

## Trust accounts and more

### Introduction and the usual disclaimers

My friends at the Indiana State Bar Association have been kind enough to make space available for a regular column on lawyer ethics and professional responsibility. The law of lawyering has become a rich and expanding practice area in recent decades, and I doubt I will run out of column ideas very soon, but I encourage the readers of this column to offer suggestions, feedback and criticism. I'd love to incorporate some of your ideas into my future musings.

My goal is to provide useful information to the practicing bar in an informal format, but I will not necessarily steer clear of controversy. I'm calling the column "Ethics Curbstone" to emphasize that the content is not intended as specific legal advice. It's in the nature of a curbstone opinion – you get what you pay for. A disclaimer at the bottom of each column will serve as a reminder that my views are my own and do not necessarily reflect the views of my masters at the Indiana Supreme Court or on the Disciplinary Commission. Here is this month's offering.

### IOLTA changes

The six-year-old Interest on Lawyer Trust Account (IOLTA) program allows lawyers to keep pooled client trust funds in an interest-bearing account, with the interest payable to the Indiana Bar Foundation to fund pro bono and other public interest programs.

The Supreme Court made the IOLTA program "universal" as of July 1. I doubt many lawyers were seduced by the Court's terminology into thinking this was anything less than a migration from an "opt-out" program to mandatory participation. Not that there's anything wrong with that. This change will

generate additional dollars for the Supreme Court's pro bono initiative. To see the great projects the Foundation supports in addition to pro bono, visit the Foundation's Web site at <http://www.inbf.org.html>. Because bank service charges on IOLTA accounts become the responsibility of the Bar Foundation, having an IOLTA account also simplifies trust account administration. It's a winner for everyone.

In your next annual attorney registration fee notice, you will be required to supply IOLTA information or claim a specific exemption category, such as government lawyers or lawyers whose practices do not require the use of a trust account. If you don't already have an IOLTA account, enrolling is easy. The Bar Foundation's Web site provides all the necessary details. The key is that your trust account will be assigned the Bar Foundation's federal tax identification number so that interest earned on the account is allocated to the Bar Foundation, and the bank's report of interest earned on the

account will not be a taxable event for lawyers or clients. You can check out the rule amendments at <http://www.in.gov/judiciary/orders/rule-amendments/2005/prof-conduct-r1.15-020905.pdf> and [http://www.in.gov/judiciary/orders/rule-amendments/2005/admis-disc-r23\(21\)-020905.pdf](http://www.in.gov/judiciary/orders/rule-amendments/2005/admis-disc-r23(21)-020905.pdf).

### Trust account overdraft reporting

Effective July 1, the Supreme Court made some modest changes in the program that requires banks and other financial institutions to report overdrafts or dishonored instruments drawn on attorney trust accounts to the Disciplinary Commission. If the trust account is an IOLTA account, the lawyer or firm is no longer required to notify the bank that the account is subject to overdraft reporting separately from the IOLTA enrollment forms. Instead, all IOLTA accounts will be deemed to be subject to overdraft reporting by the bank. Lawyers are still obliged to give separate

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notice to their banks that non-IOLTA accounts are subject to overdraft reporting. A non-IOLTA account will typically be a trust account for a particular client that is large enough and held long enough to make it economical to earn interest for the client's benefit. The lawyer or firm must keep a copy of the notice to the bank for

five years after the account is closed. To examine the amendments, go here: [http://www.in.gov/judiciary/orders/rule-amendments/2005/admis-dis-r23\(corrected\)-062005.pdf](http://www.in.gov/judiciary/orders/rule-amendments/2005/admis-dis-r23(corrected)-062005.pdf).

When an overdraft occurs on a trust account the Disciplinary Commission will ask the lawyer to explain what happened. During the

eight years the Commission has administered the overdraft reporting program, the two predominant reasons for overdrafts have been bank error and disbursement of funds from trust before corresponding funds were deposited or collected on deposit. There's not much lawyers can do about the first reason (except maybe to change banks). But the second reason is easily preventable with careful attention to internal trust account controls and good staff training.

### Tip of the month

Lawyers must pay scrupulous attention to the means they use to get access to opposing or third-party medical records, especially records for mental health or addiction treatment that enjoy enhanced legal protection. It is especially risky to take liberties with previously executed documents by re-dating stale releases or by substituting different medical providers. Because lawyers often make heavy use of paraprofessionals to secure medical records, staff training on these matters is vitally important. Also, when seeking medical records of a non-client, counsel should clearly inform the provider that his or her interests are adverse to the patient's and not imply neutrality. For a recent case briefly discussing these points, see *Matter of Blumenthal*, 825 N.E.2d 734 (Ind. April 12, 2005). 