NORTH DAKOTA
GUIDELINES
FOR
LAWYER
TRUST ACCOUNTS

North Dakota Bar Foundation, Inc.
January, 1993
GUIDELINES FOR LAWYER TRUST ACCOUNTS

Introduction

The proper management of client funds and other property is required by the Rules of Professional Conduct and Administrative Rule 24. Lawyers must be aware of the rules regulating lawyer trust accounts and take the proper precautions to avoid any disciplinary action. The guidelines were developed to facilitate the efforts of attorneys establishing trust accounts or revising their present trust accounting system. These guidelines summarize the requirements of the Rule 1.15 of the Rules of Professional Conduct and provide some helpful tips on lawyer trust accounts and the handling of the client property.

Acknowledgements

We acknowledge Justice J. Philip Johnson, member of the State Bar Association of North Dakota Attorney Standards Committee and the chair of the Lawyer Trust Account Committee, for his fine work in writing the initial Guideline draft; the SBAND Attorney Standards Committee and Board of Governors for their review and ultimate approval of the Guidelines; and the North Dakota Bar Foundation for providing the funds for printing and distribution.

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What is IOLTA?

IOLTA is an acronym for Interest on Lawyer Trust Accounts. Attorneys routinely receive funds to be placed in trust for future use. If these funds are large in amount or to be held for a long period of time, the attorney customarily deposits these monies in an interest-bearing account for the benefit of the client. However, those deposits in attorneys’ trust accounts, which are nominal or short-term, often make it impractical for the attorney or financial institution to establish a separate interest-bearing account that would result in any interest accruing to individual clients. In the past, North Dakota attorneys merely placed these nominal or short-term deposits in unsegregated noninterest-bearing accounts.

The concept of an IOLTA program is quite simple. The plan allows attorneys to invest small or short-term deposits so that these otherwise idle funds may be pooled to generate interest paid to the North Dakota Bar Foundation, Inc., for use in law related-public interest programs. The interest earned from this program is used to support civil legal services, public education relating to the courts and legal matters, and improvement of the administration of justice. If the interest in any single client’s deposit can be made available for the benefit of the client, the attorney may still do so.

WHO MUST MAINTAIN A TRUST ACCOUNT?

All licensed North Dakota attorneys who are engaged in private practice, full or part-time, and who holds funds of a client or third party must maintain a trust account for the deposit of such funds.

WHAT FUND ARE TRUST FUNDS?

Property or funds which a lawyer holds for a client or third person in connection with representation. These funds must be held separate from the lawyer’s own funds. Examples of such funds include:

1. Advances for fees received from clients, until they are actually earned;

2. Funds of others that are being held for disbursement at a later time;

3. Personal injury awards, support payments, real estate conveyancing funds, and litigation settlements.

WHERE DO I DEPOSIT TRUST FUNDS?

A lawyer must hold client or third party funds separate and apart from the lawyer’s own property. All client or third party funds should be deposited in an interest-bearing trust account in a bank, savings bank, trust company, saving and loan association, credit union, or federally regulated investment company selected by a lawyer in the exercise of ordinary prudence authorized by federal or state law to do business in North Dakota and insured by Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or the Federal Savings and Loan Insurance Corporation.
Funds of a client or third party must be deposited in:

1. A separate interest-bearing trust account for the particular client or third person on which the interest, net of any transaction costs, will be paid to the client or third person;

2. A pooled interest-bearing trust account with subaccounting which will provide for computation of interest earned by each client’s or third person’s funds and the payment thereof, net of any transaction costs, to the client or third person; or

3. A pooled interest-bearing trust account for the deposit of all funds which are nominal in amount or expected to be held for a short period of time, with the interest earned to be paid to the North Dakota Bar Foundation, Inc.

It is the responsibility of each lawyer to determine how trust funds are to be deposited. Clearly, when a large sum attributable to one client is received, it should have a separate trust account. When determining which type of account to use, lawyers should consider:

1. The amount of interest which the funds would earn during the period they are expected to be deposited;

2. The cost of establishing and administering the account, including the lawyer’s services and any tax reports which may be required; and

3. The capability of the financial institution to calculate and pay the interest on an individual account or subaccounts.

Generally, funds which are not invested for the benefit of a client or third party must be deposited in interest bearing account, with the interest going to the North Dakota Bar Foundation, Inc. The lawyer must direct the financial institution to:

1. Remit interest or dividends, net of any service charges or fees on the average monthly balance in the account, or as otherwise computed in accordance with an institution’s standard accounting practice, at least quarterly, to the North Dakota Bar Foundation, Inc. and

2. Transmit with each remittance to the foundation on a statement showing the name of the lawyer or the law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the account balance(s) of the period in which the report is made, with a copy of such statement to be transmitted to the depositing lawyer or law firm.
See Notice to Financial Institutions, Attachment A.

NOTE – The interest generated from such funds will not be taxable to the attorney, client, or third party. No participating attorney, firm, or association, or their clients will be required to report IOLTA income, only the tax-exempt North Dakota Bar Foundation, Inc., will be required to do so.

Certain lawyers who are admitted to practice in another jurisdiction and those who are associated in a law firm with at least one member who is admitted in another jurisdiction are exempt from Rule 1.15(d) if the lawyer or law firm maintains a pooled interest-bearing trust account for the deposit of funds of clients or third persons in a financial institution located outside North Dakota and the interest, net service of any charges and fees, from the account is being remitted to the client or third person who owns the funds, or to a non-profit organization or government agency pursuant to the laws or rules governing lawyer conduct of the jurisdiction in which the financial institution is located.

TIPS ON OPENING A TRUST CHECKING ACCOUNT

Some helpful hints on opening a trust checking account include:

1. Establishing the account in an institution different from where the operating account of the lawyer or law firm is located;

2. Titling the account “TRUST ACCOUNT”;

3. Printing checks that are a different color than the regular operating account checks; and

4. Depositing a small amount of funds to cover handling charges, services charges, check printing, and other incidental fees.

NOTE – A lawyer may not open an interest-bearing account for the benefit of the lawyer or the law firm with trust funds. This practice is unethical and will subject the lawyer to professional disciplinary proceedings.

GENERAL ACCOUNTING PROCEDURES

The accounting system that documents the trust funds can be as uncomplicated or as sophisticated as necessary. However, a lawyer need not be an accountant to keep proper trust account records. The lawyer should establish and maintain a system which ensures that the lawyer can document:

1. The amount within the trust account at all times;

2. The amounts within the trust account belonging to each subaccount; and

3. How each transaction is processed.

A system that incorporates internal controls and properly documents the activity occurring in the trust account should be adequate for these recordkeeping requirements.

A sample of a recommended accounting system should be consistent of the preparation and maintenance of a Trust Account Checkbook, Trust Account Receipts Journal, Trust Account Disbursements Journal, and a Trust Ledger. This system may also be incorporated through the use of computer software.
As an example, the following is a description of the significance of each separate component of the system and how each works together.

**Trust Account Checkbook.** Utilizing the checkbook register or stub, a lawyer can easily maintain an accurate record of the running balance within the trust account by maintaining a chronological journal of the receipt and disbursement activity. Each receipt or deposit transaction should show the date, source of funds, name of person with an interest in the account and a brief explanation. Likewise, each disbursement transaction should show the date, check number, payee, and a brief explanation of the purpose or person for whose benefit the money is paid and the amount.

Good internal control dictates that access to the trust account checkbook be limited to only authorized signatories.

**Trust Account Receipts Journal.** This is a chronological listing of all funds received. This journal contains the same information required to be maintained in the checkbook register or stub. This would include the date, source of funds, name of the person with an interest in the account and a brief explanation (See Trust Account Receipts Journal Sheet, Attachment B).

**Trust Account Disbursements Journal.** This is a chronological listing of every disbursement made from the trust account. This journal reflects the date, check number, payee, purpose or person for whose benefit the money is paid and the amount (See Trust Account Disbursement Journal Sheet, Attachment C).

**Trust Ledger.** A separate page or sheet should be prepared for each pending matter. This ledger sheet documents the chronological activity for each matter. Entries on this sheet are posted from the activity originating in the checkbook register whereby funds have been received in trust showing the date received or the amounts of any disbursements, and any unexpended balance, with the balances kept up to date and properly organized so that accurate accounting of all trust funds can be provided immediately on request (See Trust Ledger Sheet, Attachment D). Under no circumstances should the lawyer ever disburse more funds than received in a matter. These separate subsidiary sheets can be organized in two three ring binders. The first binder would be labeled as the “Open Account” ledger. Within this binder all of the separate subsidiary ledger sheets should be filed and maintained. The second binder would be labeled as “Closed Account” ledger. This binder would be for the purpose of keeping all subsidiary ledger sheets on closed matters.

**Monthly Reconciliation.** At the end of each month the trust fund account should be reconciled. A monthly trail balance of the entire subsidiary ledger, also showing the name of each subaccount, should agree with the month-end checkbook register’s running balance of the trust account. This figure is computed by taking the beginning balance, adding the total funds received for the month and deducting the total of funds disbursed for the month (See Receipts/Disbursements Control Sheet, Attachment E).

**Bank Reconciliation.** When the month-end bank statements are received, a written reconciliation should be made among the trust account bank balance, the receipts and disbursements journals’ totals, the checkbook balance, and the subsidiary ledger trail balance total (See Trust Account Reconciliation Sheet, Attachment F). This reconciliation should also include month-end deposits which do not appear on the bank statements and a listing of all outstanding checks. All reconciliations should be saved with the bank record for future reference. If possible,
a person who is not normally involved in the client fund bookkeeping activities should perform
the reconciliation.

Accounting to Clients or Third Parties. Periodically the lawyer should advise each
person of the status of those funds being held for them. Adequate description should be provided
indicating what receipts and disbursements have occurred and the current balance. If there is
objection to any proposed disbursement, such as for earned fees, those funds must remain in the
trust account pending the resolution of the dispute.

DEPOSITS TO THE TRUST ACCOUNT

All funds that qualify as trust funds must be deposited in a trust fund account. The lawyer
or law firm should have a clearly written policy, applicable to all attorneys and staff, specifying
what funds are deposited into a trust fund account. Deposits should be made daily.

Sound accounting advice dictates that money only should be transferred pursuant to
written communication. A voucher or other documentation for receipt and instruction should be
prepared by the attorney instructing the person performing the bookkeeping function to deposit
the funds into the trust fund account on behalf of the person or entity named in the voucher or
receipt. Written communication avoids late arguments regarding deposit instructions and
provides a needed audit trail.

Notification of clients is extremely important and required by Rule 1.15(b). Clients
should be notified when a lawyer receives funds or property for them. Compliance avoids
misunderstanding, mistakes, and mistrust.

DISBURSEMENTS FROM THE TRUST ACCOUNT

Availability. A sound business practice dictates that before disbursement of trust funds,
the client’s or third party’s check must clear through the banking process and be available. If this
precaution is not taken, and the initially receipted check or draft is returned for insufficient funds
or a stop payment order is issued, the trust funds of other clients or third parties will be disbursed
wrongfully. Cashier checks and certified checks are occasionally dishonored, therefore, the best
policy is to be assured that the initial receipts clear through the banking process.

Amounts. Trust fund disbursements from a particular ledger must not exceed the funds
from or on behalf of that person. Otherwise, a wrongful taking of other clients’ trust funds occurs,
resulting in both civil and disciplinary liability. As a precautionary measure, the individual
signing the check should have a photocopy of the particular subsidiary ledger sheet before
authorizing disbursement of trust funds.

Transaction Authority. Each disbursement transaction should be based upon a written
voucher or other documentation, which provides the identity of the file to be charged, the reason
for the transaction, authority, and approval for issuance of a trust account check by a lawyer.

Signature. A determination as to proper person(s) to sign trust checks is probably best
left for each law firm to decide. Generally, the person who prepares the checks should not have
sole signatory authority. Good internal control dictates that access to the trust account checkbook
be limited to authorized signatories, and that two signatories be required on all trust account
checks. Regardless, no individual should sign a check unless presented with written
documentation that the disbursement is proper, along with the notice that the original receipted funds have cleared the banking process and are available for disbursement. The subsidiary ledger account should reflect the availability of the trust funds.

Disbursement procedures should be clearly stated in established rules for the firm.

Internal Audit Controls. The reconciliation process should be performed entirely by personnel who are not involved in the bookkeeping process. The lawyer or firm administrator also should be involved in the reconciliation process.

Internal controls are weakened when the same person who prepares the check also signs the check. Ideally, these functions should be separated, preferably between staff personal and professional or management personnel. Also, bonding of the individuals who are signatories on the trust account is recommended.

Handling Bank Charges. The lawyer or law firm should consider depositing a small amount of funds in the trust account to cover bank charges for printing checks, monthly service charges, a returned deposit item or some other special charge. This practice might appear to be the comingly of the lawyer’s personal funds with that of others. Although not specifically authorized, this practice is a recognized exception to the general rule of comingly and will prevent the misappropriation of a client’s or third party’s funds. The lawyer properly accounts for such personal funds in the trust account, as with any other matter, by preparing a Trust Ledger sheet and calling it “bank charges.” Charges are then recorded as incurred. When the balance on the ledger sheet becomes low, a new small deposit of funds should be made to bring the balance up to a comfortable level.

Record Retention. All records of trust account funds and other property shall be kept by the lawyer and preserved for a period of six years after the termination of the representation.

Annual Certification. A lawyer shall certify, as part of the annual license renewal procedure, that the lawyer is complying with the provisions of Administrative Rule 24 and the Rules of Professional Conduct.
ATTACHMENT A

NOTICE TO FINANCIAL INSTITUTION
TO ESTABLISH NEW INTEREST-BEARING ACCOUNT

RE: The North Dakota Bar Foundation, Inc.
(Complete and mail this form to your financial institution with a copy of the North Dakota Bar Foundation)

TO: ___________________________ FROM: ___________________________

______________________________ ________________________________
(Depository Institution) (Attorney/Law Firm)

The undersigned is participating in the interest-bearing trust account program authorized by the Supreme Court of North Dakota. Under this program, please open an account subject to negotiable orders of withdrawal (NOW account) or a comparable interest-bearing account for the firm’s trust account.

Interest on the average monthly balance in the account, or as otherwise computed in accordance with your standard accounting procedure (net of customary service charges or fees), should be remitted at least quarterly by check mailed to the North Dakota Bar Foundation, Inc., P.O. Box 2136, Bismarck North Dakota 58502. Tax I.D. No. 45-0369407.

With each remittance to the Foundation, please transmit a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and the amount of service charges deducted, if any, and the copy of such statement to be transmitted to the depositing lawyer or law firm.

If your institution maintains NOW trust accounts for more than one attorney or law firm participating in this program, you may find it convenient to make a single remittance for all accounts. If you elect to do so, please submit together all the statements applicable to the attorneys and firms for which the single remittance is made.

Inquiries concerning the interest-bearing trust account may be directed to the North Dakota Bar Foundation at (701) 255-1404 or 1-800-472-2685.

The establishment of NOW trust accounts by law firms, including professional associations to implement this program, has been approved by the Federal Reserve Board and the Federal Home Loan Bank Board and FDIC Counsel. Copies of opinions are available from the North Dakota Bar Foundation.
Thank you for your prompt attention to this request. Your cooperation and support for this important program benefiting the citizens of North Dakota are appreciated.

Account Name: ____________________________  ____________________________ (All authorized trust account signatures)

Account No.: ____________________________

Date: ____________________________

cc: North Dakota Bar Foundation, Inc. (with firm letterhead enclosure)
ATTACHMENT B

TRUST ACCOUNT RECEIPTS JOURNAL

MONTH OF ____________

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<th>CASE OR FILE NO.</th>
<th>AMOUNT</th>
<th>TOTAL DAILY DEPOSIT</th>
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<td>DESCRIPTION OF TRANSACTION</td>
<td>CHECK #</td>
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ATTACHMENT E

TRUST ACCOUNT
RECEIPTS/DISBURSEMENTS CONTROL SHEET
FOR 20___

Trust Funds

<table>
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<tr>
<th>Month</th>
<th>Received</th>
<th>Disbursed</th>
<th>Balance</th>
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<td>January</td>
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<td>TOTAL</td>
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*This amount should agree with Trust Account Checkbook register’s running balance.
ATTACHMENT F

TRUST ACCOUNT RECONCILIATION SHEET

As of the Month Ended

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<thead>
<tr>
<th>Trust Ledger Balances</th>
<th>Amounts</th>
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Attorney Funds (Bank Charges)

_________

Total Trust Ledger Balances $________ *

Receipts/Disbursements Control Sheet Balance ________ *

Trust Account Checkbook Balance ________ *

Bank Statement Balance $________

  less: outstanding checks ________

  add: outstanding deposits ________

Reconciled Bank Statement Balance ________ *

*These amounts must be identical to each other.