in Rule 1.5.
- (4) There must be no violation of the fiduciary nature of the attorney-client relationship.
- (a) Comment to Rule 1.5:
- "[A fee] agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest."

An unreasonably large "special" or "non-refundable retainer" or "flat fee" seems to fit this description.

- d. The Disciplinary Board believes the Supreme Court will recognize **hybrid fee agreements** under the following circumstances:
- (1) The agreement meets the above "special" or "non-refundable retainer" requirements.
 - (2) The agreement provides that advances for hourly fees, costs, and expenses are deposited in a trust account and withdrawn when earned or incurred.
- e. "Flat or fixed fees" may be recognized for:
- (1) Routine matters with set parameters if fee is reasonable, *e.g.*, preparation of deed, preparation of simple will, etc.
CAVEAT: Flat or fixed fees are not earned until the work has been completed. Any advance payment of a "flat fee" or "fixed fee" should be deposited in the client trust account and withdrawn only when the service has been completed. *See Louisiana v. Kilgarlin*, 550 So2d 600 (LA 1989)
 - (2) From a Disciplinary Board view "flat fees uncontested divorce" are an invitation for a disciplinary complaint.
 - (a) 20% of disciplinary complaints involve handling of divorce matters.
 - (b) 80% of complaints of divorce matters involve fee disagreements.
 - (c) 80% of divorce fee disagreements involve "flat fees for uncontested divorces."
 - (d) 99.9% flat fee divorce agreements complaints are not in writing.
 - (3) Hybrid fees in domestic relations may be acceptable if:
 - (a) Fee agreement is in writing and signed by client,
 - (b) Amount of non-refundable fee is reasonable, and

- (c) Advance for future services deposited in trust account.
Cf. Volkell v. Volkell, 477 NYS2d 60 (NY 1984)
- f. Calling an “advance fee” a “non-refundable retainer” or “true retainer” or “minimum fee” or “prepaid fee” or “flat fee” or anything else doesn’t make it so.
 - (1) *In re Cooperman*, 591 NYS2d 855 (NY AD2 1993) “Minimum fees”
 - (2) *In re Lochow*, 469 NW2d 91 (MN 1991): “Immediately earned retainer”
 - (3) *In re Hedges*, 836 P2d 119 (OR 1993): “Up front fee”
 - (4) *Matter of Youmanns*, 573 A2d 899 (NJ 1990): “Prepaid legal fee”

IV. **Funds That MAY NOT Go into A Client Trust Account.**

- A. Rule 1.15(A) says that, other than bank charge money, “no funds that belong to the member or the law firm shall be deposited” into a client trust bank account.
 - 1. Unless a lawyer’s client has an interest in the money, it cannot be deposited in a client trust bank account.
 - 2. A lawyer must NEVER put personal or office funds into a client trust account.
CAVEAT: It is not commingling to deposit lawyers funds into a trust account to cover error which results in shortage or NSF check if the lawyer acknowledges that she makes no further claim to the funds so deposited. However, to establish that no claim is made to the deposited funds, it must be an **immediate** deposit and the lawyer **must** self-report to the Disciplinary Board and make such a declaration. The recovery of trust funds paid by mistake to a third party is subject to civil remedies and defenses. *See Matter of Chariff*, 633 NYS2d 618 (NY AD3 1995)
 - a. Funds like employee payroll taxes do not go into a client trust account.
 - b. Funds like sales taxes receipts on earned fees do not go into a client trust account.
NOTE: Sales tax should be removed from trust account when earned fees are billed and withdrawn.
- B. Fees received for billed services already rendered should not go into a client trust account because they are lawyer’s money and a client has no interest in them.
 - 1. When a client gives a single check that includes both a earned fee or expenses already incurred and an advance for future fees and expenses:
 - a. Deposit the entire check into a client trust bank account
 - b. Write a check to the lawyer for the earned fee or expenses already incurred as soon as the check clears and the funds becomes available.
 - c. Leave the advance for future fees and expenses in the client trust bank account.
- C. General retainer fees taken solely to ensure the lawyer’s availability to the client.
 - 1. General retainers are earned upon receipt and are the lawyer’s money and therefore should never be deposited in a client trust account.
 - 2. Hybrid fees: When a client gives a single check that includes both a general retainer, earned fee, or expenses already incurred, and an advance for future fees and expenses:
 - a. Deposit the entire check into a client trust bank account

- (1) Write a check to the lawyer for the retainer, earned fee, or expenses already incurred portion as soon as the check clears and the funds becomes available.
- (2) Leave the advance for future fees and expenses in the client trust bank account.
- b. It might be simpler to have the client write two checks; one for retainer and another for client expenses.

V. Funds That MUST Be Held in Separate Trust Account.

- A. Rule 1.15 allows only client funds that are “nominal in amount” or “held for a short period of time” in a common trust account.
 - 1. Lawyer is required to make the practical determination of whether a clients’ money must be held in the lawyer’s trust account.
 - 2. Clients’ money is “nominal in amount” or “held for a short period of time”:
 - a. If the cost of opening and administering a separate, individual client trust bank account is greater than the amount of interest the money would earn for a client in such account.
 - b. Many banks do not charge for opening trust accounts so cost will be for check imprinting, monthly account charge, and transaction charges.
 - 3. \$5,000 for a client for about seven months will earn about \$50 in interest.
 - a. If bank charges \$8 a month service charge, by the time a client earns \$50, the bank will have charged a client about \$56.
 - b. \$5,000 must be deposited into the common trust account because it couldn’t earn net interest for a client in a separate client trust bank account.

Amount of Client Money Time Needed to Earn \$50 Interest

Amount Held (At 1¾% Compounded Daily)	
\$5,000	209 days
10,000	106 days
15,000	71 days
20,000	54 days
25,000	43 days

- B. If the client funds are not “nominal in amount” or not being held for “a short period of time”:
 - 1. Lawyer is not required to earn interest for the client, but in no case is lawyer allowed to keep the interest clients’ funds earn.
 - 2. Place the funds in a separate interest-bearing account for the benefit of the client.
 - a. Account should bear the client’s taxpayer identification number.
 - b. The account must not limit access to a client’s funds in any way that will harm a client.
- C. The bank can determine whether the amount of client’s funds a client could generate net income in a separate interest-bearing client trust bank account during the time the lawyer will hold it.

Disbursements from a Client Trust Account

I. Payments That CAN'T Be Made from Trust Account.

- A. Lawyer's CAN'T make payments out of client trust account:
1. To cover the lawyer's own expenses, personal or business, or
 2. For any other purpose for which the funds were provided, or
 3. To be apply to disputed fees in another matter.
See Discipline of Tidball, 503 NW2d 850 (SD 1993)
- B. Lawyer's CAN'T make payments out of client trust account if doesn't have sufficient funds of that client available in the account to cover those payments.
1. If there are insufficient funds in account, it is a overdraft, or
 2. If there are sufficient funds to cover the disbursement, but not the client's, some other client's funds are being converted.
 - a. *See e.g., In re Moras*, 619 A2d 1007 (NJ 1993)
 Lawyer provided trust account check in exchange for client's check which was returned for insufficient funds.
 - b. *See e.g., In re Deragon*, 495 NE2d 831 (MA 1986)
 Lawyer used trust account checks to make payments to clients whose funds had not been deposited in the trust account.
 3. Payments can be made only after deposited check has cleared.
 - a. Lawyer should check with the issuing bank:
 - (1) Document time, date of confirmation, and
 - (2) Document full name and title or position of bank personnel.
 - b. Payments using post-dated check would not be proper.
See Connecticut Informal Ethics Opinion 90-13 (1990)
- C. Lawyer's CAN'T make payments out of client trust account for legal fees that a client is disputing.
1. Rule 1.15(d)(1) that a lawyer may withdraw fees 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."
 - a. This is true whether or not the lawyer has in fact earned them.
 - b. The moment a client disputes the lawyer's fees, that funds must remain in the client trust account until the dispute is resolved.
 2. If the lawyer has withdrawn fees that the client later disputes:
 - a. Redeposit the disputed funds into the client trust bank account until the dispute is resolved.
 - b. When the dispute is resolved, transfer the fees out of the client trust account as soon as the lawyer reasonably can.
 - c. Provide an accounting of the transfer of the funds to the client.

II. How Trust Account Payments MUST Be Made.

- A. Payments from client trust account must be by:
1. Check,
 2. Wire transfer, or
 3. An instrument that specifies who is getting the funds and who is paying it out.
- B. Trust Account Checks Signatures.
1. The lawyer is personally accountable for all funds in client trust account. *See supra*.

2. Lawyer's signature or co-signature should be required.
 - a. **DON'T** use a signature block check writer.
 - b. **DON'T** use a signature stamp.
 - c. **DON'T** pre-sign client trust bank account checks for employees to issue.
See e.g., Matter of Struthers, 877 P2d 789 (AZ 1994).
- C. Payments from client trust account must **NOT** be:
 1. In cash, or
 2. Checks or other instruments made out to cash,
 because there is no evidence of recipient of payment.
See e.g. Louisiana State Bar v. Williams, 512 So2d 404 (LA 1987)
- D. **DON'T** carry blank client trust account checks to pay client expenses.
 1. Checks will be out of numerical order (*i.e.*, lower numbered checks being dated later than higher numbered checks),
 - a. Checks may be lost, and
 - b. Recordkeeping and reconciliation is complicated.
 2. If out of the office and client expense occurs, pay it out of the general office account; reimburse after billing the client.

III. *Trust Account Payments That CAN Be Made.*

- A. Payments which can be made on behalf of a client from client trust account.
 1. Bank charges for a separate client trust account.
 - a. For **individual** client trust bank accounts,
 - (1) Bank charge incurred for the client for whom the lawyer have the separate account
 - (a) Bank will charge the client's funds in the account OR
 - (b) Pay from office account and bill to client.
 - b. For **common** client trust accounts,
 - (1) Rule 1.15(A)(1) allows lawyer to keep an amount "reasonably sufficient to cover bank charges" in client trust account.
 - (a) Common charges, *e.g.*, printing checks, monthly service charges:
 - i) Cannot be billed to specific to a certain client.
 - ii) Treat like other general operating expenses, lawyer — not the clients — have to pay these charges.
 - (b) Charges for a specific service (*e.g.*, for wiring funds) for a specific client:
 - i) Treat the charge as any other cost, and
 - ii) Pay for it out of funds held for that client in the trust account.
 2. Client costs and expenses (*e.g.*, court filing fees or deposition transcript costs).
 3. Disbursing settlement proceeds.
 4. Paying the lawyer's earned and undisputed legal fees.

IV. *When Trust Account Payments MUST Be Made.*

- A. Client Funds.
 1. Rule 1.15(b) and (d)(2)(d) requires that a lawyer "promptly deliver to the client ... any funds" and "promptly pay or deliver to the client as requested the funds ... " funds which the client is entitled to receive.

2. Examples of what is NOT proper delivery of client funds.
 - a. Paying in installments is violation,
 - b. Paying in cash is violation, and
 - c. Paying to someone other than client is violation.
See Louisiana State Bar v. Williams, 512 So2d 404 (LA 1987)
3. Examples of what is NOT prompt delivery of client funds.
 - a. *In re Hedges*, 836 P2d 119 (OR 1993), 14 months.
 - b. *Doyle v. California State Bar*, 648 P2d 942 (CA 1982), 10 months.
 - c. *People v. Coyne*, 913 P2d 12 (CO 1996), 9 months.
 - d. *In re Krause*, 676 A2d 1340 (RI 1996), 6 months.
 - e. *State ex rel. Oklahoma Bar Ass'n v. Wilkins*, 898 P2d 147 (OK 1995), 4 months.
 - f. *In re Lee*, 283 NW2d 179 (ND 1979), 50 days.
 - g. *In re Fraser*, 515 NYS2d 359 (NY AD 1987), 2½ months.
4. Examples of what is prompt delivery of client funds.
 - a. *In re Riley*, 3 Cal State Bar Ct Rptr 91 (1994), under the circumstances, one month delay was not unreasonable.
NOTE: Where the subrogation amount is in dispute, funds should be moved to an individual interest-bearing trust account. Lawyer should try to determine if there is an amount not in dispute that could be disbursed to client.

B. Attorney Fees.

1. When the lawyer has earned fees for which advance was made:
 - a. The itemized statement should be sent to the client.
 - b. The amount billed must be taken out of the client trust bank account promptly.
 - (1) The recommended practice is to bill, transfer, and account simultaneously.
 - (2) The fee agreement should have detailed this procedure.
 - (3) The exception may be when lawyer knows that fee will be disputed.
 - c. The lawyer must provide a written account of the trust account transfers.
 - d. Even if there is a dispute over earned fees, any unearned fees must be refunded and only amount in dispute retained in trust account.
See Louisiana State Bar v. Williams, 512 So2d 404 (LA 1987)
 “Respondent was bound to refund unconditionally, and not as an offer of settlement, [the] amount which reasonably represented the unearned portion of the advance fee, leaving the parties to litigate in a civil action over the disputed portion of the fee.”
See also Comment to Rule 1.15
 “[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.”

C. Settlement Funds with Contingent Fee.

1. Client Funds.
 - a. Pay promptly after settlement check has cleared.

- (1) Paying with post-dated check is not proper.
See Connecticut Informal Ethics Opinion 90-13 (1990)
 - (2) Paying in installments is violation.
 - (3) Paying in cash is violation.
See Louisiana State Bar v. Williams, 512 So2d 404 (LA 1987)
 - (4) Examples of what is NOT prompt delivery of settlement funds.
 - (a) *Matter of Krause*, 676 A2d 1340 (RI 1996), five months after lawyer received funds.
 - (b) *Matter of Sorid*, 596 NYS2d 125 (NY AD2 1993), two months after receipt.
 - b. If there is a dispute over any disbursements to client or third party:
 - (1) Undisputed funds should be disbursed, and
 - (2) Only amount in dispute should be retained in trust account.
See Comment to Rule 1.15
‘[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.’”
2. Attorney Fees.
- a. Before disbursement of the lawyer’s fees:
 - (1) Make sure all current services and expenses are included in settlement statement.
 - (2) An itemized statement for costs and expenses should be provided to the client.
 - (3) The fee agreement should have detailed this procedure.
 - b. The lawyer must provide a written account of the trust account transfers.
 - (1) The recommended practice is that it be part of the settlement statement, or
 - (2) As attachment to settlement statement.
 - c. If there is a dispute over attorney’s fees:
 - (1) Undisputed funds should be disbursed, and
 - (2) Only amount in dispute should be retained in trust account.
See Comment to Rule 1.15
“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.”
 - (3) A lawyer may not unilaterally take funds from a settlement matter and apply it to disputed fees in another matter.
See Discipline of Tidball, 503 NW2d 850 (SD 1993)
- D. Third-party Claims.
1. The rule lawyer also has a duty to promptly pay expenses due to a third party incurred by the lawyer on behalf of a client.
 2. The rule lawyer may also has a duty to promptly pay claims by a third party to a client’s funds.

-
- a. Rule 1.15(b) provides:

“... [A] lawyer shall promptly deliver to the ... third person any funds or other property that the ... third person is entitled to receive”
 - b. Comment to Rule 1.15 states:

“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.”
3. If the client disputes a third party's claim to the funds, *e.g.*, medical lien on settlement proceeds; subrogation claims:
 - a. If the client instructs the lawyer not to pay after the recovery is received:
 - (1) Delivering the funds over to the client may expose the lawyer to potential civil liability; some issues to consider:
 - (a) Did the client sign a lien or assignment to third party?
 - (b) Is the third party's claim “perfected”?
 - (c) Is there a statutory obligation?
 - (d) Has the lawyer made representation to third party regarding payment?
 - (2) Failing to pay the third party on the instructions of the client may violate the lawyer's fiduciary duty to third parties.

See e.g., Florida Bar v. Neely, 587 So2d 465 (FL 1991)
 - (3) Paying the third party against the instructions of the client may be violation of fiduciary duty to client.

See e.g., Farmers Ins. Ex. v. Zerlin, 61 Cal Rptr 707 (CA App 1997)
 - b. Comment to Rule 1.15 states:

“[A] lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.”

 - (1) The lawyer should consider writing to the client and the third party:
 - (a) Inform them of the problem, and
 - (b) The intention to hold the disputed funds in a client trust account until the dispute is resolved.
 - (2) If the parties cannot resolve their dispute, the lawyer should:
 - (a) Advise them of intent to file an interpleader action.
 - (b) If not settled, file an interpleader action.
 - (3) Under no circumstances should the lawyer use the disputed funds:
 - (a) For other purposes, which would be conversion, or
 - (b) For lawyer's benefit, which would be misappropriation.

III. RECORDKEEPING REQUIREMENTS OF SDCL 16-18-20.2

Presented by

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Materials by Richard Ericsson and
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III. RECORDKEEPING REQUIREMENTS OF SDCL 16-18-20.2

Presented by
Mr. Richard L. Ericsson

I. *Record Keeping And Accounting*

- A. Basis for Requirements.
 - 1. Professional requirement, Rule 1.15, Safekeeping property:
 - a. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of 5 years after the termination of representation;
 - b. Upon request by the client, or third person, the lawyer shall promptly render a full accounting regarding such property; and
 - c. Maintain complete records of all funds coming into the possession of the lawyer and render appropriate accountings to the client regarding them.
 - 2. Statutory requirement, SDCL 16-18-20.2:
 - a. Applies to all members of the State Bar of South Dakota, with some specific exceptions:
 - (1) Full-time members of the Judiciary:
 - (a) Supreme Court Justices,
 - (b) Circuit Court Judges,
 - (c) Full-time Magistrate Judges.
 - (2) Nonresident attorneys licensed to practice in South Dakota who comply with comparable trust accounting requirements in the state wherein they maintain their office.
 - (3) Non-profit legal services organizations that file a copy of their annual independent audit with The State Bar.
 - (4) Non-resident attorneys licensed to practice in South Dakota who have not represented a South Dakota client during the reporting period.
 - (5) Members who have been in an inactive status for the full reporting period.
- B. Minimum Trust Accounting Records, SDCL 16-18-20.2:
 - 1. Lawyer must maintain a separate receipts and disbursements journal.
 - a. Journal for must have columns for:
 - (1) Receipts,
 - (2) Disbursements,
 - (3) Transfers, and
 - (4) Account balance.

(See Form 5 for a Receipts and Disbursements Journal page.)

Note: A check register is NOT a substitute for a journal.
 - b. Journal entries for funds received, disbursed, or transferred must contain at least:
 - (1) The identification of the client or the matter,
 - (2) The date received, disbursed, or transferred,
 - (3) The check number for all disbursements, and
 - (4) The reason funds were received, disbursed, or transferred.

- (a) "Settlement" "Closing" "Retainer" are examples given.
 - (b) More detailed explanations are suggested.
(See Example 1 of a Receipts and Disbursements Journal page.)
 - c. For currency and coin, a "cash receipts book" is required.
 - (1) Receipt book with self-carbon will suffice.
 - (2) Keep separate book for "trust" cash and "office" cash receipts
 - (3) Cash deposited to trust account must be recorded:
 - (a) Entries to Receipts and Disbursement Journal, and
 - (b) Entries to Client Ledger cards.
2. Lawyer must maintain a separate file, ledger, or computer file with an individual card, page, or computer document for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balances, and containing:
 - a. The identification of the client or matter,
 - b. The date funds were received, disbursed, or transferred,
 - c. The check number of all disbursements:
 - (1) The reason funds were received, disbursed, or transferred:
 - (a) "Settlement" "Closing" "Retainer" are examples given,
 - (b) More detailed explanations are suggested.
(See Form 6 for example of Client Ledger page)
3. Lawyer must maintain original cancelled checks, or the equivalent, all of which must be numbered consecutively
 - a. What constitutes "equivalent" of a cancelled check?
 - b. Truncated checks,
 - c. Imaged statements,
 - d. Digital formats of the future.
4. All bank (or savings and loan association) statements for all trust accounts.
5. Other documentary support for all disbursements and transfers from the trust account:
 - a. Itemized bills for professional services from the attorney or law firm,
 - b. Original bills (or copies) paid on client's behalf from trust account proceeds,
 - c. Abstracting or title insurance bills,
 - d. Medical bills,
 - e. Real estate taxes receipts,
 - f. Receipts for payment of fines,
 - g. Costs from clerk of courts,
 - h. Real estate commissions, or
 - i. Mortgage pay-offs.

CAVEAT: SDCL 16-18-20.1 and Rule 1.15 provides that all documentary support for all disbursements and transfers from the trust account are records which must be kept for five years.

- C. Additional trust accounting procedures.
 1. Attorneys practicing in South Dakota who receive or disburse trust money (or property) **shall:**
 - a. Make **monthly** reconciliations of all trust bank or savings and loan association accounts:

- (1) Disclosing the balance per bank,
 - (2) Deposits in transit,
 - (3) Outstanding checks identified by date and check numbers, and
 - (4) Any other items necessary to reconcile the balance per bank statement with the balance per the checkbook and the cash receipts and disbursements journal.
(See Form 7 for example of Monthly/Annual Reconciliation page)
 - (5) A comparison between:
 - (a) the total of the reconciled balances of all trust accounts, and
 - (b) the total of the trust ledger cards, pages, or computer documents.
(See Form 8 for example of Client Ledger Balance page)
 - (6) A specific descriptions of any difference between the two totals and the reasons therefore.
- b. Attorney must at least **annually** prepare a detailed listing identifying the balance of the unexpended trust money held for each client or matter.
(See Form 7 for example of Monthly/Annual Reconciliation page)
 - c. Attorney must maintain the reconciliations, comparisons, and listing shall be retained for at least six years.
- D. Attorney must file with the State Bar of South Dakota a trust accounting certificate:
1. File between December 1st and January 31st,
 2. Certify compliance with these rules, and
 3. Reveal any discrepancies and the reasons.
- E. Self-reporting trust account violations.
1. It is recommended that all trust accounting discrepancies be reported immediately.
 2. Commingling, conversion, and misappropriation **MUST** be under Rule 8.3 “substantial question as to that lawyer's honesty [or] trustworthiness.”
 3. Failure to report would also raise a “substantial question as to that lawyer's honesty [or] trustworthiness.”

II. **Audits**

- A. Disciplinary Board shall have cause to order an audit of a lawyer's or law firm's trust account for any of the following:
1. Failure to file annual trust account certificate,
 2. A trust account check is returned for insufficient funds or for uncollected funds, absent bank error,
 3. A petition for creditor relief is filed on behalf of an attorney,
 4. Felony charges are filed against an attorney,
 5. An attorney is judged insane or mentally incompetent,
 6. A claim against an attorney is filed with the Clients' Security Fund,
 7. When authorized by statute or court rule, or
 8. Upon court order.
- B. Cost of audit.
1. Audits are only at the attorney expense when audit reveals there was not substantial compliance with the trust accounting requirements; or

2. When the audit was precipitated by the failure to file the trust account compliance report.
- C. Duty of attorney:
1. Produce all records and papers concerning property and funds and provide explanation.
 2. **ANY** law firm account will be subject to audit if it has been determined that trust money has been deposited into a general account.

III. *Trust Accounting with Computers*

- A. SDCL 16-18-20.2 allows lawyer to maintain trust account records by using a separate computer file WITH an individual computer document for each client or matter, showing all individual receipts, disbursements, or transfers and any unexpended balances.
1. The same information for manual trust account records must be maintained.
 2. The computer documents must be printed out and readily available.
- B. Examples of computer programs and reports will be available at the demonstrations given in conjunction with this seminar.

IV. *Record Keeping for Other Property*

- A. Rule 1.15 requires records for property of client or third parties.
1. Client Other Property Journal (Form 9) and Ledger Cards (Form 10) should show:
 - a. Date of receipt,
 - b. Identification of item,
 - c. Location of item,
 - d. Date of delivery, and
 - e. To whom delivered.
 2. Receipt given to client should show items a-c.
 3. Receipt from to client on delivery should show items b, d-e.

V. *Certificate of Compliance*

- A. Certificate form effective July 1, 1998, requires attorneys to certify that attorney is in compliance.
1. Prior law and certificate provided only that attorney certified "to the best of my knowledge."
 2. Result of change in law is that attorney is directly accountable for trust account compliance and therefore should be personally knowledgeable with the compliance of the account.

(See Form 4 for example of **Certificate of Compliance**)

VI. *Examples of Trust Account Bookkeeping*

- A. Nominal amount for bank services and check charges
1. Deposit amount equally to estimated annual cost but not more than \$200.
 2. From deposit slip
 - a. Update check register with deposit
 - b. Enter deposit in Receipts and Disbursement Journal
(Example 1, line 1)

- c. Post deposit entry to ledger card denominated "Larry Lawyer - Bank Charges" (Example 2, line 1)
 3. Enter bank charges each month after reconciliation.
 4. From monthly bank statement:
 - a. Enter bank charges in Receipts and Disbursement Journal. (Example 1, line 22)
 - b. Post bank charges entry to ledger card denominated "Larry Lawyer - Bank Charges". (Example 1, line 2)
- B. Client Retainers.
 1. Deposit client retainer check for attorney fees, costs, and expenses:
 - a. From deposit slip:
 - (1) Update check register.
 - (2) Enter in Receipts and Disbursement Journal. (Example 1, item 2 & 3)
 - (a) Calculate running balance.
 - (b) Compare Receipts and Disbursement Journal balance with check register.
 - (c) Any discrepancy signifies an error.
 - (3) Post entries to ledger card denominateds "Smith, James: State v. Smith (DUI)" (Example 4, line 1) and "Jones, Joyce: Jones v. Jones (Divorce)" (Example 5, line 1)
 2. Withdrawal of client retainer for attorney fees, and costs and expenses advanced by attorney/law firm:
 - a. From final bill, prepare check to lawyer/law firm.

Note: Be sure to update the check register balances.
 - b. From checkbook:
 - (1) Enter check details in Receipts and Disbursement Journal. (Example 1, line 17, line 19)
 - (a) Compare Receipts and Disbursement Journal balance with check register.
 - (b) Any discrepancy signifies an error.
 - (2) Post Receipts and Disbursement Journal entry to ledger cards denominated "Smith, James: State v. Smith (DUI)" (Example 4, line 2) and "Jones, Joyce: Jones v. Jones (Divorce)" (Example 5, line 3)
 3. Withdrawal of client retainer for costs and expenses.
 - a. From bill for expense prepare check to payee.

Note: Update the check register.
 - b. From checkbook:
 - (1) Enter check details in Receipts and Disbursement Journal. (See Example 1, Line 4, Lines 6-9)
 - (a) If no bill, itemize, *e.g.*, "Register of deeds: Recording fee 35.00" "Register of deeds: Transfer fee - \$150.00," "Clerk of courts: Cash bond - \$200," and save receipt.
 - (b) Compare Receipts and Disbursement Journal balance with check register.
 - (c) Any discrepancy signifies an error.
 - (2) Post Receipts and Disbursement Journal entry to client ledger card denominated "'Jones, Joyce: Jones v. Jones (Divorce)" (Example 5,

- line 3)” and “Farmer, Fred: Farmer-Rancher Real Estate Sale.”
(Example 6, lines 2-6)
- c. Send client accounting of client’s trust fund:
 - (1) Copy of client ledger card, or
 - (2) Part of billing statement, or
 - (3) Separate document.
- C. Insurance Settlements.
- 1. Deposit of settlement check.
 - a. From deposit slip:
 - (1) Update check register.
 - (2) Enter in Receipts and Disbursement Journal.
(See Example 1, Line 11)
 - (a) Compare Receipts and Disbursement Journal balance with check register.
 - (b) Any discrepancy signifies an error.
 - (3) Post Receipts and Disbursement Journal entry to client ledger card denominated “Vivian Viktum - Viktum v. Tort (PI).”
(Example 7, Line 1)
 - 2. Withdrawal of settlement proceeds:
 - a. Confirm clearance of settlement check.
 - b. Prepare settlement accounting.
 - c. From settlement accounting, prepare checks for:
 - (1) Medical liens or agreements to pay. (Example 1, Line 12)
 - (2) Subrogation payments. (Example 1, Line 13)
 - (3) Other direct costs and expenses. (Example 1, Line 14)
 - (4) From detailed attorney bill, prepare check for lawyer/law firm .
(Example 1, Line 15)
 - (5) Balance of proceeds to client. (Example 1, Line 16)
 - (6) Update check register.
 - d. From checkbook:
 - (1) Enter check details in Receipts and Disbursement Journal.
(Example 1, Line 12-16)
 - (a) Compare Receipts and Disbursement Journal balance with check register.
 - (b) Any discrepancy signifies an error.
 - (2) Post journal entries to client ledger card denominated “Vivian Viktum - Viktum v. Tort (PI).” (Example 7, Lines 2-6)
 - e. Send client final accounting of client’s trust fund:
 - (1) Copy of ledger card, or
 - (2) As part of settlement accounting, or
 - (3) Separate document.
- D. IOLTA and Bank Charges.
 - 1. Before reconciliation, enter bank charges and IOLTA from monthly bank statement.
 - a. Enter bank charges in Receipts and Disbursement Journal. (Example 1, Line 22)

-
- b. Post bank charges entry to ledger card denominated "Larry Lawyer - Bank Charges." (Example 1, Line 2)
 - c. Post IOLTA entries to ledger card denominated "IOLTA - State Bar Foundation." (Example 3, Line 1 and 2)
 - d. If needed, make additional deposit to cover future bank charges.
- E. Monthly Reconciliation.
1. Collect monthly bank statement, deposit book, checkbook, journal, client ledger cards.
 2. Prepare Client Ledger Balances. (Example 8)
 - a. Record running balance from each Client Ledger card with balance.
Note: Don't forget the "Larry Lawyer - Bank Charge" ledger card.
 - b. Record running balance from Journal.
 - c. Compare Total of Client Ledger Balances with Journal balance.
Note: These amounts should be equal, any discrepancy indicates an error.
 3. Prepare Client Trust Account Reconciliation. (Example 9)
 - a. Enter bank statement balance.
 - b. Enter undebited check numbers and amounts.
 - (1) Total undebited checks column.
 - (2) Enter total in Subtract undebited checks.
 - c. Enter uncredited deposits.
 - (1) Total uncredited deposits column.
 - (2) Enter in Add uncredited deposits.
 - d. Total adjustments column and enter in Total Adjustments, column 2.
 - e. Enter Journal balance
 - f. Subtract Total Adjustments from Journal Balance and enter in Adjusted Journal Balance.
 - g. Adjusted Journal Balance and Bank Statement Balance must be equal.

IV. INSURING AGAINST LOSS OF CLIENT FUNDS

Presented by

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IV. INSURING AGAINST LOSS OF CLIENT FUNDS

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The reality of the insurance world is that there is no easy way to fully protect a law firm that suffers theft of clients' funds. While many ways exist to contain the exposure and there are insurance products available to indemnify against some of the losses a firm could sustain, policy provisions are restrictive and in many areas coverage is unavailable. As is the case for so many potential losses, prevention is by far the best answer. Failing that, this is intended as a short discussion of the insurance vehicles available to protect a law firm that has a client trust fund loss. I discuss here the indemnity tools in light of the exposures a law firm faces.

Numerous losses have occurred as a result of **employee theft**. Secretaries, bookkeepers, and other staff members, especially those allowed signature authorities on the firm's client trust fund accounts, have purposefully misallocated funds. In some cases these "purposeful misallocations" have continued for years without discovery.

The best way to protect against employee theft is to add an endorsement to the policy that insures the office building and/or contents. A knowledgeable insurance agent, who knows that what lawyers do often involves holding money and accounting for it, will include Employee Dishonesty coverage with this policy.

Though relatively inexpensive when compared with other forms of defalcation protection at modest amounts (up to \$50,000), the endorsements that customarily are used to add this coverage are restrictive. Commonly, they require that there be an actual theft and that, as is the case with all other bonds, the bondholder (firm) sign a Proof of Loss that details what has been taken and how. Any loss must be proven and not be merely the result of an accounting discrepancy. Additionally, all such endorsements, again like all bonds, contain provisions indicating that any employee is covered for only one incident. Once a defalcation is covered, coverage ceases for that employee or those employees involved. In spite of the restrictions, the added endorsement is usually the most cost-effective way for firms to protect themselves from loss due to employee theft.

Client trust fund losses would not be the often-discussed problem they are if they were caused only by employee theft. Unfortunately, all too often, as a means to fuel a dependency habit, it is the professionals who "purposefully misallocate" client funds. Partner defalcation is a much harder problem to protect a firm against.

Firms that wish to include this protection or maintain large client trust fund balances or a larger amount of cash on hand can opt to purchase an actual bond. Written as a separate contract, the bond may have greater coverage and protect on a general (Blanket Bond) basis or be limited to acts committed by specific individuals (those the firm identifies as handling money) who are named in the bond. Cost is almost always greater and reporting requirements are stringent. The same provisions discussed under the Employee Dishonesty endorsement above are almost always found in the bond. Typically, bonds are written for an indefinite period and are in force until there is a loss or the premium is not paid for the coming period.

Some insurers offer "Crime Policies." This coverage can be found in separate policies or as a part of the office package in some circumstances. In addition to covering the firm for employee

dishonesty, they protect the policyholder against theft inside or outside the premises and include robbery of a messenger. They may also include accounts receivable loss protection and may have computer fraud or other similar more specific coverage. Losses in these areas more typically will involve the firm's funds but may include client trust funds in transit to depositories or for other purposes.

Loss of records in some cases may mean that a client could sustain a trust fund loss. As the funds themselves would presumably not be lost, this should only produce a temporary loss that should be resolvable once account information is recreated. Recreation of the account information after a natural disaster can be time consuming and costly. However, the policy provisions of a firm's office package insurance policy, particularly the extra expense coverage allowance, will provide some indemnity for this cost. Firms with a large amount of information that is not captured in one spot, i.e., on the hard drive of their computer server and backup tape, should investigate additional purchase of valuable papers replacement coverage, which usually includes computer and other information storage media.

Inadequate supervision of those handling trust funds is often alleged in conjunction with conversion or some other purposeful act. This is done, I suspect, when the party filing the complaint realizes that the law office incurring the loss has no bond or crime coverage. Quickly this leads to the realization that the firm's professional liability policy will not respond unless there is an allegation of negligence. An allegation that the firm or its partners failed to supervise and oversee the handling of client trust funds fills this need.

Most professional liability policies written for law firms include exclusions that are meant to preclude coverage for any purposeful loss of client funds. Exclusion 2.1.17 of the ALPS policy indicates, "*This policy does not apply: ... to any claim arising out of conversion, misappropriation or improper commingling of client funds or trust account funds ...* ." In spite of this, courts have held that a duty to defend does arise and coverage will apply to allegations that involve negligence in supervision and office administration. For this reason most professional liability insurers provide a defense to the complaint subject to reservation(s).

SIMPLE MEASURES A LAW FIRM CAN TAKE TO REDUCE THE LIKELIHOOD OF CLIENT TRUST FUND LOSS

1. Copy all checks as soon as the mail is opened. In small offices the receptionist or lead secretary usually opens the mail. Having that person copy all checks and give the copies to partners makes any defalcation that much more difficult and allows the firm's equity owners to see what monies have been received.
2. As soon as possible a restrictive endorsement should be placed on the reverse side of all received checks. Sometimes, if a generic endorsement is not sufficient, the accounting personnel will have to decide which account is to receive the deposit before a restrictive endorsement is placed on the check. Nonetheless, this should be done as soon after the check is received as possible. Not only will it discourage misapplication in a small office, but also it assures that if the check is lost it cannot be misused.
3. Make sure that an attorney, preferably a partner who is not involved in the case, signs all client trust fund checks. If this is totally impractical, require dual signatures beyond a small amount and review the second copies of all client trust fund checks at least weekly.

Firms that allow support staff to sign checks without any supervision or oversight are asking for trouble.

4. Keep client trust fund records so that they can be sorted by client as well as by account. Whenever a client calls, the office should be able to indicate immediately what balance the client maintains in the client trust fund account. There are a number of software programs that can do this efficiently.
5. If possible, have someone other than the account keeper accomplish the monthly reconciliation. Have a partner review the reconciliation monthly to assure that no mistakes have been made. The reconciliation and review should include review of each client's transactions and balance to assure that funds have not been misallocated among clients.
6. Move clients' funds on retainer as an advance for fees to the general account only after the client receives a bill. Some firms make it a habit to allow 15 days between bill mailing and fee transfer to allow clients time to object.
7. Correct mistakes as soon as they are recognized. Document and communicate the corrections if they involve any change in the balance of any client's funds.

Cases Involving Client Trust Fund Irregularities

MISAPPROPRIATION

In re Wilson, 490 A2d 1153. In this 1979 decision the New Jersey Supreme Court enunciates the rule "Disbarment is the only appropriate discipline for knowing misappropriation of client funds."

In re Noonan, 102 N.J. 157. In the *Noonan* decision the New Jersey Supreme Court goes further to define misappropriation as "... simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking."

In both of these cases and several others, the New Jersey Supreme Court has refused to consider any mitigating circumstances to avoid disbarment of an attorney who misappropriates clients' funds.

People v. Young, 864 P2d 563. A 1993 Colorado case that states disbarment is "... virtually automatic in the absence of significant factors in mitigation."

People v. Rodriguez, 889 P2d 681, January 1995. In this 1995 decision the Supreme Court of Colorado upheld a 90-day suspension from practice after two trust fund checks bounced. One was written to refund a retainer and the other to pay bar dues. Alcohol and the attorney's involvement in client investments were both factors.

Achrem v. Expressway, 917 P2d 447, May 1996. The Supreme Court of the State of Nevada upheld a summary judgment granted in favor of a lienholder, holding that the attorney had a duty to hold lienholder's funds in his client trust fund account instead of releasing them to the client after a personal injury settlement.

In the Matter of Harris, 934 P2d 965, March 1997. The Kansas Supreme Court imposed a greater discipline than that which was recommended, a two-year probation with conditions and

costs to be paid. The attorney commingled a disputed fee with his own funds and paid personal expenses from the account that held the disputed fees. A significant factor in the case was failure to communicate with the client and efforts at settlement negotiations after the client had fired the attorney.

Office of Disciplinary Counsel v. Mazer, 668 NE2d 478, August 1996. Finding that the attorney attempted to avoid taxes by depositing personal funds in his client trust account and thus commingled funds, the Ohio Supreme Court suspended the attorney for six months, staying the suspension if the attorney attended six hours of CLE in office management and agreed to probation for one year. Note that the need to preserve cash to pay for his spouse's expensive medical treatment was a significant factor in the attorney's discipline.

State of Oklahoma v. Perry, 936 P2d 897, March 1997. The attorney was disbarred after commingling funds for a period of time. He was involved in multiple conflicts of interests, made unauthorized loans to one corporate client without the knowledge of its principal, loaned money to another client to settle a matter brought by yet a third client, and paid personal expenses from the client trust fund.

In the Matter of Tway, 919 P2d 323, June 1996. Here the Supreme Court of the State of Idaho suspended an attorney for five years after a second client trust fund violation occurred while an investigation was underway regarding the first violation. The attorney accepted a personal injury case and received a retainer of \$2,500 that was deposited in the client trust account. He paid expenses totally unrelated to the case from that account which reduced it to a balance of less than \$2,500. At one point he convinced the client to allow him to move the trust fund to Nevada where it would allegedly bring higher interest. Throughout the pendency of the case, he refused to give an accounting to the client and dismissed the matter after opposing counsel pointed out that it was filed after the statute of limitations had run without researching the statute or discussing it with the client.

In the Matter of Fullwood, 471 SE2d. 151. Attorney was disbarred by the Supreme Court of South Carolina after he used for personal expenses monies on deposit for several clients. Alcohol was a factor. The decision's penultimate paragraph contains these sentences: "Although it is very clear that Fullwood was suffering from severe alcoholism and depression, such conditions do not excuse his misconduct. ... The public must be protected from dishonest lawyers, whatever the cause of the dishonesty."

FAILURE TO SUPERVISE

Florida Bar v. Weiss, 586 So2d 1051. The attorney failed to supervise his accountant in the appropriate method and timing for exchange of funds between the trust account and the general account. Lawyer was suspended for six months.

In re Pollack, 536 NYS2d 437. A partner was censured when an associate made a mistake in the client trust fund accounting, which the partner did not find or correct in a timely manner.

In re Williams, 711 SW2d 518. An attorney was held accountable and suspended for six months when he failed to supervise his wife who did not account for monies in the client trust fund and had several checks returned to clients marked insufficient funds from the client trust fund.

Attorney Grievance Commission of Maryland v. Morris, 469 A2d 853. A law office employee forged a signature of a client. When the attorney became aware of it, he failed to take any action. The Maryland Supreme Court disbarred the attorney.

USING CLIENT TRUST FUNDS TO ACCOMMODATE A FRIEND

In re Moras, 619 A2d 1007. A realtor friend of the attorney needed a trust fund check in order to close on a property she was purchasing. Although she promised to do so, she never did repay the attorney. The attorney was suspended for six months.

FAULTY RECORD KEEPING

In re Choroszej, 624 A2d 434. Inadequate record keeping caused suspension though there was no intent to use client funds inappropriately.

In re Brown, 427 SE2d 645. Lawyer was suspended for unintentionally commingling mortgage funds with other funds, in spite of the fact that all monies were repaid.

North Carolina State Bar v. Sheffield, 326 SE2d 320. An attorney was suspended for three years for failure to keep records. The court held that maintenance of check stubs was insufficient record keeping.

Louisiana State Bar v. Hopkins, 447 So2d 464. Attorney was suspended for one year as a result of several client trust fund irregularities and lax record keeping. His claim that an inefficient staff was the cause had no effect.

EXTENUATING CIRCUMSTANCES

In the Matter of Koehler, 628 P2d 461. Attorney Koehler's office burned. All records regarding his client trust fund were destroyed in the fire. The court held that this was no excuse; Koehler still had failed to maintain adequate records in accordance with the rules.

In re Jones, 843 P2d 709. A Kansas attorney was disbarred for misusing law school organization funds, in spite of his impairment due to cocaine and subsequent successful treatment.

INSURANCE COVERAGE FOR CLIENT TRUST FUND MISHANDLING LIABILITY

Continental Casualty Company v. McDowell, et al, 668 NE2d 59, June 1996. For a period of nearly two years a partner of the firm was, unbeknownst to the firm, diverting trust account funds to pay firm debts and for his personal use. The Court of Appeals of the State of Illinois ruled that there was potential coverage under the firm's LPL policy for the alleged negligent supervision of the innocent partners in failing to assure safety of the client's funds and thus a duty to defend a suit brought by clients who lost deposited funds. Over \$1,000,000 was transferred from client trust funds for firm or personal use from settlements and other monies received.

**CLIENT TRUST FUND ACCOUNTING
SOFTWARE PROGRAMS**

TABS III	Software Technology, Inc. 1621 Cushman Drive Lincoln, NE 68512	(402) 423-1440
Juris Trust Accounting	Juris Inc. 5106 Maryland Way Brentwood, TN 37027	(615) 377-3740
P.C. Law, Jr.	Alumni Computer Group 300 Pearl Street, Suite 200 Buffalo, NY 14202	(800) 387-9785
Morningstar	Morningstar Technology Corp. P.O. Box 5370 Greenville, SC 29606-5370	(803) 232-2170
Legal Ease Auto Systems	Micro Concepts, Inc. 8424 Central Avenue St. Petersburg, FL 33707	(800) 232-1321
Excelsior Legal, Inc.	Direct Marketing Affiliate of Julius Blumberg, Inc. 62 White Street New York, NY 10013	(800) 221-2972 Ext 503
Computer Law	Computer Law Systems 11000 West 78th Street Minneapolis, MN 55344	(800) 328-1913
Pro Law	Impact Software Products, Inc.	(800) 977-6525
Brief Accounting	Colin McPhail Pan Pacific Professional	(604) 533-8315
Perfect Practice	ADC Legal Systems, Inc. 1209 Edgewater Drive Orlando, FL 32804	(407) 843-8992

V. ISSUES OF NON-COMPLIANCE

Presented by

Mr. J. Crisman Palmer

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Member: Pennington County Bar (President, 1985) and American (Vice Chairman, Corporate and Banking Section, General Practice Section, 1990) Bar Associations; The State Bar of South Dakota (Commissioner, 1983-1986; Member, Disciplinary Board, 1996 to present); South Dakota Board of Pardons & Parole (1991-1997; Chairman, 1993-1997); South Dakota Trial Lawyers Association; South Dakota Council of School Attorneys; Defense Research Institute; Federation of Insurance and Corporate Counsel; South Dakota Defense Lawyers Association (Member, Board of Directors, 1995-1997).

Materials by Laurence Zastrow, Disciplinary Board Counsel, State Bar of South Dakota

V. ISSUES OF NON-COMPLIANCE

Presented by
Mr. J. Crisman Palmer

I. *How Trust Account Violations Get before the Disciplinary Board*

- A. Complaints from clients.
1. Failure to refund unearned fee.
 2. Failure to do work where advance fee paid.
 3. Failure to account for disbursement of advanced fees.
 4. Delay in paying settlement disbursements.
 5. Non-sufficient funds trust account check.
Board will compel production of trust account records for any of these complaints.
- B. Complaints from lawyers, judges, partners, associates.
1. Rule 8.3(a) provides:
“A lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a **substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer** in other respects, shall inform the appropriate professional authority.”
 2. Commingling, conversion, and misappropriation all meet the criteria of Rule 8.3.
Board will compel production of trust account records for any of these complaints.
- C. Complaints from employees, spouses, third parties.
1. Disgruntled employees and divorced spouses are highly motivated.
 2. Failure to promptly pay third parties.
 - (a) Medical liens against recovery.
 - (b) Insurance subrogation claims.
 3. Non-sufficient funds trust account check.
Board will compel production of trust account records in any of these complaints.
- D. Board Investigation.
1. Standard questions lawyer before the Board must answer under oath are:
 - (a) “Have you filed the trust account certificate of compliance?”
 - (b) “Are you in compliance with trust account rules?”
 - (c) “Are your records in compliance with trust account rules?”**NOTE:** Answers of “No,” “I don’t know,” “I think so,” or “My [secretary] [bookkeeper] [accountant] takes care of that” are not adequate.
 2. Board follows wherever trail leads to trust account.
 - (a) Payment of personal debt is with trust account check.
 - (b) Refund of unearned fees is with office account check.
 - (c) Disbursement of settlement is with office account check.
Board will compel production of trust account records under any of these situations.

II. Definitions.

A. Commingling.

1. ***State ex rel. Oklahoma Bar Ass'n. v. Dunlap***, 880 P2d 364 (OK 1994)
“Commingling” occurs when lawyer has failed to keep client monies, or money accepted on behalf of client, in an account which is separate from that of lawyer.
2. ***Matter of Davis***, 614 A2d 1116 (PA 1992)
Rule against commingling of client funds and lawyer personal funds contains no requirement of intentional act, but rather provides for strict liability.
3. ***Matter of McGann***, 666 A2d 489 (DC App 1995)
Rule against commingling is to prevent misappropriation or unintentional loss of client funds.
4. ***In re Micheel***, 610 A2d 231 (DC App 1992)
Commingling occurs when client funds are deposited into lawyer’s operating account.
5. ***In re Millstein***, 667 A2d 1355 (DC App 1995)
Commingling occurs when settlement funds are deposited in operating account.
6. ***Matter of Archuleta***, 920 P2d 517 (NM 1996)
Commingling occurs when unearned fees are deposited into office account, rather than trust account.
7. ***Matter of Gambino***, 619 NYS2d 305 (NY AD2 1994)
Commingling occurs when earned fees are allowed to remain in escrow account along with funds lawyer holds on behalf of clients and others.
8. **A NARROW EXCEPTION** (which the Disciplinary Board believes the Supreme Court would follow):
 - (a) ***Matter of Chariff***, 633 NYS2d 618 (NY AD3 1995) “[H]is deposit of personal funds into the escrow account was not prohibited commingling because he was correcting an account deficiency and respondent **relinquished any claim** to the deposited funds.” *See also Matter of Barnes*, 605 NYS2d 955 (NY AD2 1993).
CAVEAT: However, to establish that lawyer has “relinquished any claim to the deposited funds,” it must be **immediately reported** to the Disciplinary Board and the lawyer **must** self-report and make such a declaration. In South Dakota both commingling, *see Discipline of Tidball*, 503 NW2d 850 (SD 1993), and issuing non-sufficient funds check is serious violation, *see In re Rude*, 88 SD 416, 221 NW2d 43 (1974). The recovery of trust funds paid by mistake to a third party **may** be available through civil remedies but subject to normal defenses.

B. Conversion.

1. ***State ex rel. Oklahoma Bar Ass'n. v. Meek***, 895 P2d 692 (OK 1994)
Conversion occurs when a lawyer applies a client’s funds to purpose other than that which it was entrusted to the lawyer.

2. ***Matter of Rosenberg***, 596 NYS2d 564 (NY AD3 1993)
Conversion occurs where funds of one or more clients are used to pay expenses on behalf of another client even though due to poor bookkeeping.
 3. ***The Florida Bar v. de la Puente***, 658 So2d 65 (Fla 1995)
Paying obligations of one client from trust funds held for another client is conversion.
 4. ***Idaho State Bar v. Tway***, 919 P2d 323 (Ida 1996)
Placing client funds in “underfunded” trust account is conversion.
 5. ***Ried v. Mississippi State Bar***, 586 So2d 786 (MS 1991)
Trust account deposits less than amount delivered to lawyer supports conclusion of conversion.
 6. ***Matter of Hahn***, 615 NYS2d 872 (NY AD4 1993)
Depositing client’s proceeds from real estate closing into an escrow account which had a negative balance is conversion.
 7. ***Matter of Klugerman***, 596 NYS2d 397 (NY AD1 1993)
Allowing client trust account balance to fall below sum of accounts held on behalf of clients is conversion.
 8. Conversion is synonymous with “deprivation of client funds” used in some opinions.
See e.g., Matter of Carrigan, 609 NE2d 442 (MA 1993)
 9. Conversion is synonymous with “unintentional misappropriation of client funds” used in some opinions.
See e.g., In re Choroszej, 624 A2d 434 (DC App 1992)
- C. Misappropriation.
1. ***State ex rel. Oklahoma Bar Ass’n. v. Meek***, 895 P2d 692 (OK 1994)
Misappropriation occurs when an lawyer knowingly, intentionally, or purposefully deprives a client of money by way of deceit and fraud.
NOTE: Intent to *permanently* deprive client of funds is not an element of “knowing misappropriation.” *see Matter of Barlow*, 657 A2d 1197 (NJ 1995)
 2. ***State ex rel. NSBA v. Veith***, 470 NW2d 549 (NE 1990)
“The willful misappropriation of client funds should be the State Bar’s equivalent of a capital offense.”
 3. ***The Florida Bar v. Simring***, 612 So2d 561 (Fla 1993)
Persistent shortages in trust account, payment of personal obligations from trust account, and “*sloppy and incomplete records*” support finding of knowing misappropriation.
 4. ***In re Konopka***, 596 A2d 733 (NJ 1991)
Conversion of client funds from trust account which are result of “*shoddy bookkeeping*” will support finding of knowing misappropriation.
 5. ***State ex rel. NSBA v. Bruckner***, 543 NW2d 451 (NE 1996)
Misappropriation caused by “*inexcusable failure to oversee entrusted funds*” is willful, even in absence of improper intent or deliberate wrongdoing.
 6. ***In re Strom***, 551 NW2d 715 (MN 1996)
Misappropriation occurs when client funds are *not kept in trust account* and are used for any purpose other than purpose specified by the client.

7. ***In re Whipple***, 886 P2d 7 (OR 1994)
Misappropriation occurs when lawyer *cashes* client's check for advance fees and uses unearned portion of the funds for his own use knowing it is not yet earned.
8. ***Matter of Eckelman***, 599 NYS2d 443 (NY AD2 1993)
Misappropriation occurs when lawyer issues checks from an escrow account to third parties in satisfaction of personal obligations notwithstanding lawyer has earned fees in escrowed funds.
9. ***In re Charron***, 918 SW2d 257 (MO 1996)
Misappropriation occurs even though lawyer may have legitimate claim for \$20,000 against estate funds in trust account where payment to himself was made prior to perfecting claim by filing form with court.
10. ***Attorney Grievance Com'n v. Boyd***, 635 A2d 382 (MD 1994)
Misappropriation occurs when lawyer uses client trust funds for business, not personal, expenses.
11. Misappropriation is synonymous with "knowing" or "intentional conversion" to lawyers use or benefit used in some opinions.
See e.g., Butler Co. Bar Ass'n. v. Schoettler, 660 NE2d 1139 (OH 1996)
12. Misappropriation is synonymous with "gross negligence" which results in "conversion to lawyer's benefit."
See e.g., Matter of Davis, 603 A2d 12 (NJ 1992);
Attorney Grievance Com'n v. Powell, 614 A2d 102 (MD 1992)

III. ***The Benefits of Self-Reporting***

- A. Technical Violations
 1. A self-report of technical violations and certification of corrections and there was no commingling, conversion, or misappropriation of client funds will simply be filed with Certificate of Compliance.
 - (a) Commingling, conversion, or misappropriation of client funds are not technical violations.
 - (b) False certification would be an aggravating circumstances in past or future complaints concerning trust accounts.
 2. Failure to correct technical violations will be an aggravating circumstance in future complaints concerning trust accounts.
- B. Commingling
 1. The only way to argue that placing personal funds in the trust funds was NOT intentional is by the lawyer self-reporting to the Disciplinary Board.
 - (a) Lawyer may end up with a admonition if it was staff error.
 - (b) Lawyer may end up with a private reprimand if it is lawyer's failure to supervise.
- C. Conversions (including negligent or unintentional use of erroneously commingled funds)
 1. The only way to argue that the mishandling of trust funds was NOT intentional is by the lawyer self-reporting to the Disciplinary Board.
 - (a) Lawyer may end up with a private reprimand or private reprimand with Rule 60 agreement with reporting requirements.

- (b) Lawyer may end up with a public censure or private reprimand with Rule 60 agreement with serious practice restrictions if there was gross negligence.
- D. Misappropriations (including gross negligence)
 - 1. The only way to effectively argue that the misappropriation of trust funds was NOT intentional, i.e., criminal, is by the lawyer self-reporting to the Disciplinary Board and making immediate restitution.
 - (a) Lawyer may end up with a suspension.
Or less, see In re Holly, 417 NW2d 263 (MN 1987) (public censure);
In re Simonsen, 365 NW2d 259 (MN 1987) (2-year probation).
 - (b) Lawyer may end up with a disbarment, but self-reporting may be the key to reinstatement.
Compare Petition of Pier, 1997 SD 23, 561 NW2d 297 with *Discipline of Coacher*, 438 NW2d 549 (SD 1989).

IV. ***Punishments for Trust Account Violations.***

- A. *ABA Standards for Imposing Lawyer Sanctions* have not been adopted by the South Dakota Supreme Court but are used by the Disciplinary Board and the Supreme Court as a guide.
 - 1. Use of standards by South Dakota Supreme Court.
 - (a) ***Discipline of Claggett***, 1996 SD 21, 544 NW2d 878
“Furthermore, while not dispositive of the case before us, we may look to the ABA Standards for Imposing Lawyer Sanctions for some guidance.”
 - (b) ***Discipline of Jeffries***, 488 NW2d 674 (SD 1992)
 - (c) ***Discipline of Pier***, 472 NW2d 916 (SD 1991)
 - 2. ***Standard 3.0 Generally***
3.0 In imposing a sanction after a finding of lawyer misconduct, a court should consider the following factors:
 - (a) Duty violated;
 - (b) Lawyer’s mental state;
 - (c) Actual or potential injury caused by the lawyer’s misconduct; and
 - (d) Existence of aggravating or mitigating factors.
 - 3. ***Standard 4.1 Failure to Preserve Client’s Property***
4.1 Absent aggravating or mitigating circumstances, upon application of the factors set out in 3.0, the following sanctions are generally appropriate in cases involving the failure to preserve client property.
 - 4.11** Disbarment is generally appropriate when a lawyer knowingly converts client property and causes injury or potential injury to a client.
 - 4.12** Suspension is generally appropriate when a lawyer knows or should know that he is dealing improperly with client property and causes injury or potential injury to client.
 - 4.13** [Public censure] is generally appropriate when a lawyer is negligent in dealing with client property and causes injury or potential injury to a client.

4.14 [Private reprimand] is generally appropriate when a lawyer is negligent in dealing with client property and causes little or no actual or potential injury to a client.

4. **Standard 9.3 Mitigation**

9.31 Definition. Mitigation or mitigating circumstances are any considerations or factors that may justify a reduction in the degree of discipline to be imposed.

9.32 Factors which may be considered in mitigation. Mitigating factors include:

- (a) Absence of a prior disciplinary record;
- (b) Absence of a dishonest or selfish motive;
- (c) Personal or emotional problems;
- (d) Timely good faith effort to make restitution or to rectify consequences of misconduct;
- (e) Full and free disclosure to disciplinary board or cooperative attitude toward proceedings;
- (f) Inexperience in the practice of law;
- (g) Character or reputation;
- (h) Physical disability;
- (i) Mental disability or chemical dependency including alcoholism or drug abuse when;
 - (1) There is medical evidence that the respondent is affected by a chemical dependency or mental disability;
 - (2) The chemical dependency or mental disability caused the misconduct;
 - (3) The respondent's recovery from the chemical dependency or mental disability is demonstrated by a meaningful and sustained period of successful rehabilitation; and
 - (4) The recovery arrested the misconduct and recurrence of that misconduct is unlikely.
- (j) Delay in disciplinary proceedings;
- (k) Imposition of other penalties or sanctions;
- (l) Remorse;
- (m) Remoteness of prior offenses.

5. **Standard 9.2 Aggravation**

9.21 Definition. Aggravation or aggravating circumstances are any considerations, or factors that may justify an increase in the degree of discipline to be imposed.

9.22 Factors which may be considered in aggravation.

Aggravating factors include:

- (a) Prior disciplinary offenses;
- (b) Dishonest or selfish motive;
- (c) Pattern of misconduct;
- (d) Multiple offenses;
- (e) Bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with rules or orders of the disciplinary agency;

- (f) Submission of false evidence, false statements, or other deceptive practices during the disciplinary process;
- (g) Refusal to acknowledge wrongful nature of conduct;
- (h) Vulnerability of victim;
- (i) Substantial experience in the practice of law;
- (j) Indifference to making restitution;
- (k) Illegal conduct, including that involving the use of controlled substances.

V. **Examples of Punishment or Recommendations**

- A. Failure to keep records in form required by statute and rules.
 - 1. **Self report** and no commingling, etc., and no loss to client –
 - (a) Technical violation which lawyer certifies has been corrected and certifies that no commingling has occurred, no harm to client,
 - (1) If the lawyer has NO prior complaints, the report of a technical violation will be filed with lawyer’s Certificate of Compliance.
 - (2) If the lawyer has an existing Disciplinary Board file, the report of a technical violation will be filed in Disciplinary Board file.
 - (b) When a client or third party reports the technical violation, the Disciplinary Board can state that the problem is known and corrected.
 - 2. Not self-reported but no commingling and no loss to client – Private reprimand. Why? – If client or third party reports to the Board, lawyer has also failed to comply with Rule 8.3.
- B. Failure to notify client of receipt.
 - 1. **Self-report** and no commingling, etc., and no loss to client – Admonition.
 - 2. Not self-reported but no commingling and no loss to client – Private reprimand.
- C. Failure to promptly pay or deliver, failure to account.
 - 1. No loss to client and no commingling, and legitimate excuse for failure to promptly pay – Private reprimand.
 - 2. Significant delay but nominal loss or damage to client (loss of interest, inconvenience) but no commingling, etc., – Private reprimand with Rule 60 Agreement or Public censure.
 - 3. Substantial loss or damage to client (i.e., lost income, lost business opportunity, litigation expense) but no commingling, etc., – Suspension.
See e.g., Matter of Lehman, 509 NW2d 291 (WI 1994)
- D. Commingling (failure to maintain separate account, deposit to office account but available funds always exceed client funds).
 - 1. **Self-report** and no conversion, etc., and no loss to client – Private reprimand.
 - 2. Not self-reported but no conversion, etc., and no loss to client – Public censure
- E. Conversion (use for purpose not authorized by client but not for lawyer’s benefit)
 - 1. **Self-report** of negligent act (e.g., poor accounting, employee act) with no misappropriation and no loss to client – Private reprimand.
 - 2. Not self-reported but negligent act (e.g., poor accounting, unknown partner or associate or employee act) with no misappropriation but some loss to client – Public censure.
 - 3. Not self-reported but negligence or unintentional act but substantial loss to client – Suspension.

4. Not self-reported but gross negligence or willful act or loss to client – Suspension.
- F. Misappropriation (client’s funds used for lawyer benefit)
1. Report of partner or associate or employee who concealed act and no loss to client – Private reprimand of innocent partner.
 2. Report of partner or associate or employee act caused by failure to supervise and loss to client – Private reprimand or public censure of innocent partner depending on amount of neglect or loss.
See e.g., Matter of Falanga, 583 NYS2d 472 (NY AD 1992), public censure.
 3. Misappropriation by lawyer or associate or employee act
 - (a) Willful or intentional misappropriation is presumptively a disbarment violation.
 - (b) Failure to report partner or associate or employee act
 - (1) No loss to client – Private reprimand for non-reporting partner.
 - (2) Loss to client – Public censure for non-reporting partner.
See e.g., In re Sykes, 546 NYS2d 376 (NY AD2 1989)
 - (c) No loss because of pre-complaint restitution
 - (1) Not self-reported – Suspension of offending lawyer
See e.g., People v. Schidler, 901 P2d 477 (CO 1995);
Matter of Lehman, 509 NW2d 291 (WI 1994);
Iowa Bd. Of Professional Ethics v. Gottschalk, 553 NW2d 332 (IA 1996)
 - (2) Self-reported substantial misappropriation – Disbarment with possible reinstatement after 5 years.
See e.g., Petition of Pier, 1997 SD 23, 561 NW2d 297
“Pier's payment of full restitution does more than just settle accounts. ‘Restitution is fundamental to the goal of rehabilitation.’ ... Pier repaid what he took, with interest, within days after he admitted guilt. Repayment alone will not establish rehabilitation, but certainly restitution expresses the sincerest form of atonement and the surest mark of accountability.”
 - (d) Loss to client and no restitution.
 - (1) Suspension with possible reinstatement after 3 years
See e.g., Discipline of Tidball, 503 NW2d 850 (SD 1993)
 - (2) Loss and no subsequent restitution – Disbarment
See e.g., Matter of Wright, 509 NW2d 290 (WI 1994)

VI. Examples of Aggravating Circumstances

- A. Failure to respond to Disciplinary Board.
 1. *In re Rude*, 88 SD 416, 221 NW2d 43 (1974)
“We consider respondent's failure to respond to the communications from the Grievance Committee to be indicative of his attitude towards the serious nature of the complaints [L]et this opinion be fair notice that similar inexcusable failures to respond will count heavily in any subsequent formal disciplinary proceedings brought against an lawyer. ... He acts at

- his peril who treats a communication from the Grievance Committee with the indifference accorded an unsolicited invitation to join a book club.”
2. ***Discipline of Tidball***, 503 NW2d 850 (SD 1993)
 “The numerous failures to promptly reply to Board demands for responses and subpoenas ... are a separate basis for discipline. ... It is also the basis for increasing the severity of the appropriate discipline imposed for the commission of other acts of unprofessional conduct. Today we reaffirm in the strongest possible terms the admonition given the bar in *In re Rude*...”
 3. *See also* non-trust account disciplinary matters:
 - (a) ***Discipline of Kirby***, 336 NW2d 378, 380 (SD 1983)
 - (b) ***Discipline of Kintz***, 315 NW2d 328, 331 (SD 1982)
- B. Bad attitude, lack of remorse.
1. ***In re Rude***, 88 SD 416, 221 NW2d 43 (1974)
 “During his appearance ... respondent displayed an attitude of belligerence and defiance towards the court. Respondent's attitude towards the court, his almost immediate violation of his promise to the court to avoid future acts of misconduct, his earlier indifference to the communications from the Grievance Committee, his subsequent failure to file an answer to the amended complaint, and his affront to the Referee by appearing at the hearing at times of his own choosing, weigh heavily against the plea that we exercise leniency in imposing discipline. ... We conclude that respondent's conduct ... [his] attitude of belligerence and defiance towards this court and to the Referee and his indifference to the inquiries from the Grievance Committee, establishes respondent's present unfitness to continue as a member of the profession.”
 2. *Compare* ***Petition of Pier***, 1997 SD 23, 561 NW2d 297
 “Pier was open and honest and plainly confessed his misconduct. This was also his posture during the initial Board hearing in 1991, as he testified candidly about the theft, even though he was unaware at the time whether his admissions would be used in criminal proceedings against him.”
- C. Lack of knowledge of rules or financial affairs.
1. ***In re Rude***, 88 SD 416, 221 NW2d 43 (1974)
 Lawyer who “also points to the failure of the State Bar to educate and advise young lawyers who are entering the practice of law as sole practitioners about financial matters” disbarred.
 2. ***Matter of Davis***, 603 A2d 12 (NJ 1992)
 Lawyer disbarred where “Respondent argue[d] that any misappropriation was caused by his ignorance about bookkeeping and lawyer’s ethics ... and [because he] could not afford a bookkeeper.”
- D. Failure to accept responsibility.
1. ***In re Rude***, 88 SD 416, 221 NW2d 43 (1974)
 Lawyer “pointing the finger of guilt at his employees” was disbarred.
 2. ***Petition of Pier***, 1997 SD 23, 561 NW2d 297
 Lawyer was reinstated where “[he] was open and honest and plainly confessed his misconduct.”

- E. Loss to client or third party – No restitution.
1. **Matter of Wright**, 509 NW2d 290 (WI 1994)
 Lawyer disbarred where she was personal representative of estate and from \$46,000 of cash assets of estate converted \$10,946 to her personal use and made no restitution. *Compare*, **Matter of Lehman**, 509 NW2d 291 (WI 1994) (six-months suspension where \$12,000 restored)

VII. Examples of Mitigation

- A. Overworked, “Workaholic.”
1. **Attorney Grievance Com’n v. Drew**, 669 A2d 1344 (MD 1996)
 Lawyer was suspended although handling post-bankruptcy payments for clients with over 900 trust account transactions in a year was proof “Mr. Drew is a workaholic. ... [and] left him with little time for office supervision ... [causing him to] relied upon his staff and signed the [trust account] checks they presented, ... the court has never considered that a lawyer’s decision to take on more work than the lawyer could handle was a mitigating factor.”
- B. Alcoholism.
1. **In re Rude**, 88 SD 416, 221 NW2d 43 (1974)
 Lawyer disbarred although his “[c]ounsel suggested that ... the court to place a condition upon a suspension from practice that would permit respondent to be reinstated to the profession upon his overcoming his drinking problem. ... Although it is to be hoped that respondent will overcome his problem with alcohol, it is the primary duty of this court to protect the public and to uphold the standards of the profession by taking such disciplinary action as is appropriate... .”
 2. **Discipline of Tidball**, 503 NW2d 850 (SD 1993)
 Lawyer suspended for three years where “... the real reason [for the misconduct] is that he had become a chronic abuser of alcohol. ... Alcoholism per se is no defense ... The client suffers as much through the misconduct of the alcoholic lawyer as if the same misconduct had as its source a calculated evil motive. ... We do not hold that alcoholism as a causation factor in misconduct will shield the perpetrator from the consequences of his actions.”
Cf. In re Walker, 254 NW2d 452 (SD 1977) a non-trust account proceeding where “the respondent two and one-half years ago ceased to use intoxicating liquor and has since totally abstained and has pledged to totally abstain in the future, and ... the misconduct ... was proximately caused by his alcoholism and occurred primarily prior to the beginning of his total abstention ... he [may] continue the practice of law conditional upon his continued abstinence from alcohol ... [for a period of five years]. ... not ... because he is an admitted alcoholic but rather because he is ... a bona fide recovered or arrested alcoholic who has for the past two and one-half years demonstrated his fitness to continue in the practice of law. ”

3. ***In re Kersey***, 520 A2d 321 (DC 1987)
Lawyer's disbarment for misappropriation suspended on condition of sobriety for five-year because "but for his alcoholism, his misconduct would not have occurred ... [and] this 'but for' test is the standard that must be met in order to prove causation ... [and] rehabilitation from that condition will be considered a significant factor in imposing discipline."
 4. ***Cleveland Bar Ass'n v. Sterling***, 629 NE2d 400 (OH 1994)
Lawyer suspended for two years for misappropriation of client funds where lawyer "suffered from alcoholism ... [which was] connected to his service as an intelligence officer in Vietnam" where lawyer failed to deposit unearned fees in trust account and when asked for refunds told clients "his account had been frozen by IRS."
 5. ***Attorney Grievance Com'n v. Bakas***, 593 A2d 1087 (MD 1991)
Lawyer was indefinitely suspended although "... Bakas testified concerning his alcoholism during the period ... he functioned ... without incident for a number of years in the practice of law; ... he had the presence of mind to secrete \$10,000 from the [IRS]; ... and he successfully handled all aspects of [client's] case."
 6. ***Attorney Grievance Com'n v. Powell***, 614 A2d 102 (MD 1992)
Lawyer was suspended indefinitely because "despite his alcoholism, respondent was able to perform complex business transactions ... and successful rehabilitation ... does not constitute a sufficient mitigating factor to outweigh the presumptive disbarment for [knowing misappropriation]."
- C. Drug addiction.
1. **SDCL 16-19-48**. Transfer to inactive status of respondent pleading disability.
"If, during the course of a disciplinary proceeding, the respondent claims to suffer from ... addiction to drugs or intoxicants, which makes it impossible for the respondent to make an adequate defense, the Supreme Court shall enter an order immediately transferring the respondent to disability inactive status"
 2. ***In re Cooper***, 591 A2d 1292 (DC App 1991) on rehrg. 613 A2d 938 (1992)
Lawyer's cocaine addiction is not a defense and, even assuming that addiction to illegal drug should be treated same as alcohol addiction, "Respondent had not shown present rehabilitation or that his addiction would probably not recur in the foreseeable future ... [and] it is more appropriate to examine the issue [of rehabilitation] when it is time for Cooper to re-enter practice" after six month suspension for conversion of \$550 of client funds.
 3. *See also* ***Discipline of Jeffries***, 500 NW2d 220 (SD 1993)
In proceedings not involving client funds, three-year suspension of lawyer admitting extensive "recreational use" of cocaine.
 4. *See also* ***Discipline of Johnson***, 500 NW2d 215 (SD 1993)
In proceedings not involving client funds, two-year suspension of lawyer admitting extensive "recreational use" of marijuana.
- D. Mental Illness, psychological problems.
1. **SDCL 16-19-48**. Transfer to inactive status of respondent pleading disability.

“If, during the course of a disciplinary proceeding, the respondent claims to suffer from a disability by reason of mental ... illness, ... which makes it impossible for the respondent to make an adequate defense, the Supreme Court shall enter an order immediately transferring the respondent to disability inactive status ...”

2. ***In re Patkus***, 654 A2d 434 (DC App 1995)
Lawyer disbarred for “... intentionally misappropriat[ing] \$9,600... [and] it is unnecessary to decide ... whether post-traumatic stress disorder [PTSD] can ever create the basis for mitigation ... because respondent failed to demonstrate (a) that he suffered from PTSD, and (b), assuming he suffered from PTSD, that the condition substantially caused his misconduct or that he has been rehabilitated.”
3. ***Cuyahoga Bar Ass’n. v. Bernardic***, 656 NE2d 326 (OH 1995)
Lawyer permanently disbarred although “he had been treating ... for clinical depression, ... a bipolar disorder, since 1991, and ... [hospitalized for] severe or suicidal depression ... [which only] contributed to his impulsiveness, but ... did not ... cause him to forge signatures and steal [\$208,000] from his clients.”
4. ***In re Porter***, 449 NW2d 713 (MN 1990)
Lawyer disbarred where “respondent failed to establish that the bi-polar disorder was not likely to recur ... [and] no evidence of [medication’s] effectiveness was introduced.”
5. ***Attorney Grievance Com’n v. Drew***, 669 A2d 1344 (MD 1996)
Lawyer indefinitely suspended for conversion although “he sought counseling ... for depression and stress ... from 1988 ... until 1992.”
6. ***People v. Schidler***, 901 P2d 477 (Col 1995)
Public censure imposed where “in 1993 Respondent was diagnosed with attention deficit hyperactivity disorder [which] was the major cause of the respondent’s mishandling of the trust funds, but ... with appropriate medication ... he will not engage in similar misconduct.”

E. Financial Problems.

1. ***In re Rude***, 88 SD 416, 221 NW2d 43 (1974)
Lawyer disbarred because “[f]inancial problems ... do not excuse nor do they justify a course of conduct in the handling of a client’s funds that leads to the misallocation or withholding, however temporary, of such funds.”
2. ***Discipline of Tidball***, 503 NW2d 850 (SD 1993)
Lawyer suspended because “Respondent’s partial justification for his conduct is that he used the bank drafts to avoid garnishment of his client’s funds by his personal creditors ... has no legal basis.”
3. ***Discipline of Pier***, 472 NW2d 916 (SD 1991)
Lawyer disbarred because “a negative cash flow in a newly formed law practice ... do[es] not excuse nor ... justify ... misallocation ... of [client] funds.”
4. ***Attorney Grievance Com’n v. Powell***, 614 A2d 102 (MD 1992)
5. ***Attorney Grievance Com’n v. Drew***, 669 A2d 1344 (MD 1996)

- F. Domestic Problems
1. ***Discipline of Pier***, 472 NW2d 916 (SD 1991)
Lawyer disbarred because “... domestic troubles with his wife... do not excuse nor do they justify ... misallocation or withholding, however temporary, of such funds.”
 2. ***Petition of Pier***, 1997 SD 23, 561 NW2d 297
Lawyer petition for reinstatement allowed where “... in mitigation he revealed severe stress from a disintegrating marriage [that] later ended in divorce.”
 3. ***Cleveland Bar Ass’n v. Sterling***, 629 NE2d 400 (OH 1994)
Lawyer suspended for two years for misappropriation of client funds although lawyer “experienced domestic problems that ultimately led to his divorce in 1989 ... [which were] connected to his service as an intelligence officer in Vietnam.”
 4. ***Attorney Grievance Com’n v. Powell***, 614 A2d 102 (MD 1992)
Lawyer indefinitely suspended despite “[r]ecord ... replete with many personal and familial problems.”
 5. ***Attorney Grievance Com’n v. Drew***, 669 A2d 1344 (MD 1996)
Lawyer indefinitely suspended although “his personal life contributed to the stress ...[,] he described the marriage was a tumultuous ... [, and] custody and visitation problems are ongoing.”
 6. *Cf.*, ***Matter of Barnes***, 605 NYS2d 955 (NY AD2 1993)
Lawyer “beset with personal problems” given public censure.
- G. Employee’s act.
1. ***In re Rude***, 88 SD 416, 221 NW2d 43 (1974)
Lawyer disbarred because “the lawyer [cannot] escape censure... by pointing the finger of guilt at his employees.”
 2. ***Matter of Davis***, 603 A2d 12 (NJ 1992)
Lawyer disbarred because “this Court view[s] ‘defensive ignorance’ with a jaundiced eye. ... [and] intentional and purposeful avoidance of knowing what is going on in one’s trust account will not be deemed a shield against proof of what would otherwise be ‘knowing misappropriation.’”
 3. ***Attorney Grievance Com’n v. Powell***, 614 A2d 102 (MD 1992)
Lawyer suspended indefinitely for “unintentional misappropriation” where he blamed “misdeposit by his secretary, who at that time was a temporary employee hired from temporary secretarial services agency” but was on notice of probability that funds were misdeposited because of checks returned for non-sufficient funds.
 4. ***State ex. rel. NSBA v. Bruckner***, 543 NW2d 451 (NE 1996)
Lawyer suspended for misappropriation caused by inexcusable failure to oversee entrusted funds is deemed willful, even in absence of improper intent or deliberate wrongdoing.
 5. ***In re Williams***, 711 SW2d 518 (MO 1986)
Lawyer disbarred for numerous non-sufficient funds trust account checks because lawyer cannot escape responsibility where he knowingly ignores trust account problems and demonstrates a total disregard of secretary/bookkeeper/wife handling of account.

6. ***People v. Schidler***, 901 P2d 477 (Col 1995)
Public censure imposed on lawyer where his employee/wife's personal problems prevent her from reconciling trust account which she was overseeing for two months.
 7. ***Louisiana State Bar v. Keys***, 567 So2d 588 (LA 1990)
Lawyer suspended for failure to supervise employee who used misappropriated funds for lawyer's benefit.
 8. ***Louisiana State Bar v. Lindsay***, 553 So2d 807 (LA 1989)
Lawyer disbarred for failing to oversee accountant's work; lawyer bears ultimate responsibility for conversion of client's funds.
- H. Restitution.
1. ***In re Kaas***, 39 SD 4, 162 NW 370 (1917):
Lawyer disbarred where "respondent collected and appropriated to his own use moneys belonging to his clients ... [although] these moneys were returned to such clients since these disbarment proceedings were begun. ... [and] respondent 'did not intend to defraud (his clients) of such amounts by permanently retaining the same,' ... [because] such intent, if it existed, in no degree deprived respondent's acts of their unprofessional and wrongful character."
 2. ***Discipline of Pier***, 472 NW2d 916 (SD 1991), where lawyer was disbarred, Justice Amundson, dissenting, argued:
"Respondent in this case has made restitution and has cooperated with the Disciplinary Board ... I would suspend respondent from the practice of law for three years ..."
 3. ***Petition of Pier***, 1997 SD 23, 561 NW2d 297, on reinstatement after disbarment:
"Pier repaid what he took, with interest, within days after he admitted guilt. Repayment alone will not establish rehabilitation, but certainly restitution expresses the sincerest form of atonement and the surest mark of accountability."
 4. ***Matter of Farrell***, 636 NYS2d 55 (NY AD1 1996)
Ultimate repayment of misappropriated funds by lawyer does not excuse wrongful conduct.
 5. *But compare* ***Matter of Lehman***, 509 NW2d 291 (WI 1994) (six-months suspension where restitution made) and ***Matter of Wright***, 509 NW2d 290 (WI 1994) (disbarment where no restitution was made.)
- I. Lack of prior discipline.
1. ***The Florida Bar v. Smiley***, 622 So2d 465 (Fla 1993)
Knowing misappropriation of client funds warrants disbarment rather than suspension despite lack of prior discipline and other mitigating factors.
 2. ***Matter of Falanga***, 583 NYS2d 472 (NY AD 1992)
Lawyer was publicly censured for "failure to oversee or review the books, records, and bookkeeping practices of his law firm" although lawyer had received no discipline in 30 years of practice.

- J. Not acting as lawyer.
1. ***Reeck v. Polk***, 257 NW 698 (MI 1934)
There is no authority to separate matters into lay and professional services in connection with duty to account to client for client's money in lawyer's hands.
 2. ***The Florida Bar v. Fine***, 607 So2d 416 (FL 1992)
"In the course of representation" covers any situation where lawyer is acting in any fiduciary capacity, personal representative, conservator, etc., even though not acting as the lawyer for the estate.
 3. ***Matter of Wright***, 509 NW2d 290 (WI 1994)
Lawyer disbarred where she was personal representative of estate and from \$46,000 cash assets of estate she converted \$10,946 to her personal use.
 4. ***In re Patkus***, 654 A2d 434 (DC App 1995)
Lawyer was disbarred for intentionally misappropriating funds from the estate of a minor the lawyer had been appointed to represent as a guardian.
 5. ***Attorney Grievance Com'n v. Lazerow***, 578 A2d 779 (MD App 1990)
Non-practicing lawyer operating real estate business disbarred for paying personal bills from home purchasers' down payments.
 6. ***The Florida Bar v. St. Laurent***, 617 So2d 1055 (FL 1993)
Non-practicing lawyer acting as president of condominium association suspended for paying personal bills from members' payments to association.
 7. ***In re Spina***, 617 A2d 262 (NJ 1990)
Non-practicing lawyer acting as administrator of law institute disbarred for taking institute funds in frustration over expense reimbursements procedures.

TRUST ACCOUNT JOURNAL

EXAMPLE 1

Firm: Larry Lawyer

Page J1

Bank: EastBank

Account: 555-5555

Date	Client/Matter: Source, Reason		Ref No	Checks (-)				Deposits (+)				Balance									
	Client/Matter: Check#, Reason																				
Balance Brought Forward																					
1	1/2	98	Lawyer, Larry: Deposit for Bank Service Charges)	1a1								1	0	0	00			1	0	0	00
2	1/2	98	Smith, James: Client retainer fee	3a1								5	0	0	00			6	0	0	00
3	1/2	98	Jones, Joyce: Client retainer fee	4a1								9	0	0	00			1	5	0	00
4	1/2	98	Jones, Joyce: #1001, Clerk of Courts, Filing Fee	4a2			3	5	00									1	4	6	50
5	1/5	98	Farmer, Fred: Client, Farmer-Rancher land closing	4a1						2	4	5	0	0	00	2	4	6	4	6	50
6	1/6	98	Farmer, Fred: #1002, Hugh Co Abst, title ins.	5a1		1	6	7	50							2	4	4	7	9	00
7	1/6	98	Farmer, Fred: #1003, Hugh Co Reg/Dds, filing fee	5a2			2	7	50							2	4	4	5	1	50
8	1/6	98	Farmer, Fred: #1004, Hugh Co Treas, taxes	5a3		8	5	4	75							2	3	5	9	6	75
9	1/6	98	Farmer, Fred: #1005, Hugh Co Realtor, commis'n	5a4		1	2	0	00							2	2	3	9	6	75
10	1/6	98	Farmer, Fred: #1006, Ralph Rancher, Net closing	5a5	2	2	2	5	03							1	4	6	5	00	
11	1/20	98	Viktum, Vivian: St Peter Indemnity, T. Tort PI settlement	6a1						7	5	0	0	00	7	6	4	6	5	00	
12	1/27	98	Viktum, Vivian: #1007, St Judy's Hosp, med bills	6a2		3	6	0	00							7	2	8	6	5	00
13	1/27	98	Viktum, Vivian: #1008, Duhmsday Ins, subrogation	6a3		8	4	5	00							6	4	4	1	5	00
14	1/27	98	Viktum, Vivian: #1009, Wilhim Reprts, depos	6a4			7	5	00							6	3	6	6	5	00
15	1/27	98	Viktum, Vivian: #1009, Larry Lawyer, fees	6a5	2	5	5	0	00							3	8	1	6	5	00
16	1/27	98	Viktum, Vivian: #1010, Vivian Viktum, settlement ne	6a6	3	6	7	0	00							1	4	6	5	00	
17	1/28	98	Smith, James: #1012, Larry Lawyer, Jan fees	3a2		4	2	4	00							1	0	4	0	00	
18	1/28	98	Smith, James: #1013, James Smith, refund	3a3			7	6	00							9	6	5	00		
19	1/28	98	Jones, Joyce: #1014, Larry Lawyer, Jan fees	4a3		5	5	0	00							4	1	5	00		
20	1/31	98	EastBank: Bank credit for interest	2a1						1	2	50				4	2	7	50		
21	1/31	98	IOLTA: Bank EFT of interest	3a2			1	2	50							4	1	5	00		
22	1/31	98	EastBank: Debit for check charge	1a2		4	5	00							3	7	0	00			
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Balance to Carry Forward																					

VI. TRUST ACCOUNTING EXAMPLES

CLIENT LEDGER

EXAMPLE 2

Client Larry Lawyer Page CL 1a

Matter: Deposit for Bank Charges

File No: N/A

	Date		Source, Reason	Ref	Checks (-)			Deposits (+)			Balance					
			Check#, Reason	No												
Balance Brought Forward																
1	1/31	98	Larry Lawyer: Deposit for Bank charges	1-1					1	0	0	00	1	0	0	00
2	1/31	98	EastBank Debit for checks	1-22		4	5	00						5	5	00
3																
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Balance to Carry Forward																

CLIENT LEDGER

EXAMPLE 3

Client IOLTA Interest Account

Page CL 2a

Matter: IOLTA State Bar Foundation

File No: N/A

	Source, Reason		Ref No	Checks (-)			Deposits (+)			Balance					
	Date	Check#, Reason													
Balance Brought Forward															
1	1/31	98 EastBank: Bank credit for interest	1-20					1	2	50			1	2	50
2	1/31	98 IOLTA: Bank EFT of interest	1-21		1	2	50							0	00
3															
4															
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Balance to Carry Forward															

CLIENT LEDGER

EXAMPLE 5

Client Jones, Joyce Page CL 4a

Matter: Jones v. Jones (Divorce)

File No: 98-1002

Date		Source, Reason Check#, Reason	Ref No	Checks (-)			Deposits (+)			Balance				
Balance Brought Forward														
1	1/2	98 Jones, Joyce: Client retainer fee	1-3					9	0	0	00	9 0 0 00		
2	1/2	98 #1001, Clerk of Courts, Filing Fee	1-4		3	5	00					8 6 5 00		
3	1/28	98 #1014, Larry Lawyer, Jan fees	1-19		5	5	00					3 1 5 00		
4														
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Balance to Carry Forward														

CLIENT LEDGER

EXAMPLE 6

Client Farmer, Fred

Page CL 5a

Matter: Farmer-Rancher Real Estate Sale

File No: 98-1003

Date			Source, Reason	Ref No	Checks (-)				Deposits (+)				Balance											
Date			Check#, Reason	No	Checks (-)				Deposits (+)				Balance											
Balance Brought Forward																								
1	1/5	98	Farmer, Fred: Client, Farmer-Rancher land closing	1-5					2	4	5	0	0	0	00	2	4	5	0	0	0	00		
2	1/6	98	#1002, Hugh Co Abst, title ins.	1-6		1	6	7	5	00							2	4	3	3	2	5	00	
3	1/6	98	#1003, Hugh Co Reg/Dds, filing fee	1-7			2	7	5	00							2	4	3	0	5	0	00	
4	1/6	98	#1004, Hugh Co Treas, taxes	1-8		8	5	4	7	50							2	3	4	5	0	3	00	
5	1/6	98	#1005, Hugh Co Realtor, commis'n	1-9		1	2	0	0	00							2	2	2	5	0	3	00	
6	1/6	98	#1006, Ralph Rancher, Net closing	1-20		2	2	2	5	03	00													00
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VII. TRUST ACCOUNTING FORMS

CLIENT LEDGER

Form 6

Client _____ Page _____

Matter: _____

File No: _____

	Source, Reason		Ref No	Checks (-)				Deposits (+)				Balance			
	Date	Check#, Reason													
Balance Brought Forward															
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