

IOLTA Management for Lawyers

The nuts and bolts of handling IOLTA/Trust accounts



Tim Jakubowski

Attorney Banking Consultant

(716) 290-6396

Tim@trustnota.com

The Florida Bar

Agenda



1. IOLTA Overview
1. ABA Rule 1.15 + ABA Rule 1.5
2. Top Mistakes Attorneys Can Make
3. Best Practices

What's an IOLTA and do I need one?

Back to Basics: What's an IOLTA?

Interest on Lawyers' Trust Account (IOLA/IOTA/IOLTA):

A bank account used by lawyers to **hold nominal or short-term client funds.**

These funds are placed in a single, pooled, interest-bearing trust account that raise money for charitable purposes, primarily the provision of civil legal services to indigent persons.

IOLTA rules are dictated by the American Bar Association (ABA) but may also have specific requirements by state.

IOLTA:
*“Interest on
Lawyers Trust
Account”*

- Designed to hold client funds when the amounts do not justify a separate account, but the funds include unearned fees and expenses
- Remember, IOLTAs are not the same as your operating account - which is used for business expenses and day-to-day transactions
- Calling an account an IOLTA doesn't make it so - you need to work with an *approved* bank to ensure it is set up correctly

204 PA. Code Rule 1.15.: Safe Keeping Property

Key Takeaways



Client funds should be kept in a separate account maintained in the state the law office is located.



A lawyer's own funds can be deposited in a client trust account for the **sole purpose of paying bank service charges on that account.**



Prepaid legal fees and expenses should be held in a client trust account, and **only withdrawn as fees are earned or expenses incurred.**



When receiving funds due to the client, the lawyer should **promptly notify the client and promptly deliver** any funds the client is entitled to receive.

Mismanaging client funds can lead to disciplinary action, suspension, or even disbarment

Key Takeaways



Do not charge unreasonable fees or collect unreasonable amounts for expenses.

Think of the effort and expertise required, time constraints imposed, and market rate for such services.



Communicate the scope of representation to clients.

Let them know the fees and expenses they will be responsible for, preferably in writing. Notify the client of any changes in the basis or rate of the fee or expenses.



Provide clients with written explanations of contingency agreements and outcomes.

Explain the breakdown of funds due to lawyers upon recovery, outline any expenses covered by clients, and define if expenses are deducted before or after the contingency fee is calculated.



Do not charge or collect any contingent fees in domestic relations matters where payment is reliant on securing funds from divorce, alimony, etc.

Also, do not enter a contingent fee agreement when representing a defendant in a criminal case

Thinking about splitting the fee?

You can divide a fee between lawyers of different firms only if the fee is reasonable, the client agrees in writing, and the split is in proportion to services provided by each lawyer or each lawyer assumes joint responsibility for the representation

Glossary of Terms

- **Operating Account vs Trust Account**
- **Retainer:** advanced payment from a client for work a lawyer will conduct in the near *future*
- **Earned Funds:** payments received for actual work performed
- **Commingling:** the act depositing / keeping client's monies with attorney / firm monies
- **Hybrid Fees:** Combination of flat & hourly fees



Don't Make These Mistakes

Lawyers can make
with their
IOLA/IOTA/IOLTA

Mistake #1: Commingling of Clients' Funds

- **How does this happen?**

- Depositing money identified as a retainer into an operating or personal account
- Writing checks from / using funds from an operating account
- Failing to deposit money belonging to a client (ex settlement funds)
- Depositing *earned* money into a trust account
- Using funds from a trust account to pay for normal business expenses
- Overdrawing a trust account constitutes commingling
- Failing to promptly withdraw earned fees is also considered commingling of funds

- **How you can avoid it**

- Deposit incoming checks in a timely manner and move earned fees out of IOLTA once fees are earned

Don't mix business / personal funds with client funds

Security Feature for Transfers

Transfer Funds



Transfer from
IOLA/IOLTA NOW (0001) X ▾

Available balance: \$82,474.00

[Add another client matter](#) ⊕

Client Matter
ABC Co., Case #657: \$6,2 X ▾

Matter Adjusted Balance: \$6,247.35

Amount
\$ 100,000.00

This amount exceeds the client balance

Add notes : Required

Required

Transfer to
Advanced Business Checkin X ▾

Available balance: \$20,000.00

Amount
\$ 100,000.00

This amount exceeds the From account balance

Cancel

Transfer

Mistake #2: Poor Recordkeeping

- **How does this happen?**

- Not maintaining accurate records or reconciling in a timely fashion
- Not maintaining records of accounts for X# of years (varies by state)
- Failure to maintain complete records of handling, maintenance, and disposition of all account funds
- Bounced checks
- Failing to provide records of check registers, subsidiary client ledgers, and monthly reconciliations
- Failure in identifying “every penny” in trust account

- **How you can avoid it**

- Reconcile regularly (at least monthly) and understand 3-way reconciliation
- Track outstanding checks that have not cleared

Bar associations require robust recordkeeping in the event of an audit

Mistake #2: Poor Recordkeeping

Bar associations require robust recordkeeping in the event of an audit

Are you able to provide...

- Proof that each IOLA/IOLTA transaction is related to a specific client matter?
- Proof that all IOLA/IOLTA balances can be tied to a specific client matter?
- Records of all IOLA/IOLTA deposits/withdrawals with date, source and purpose?
- Client ledgers with transaction details and names of parties receiving funds?
- Physical/electronic checkbook registers, bank statements, records of deposit?
- Records of all electronic transfers from client trust accounts?
- Copies of reconciliations of the client trust accounts?
- Records of client funds from any matters within the past 5 years?

Many of these requirements were pulled directly from ABA Model Rules on Client Trust Account Records²

You should be able to answer “yes” to all of these questions

Mistake #3: Not Knowing 3-Way Reconciliation for IOLA/IOLTA

Everything must balance



ABA Rule 1.15: “Safekeeping Property” requires monthly reconciliation of client ledgers and quarterly reconciliation of the trust account³

Reconciliation Report

Year **2022** Date Range **01/01/2022** To **08/08/2022**

Client Matter Activity Report

Bailey, James, Case #610
Law Office of John Smith
Jan 1, 2022 - Aug 8, 2022 as of Aug 8, 2022

Client Matter Balance as of Jan 1, 2022	\$0.00
Matter Adjusted Balance as of Aug 8, 2022	\$11,867.52

Outstanding Checks 4

Date	Amount	Check #	Check Payee	Notes
2022-08-08	\$1,000.00	7890	Monroe County	123 Main St
2022-08-02	\$25,000.00	7890	Nick Beardi	Settlement
2022-07-26	\$5,000.00	7890	Nick Beardi	123 Main St
2022-07-22	\$50.00	99871	Roger Smith	---

Matter Transactions 8

Date	Type	Credit	Debit	Ending Balance	Notes
2022-07-22	CHECK		-\$4,000.00	\$42,917.52	---

Mistake #3: Not knowing 3-way reconciliation

Everything must balance

Reconciliation Report

as of Aug 8, 2022

Law Office of John Smith | IOLA/IOLTA NOW Account (0001)

BOOK BALANCE	\$35,424.00
All deposits as of Aug 8, 2022	\$94,868.74
All disbursements as of Aug 8, 2022	(\$19,311.00)
Initial funds	\$6,916.26
Outstanding Checks	(\$47,050.00)

ADJUSTED TRUST BALANCE	\$35,424.00
Bank Balance as of Aug 8, 2022	\$82,474.00
Outstanding Checks	(\$47,050.00)

NOTA CLIENT LEDGER BALANCE	\$34,507.74
ABC Co., Case #657	\$6,247.35
Bailey, James, Case #610	\$12,192.52

Mistake #4: Misappropriation and Conversion

- **How does this happen?**

- Taking or using client funds without express authorization (No, you cannot “borrow” money from a trust account)
- Adds additional hours to an invoice for time not spent on a matter
- Charging for and receiving payment for an expense never incurred
- Failing to deposit unearned client funds into a trust account / Depositing unearned funds into an operating or personal account
- Trust account theft (someone accesses your trust account and writes themselves a check)
 - This can also trigger a “failure to supervise” claim

Avoid triggering a second malpractice claim by becoming an IOLTA expert

Mistake #4: Misappropriation and Conversion (cont'd)

- **How you can avoid it**

- Keep detailed IOLTA records - as far back as 7 years!
- Work with your bank to ensure any IOLTA fees are pulled from operating
- Use a tool that enables virtual sub accounts to avoiding having to maintain multiple accounts
- Track “float” to avoid bouncing checks
- Exercise supervision of non-attorney staff access to accounts and related items such as a signature stamp

- **When and how can I withdraw from my IOLTA?**

- When work is completed, invoice your client with a clearly itemized bill, then wait a “reasonable time” before paying yourself into your operating account

Advanced fees are client fees until the lawyer earns the fees

Best Practices to prevent mismanaging client funds

Keep detailed records of your IOLTA



Pay attention IOLA/IOLTA activity to ensure each transaction can be tied to the correct client matter

Regularly self-audit account activity and client matter balances.



Limit access to your IOLA/IOLTA and restrict permissions where possible.

Attorneys have been disciplined for improper actions of bookkeepers or office managers.



Don't wait until month end to review your IOLA/IOLTA activity.

Frequent reviews help ensure smooth reconciliation.

Pay attention - your license is at stake!

Rules to Remember

- **Costs and Expenses:** should be deposited in your IOLTA. However, if you've already paid these out to your client, you may deposit them as a reimbursement to your operating account
- **Traditional Retainer:** this is considered earned upon receipt and should be deposited into your operating account
- **Hourly, Flat, Hybrid Fees:** should be deposited into IOLTA until earned and may be dependent on agreement (e.g. upon the occurrence of a contingent event or completion of a phase in the case)
- **Credit Card Payments:** deposit into IOLTA unless the merchant agreement prevents passing the percentage fees to clients. If you make the client responsible for these fees, state that explicitly in your fee agreement. Otherwise, keep more of your fees as a buffer and pay them from your operating account.
- **PayPal and Venmo:** because funds are initially deposited in these accounts, some jurisdictions prevent from being transferred into IOLTA accounts
- **Don't hold onto an undeposited client check and put into operating account when paying yourself**

Above principles are not true everywhere, and state rules differ in crucial ways. You must know which rules apply (MR 8.5)

More Best Practices

- Define terms in your fee agreement, such as “until earned,” “costs,” “expenses,” “attorney fees,” etc, and state in plain language where the fees will be held.
- Specify in your fee agreement whether a third-party payor is entitled to receive a refund
- Consider using a merchant that will notify you and automatically pull the funds from your operating account
- Ensure that your IOLTA reporting can track client funds, transaction details, and purpose of all IOLTA transactions
- Be active in IOLTA oversight - don't rely solely on your bookkeeper or accounting partner
- Restrict IOLTA access and limit permissions for support staff
- Consider obtaining a short term line of credit during good times, so you aren't tempted to borrow client funds in bad times

Withdraw earned fees in a timely manner, or the bar can take it away from you

When and how can I withdraw from my IOLTA?

- When work is completed, invoice your client with a clearly itemized bill, then wait a “reasonable time” before paying yourself into your operating account
- Know the state variations on how to define “reasonable time” and how different funds may be withdrawn (debit card, check, cash)

Be active with IOLA/IOLTA oversight

Opening IOLTA Balance		Closing IOLTA Balance		
\$265.000		\$150.000		

Posting Date	Description	Debit	Credit	Total
Nov 16, 2020	Beginning Balance			\$265,000.00
Nov 17, 2020	Check #101		\$15,000.00	\$250,000.00
Nov 19, 2020	Incoming ACH	\$2,500.00		\$252,500.00
Nov 21, 2020	Check #105		\$550.00	\$251,950.00
Nov 22, 2020	Check #103		\$125,000.00	\$126,950.00
Nov 25, 2020	Mobile Check Deposit	\$23,050.00		\$23,050.00
Nov 30, 2020	Ending Balance			\$150,000.00

Attorneys should be able to assign every penny in their IOLA/IOLTA to an existing client matter

Attorneys should be able to tie every transaction to an existing client matter and understand the purpose of that transaction

Best Practice: Electronic reconciliation and record keeping (with notes) helps minimize human error and stay organized with money movement

Client Matters

You have 1 untagged transactions, totalling \$325.00

Date	Description	Type	Credit	Debit	Client Matters
Jul 21, 2022	 DEPOSIT	DEPOSIT	\$325.00		<input type="text" value="Enter client matter"/>

Showing 1 of 1 transactions

- ABC Co., Case #657: \$6,247.35
- Bailey, James, Case #610: \$11,867.52
- Bruen Inc, 00205-Bruen Inc: \$67.87
- Conway, Charles, Divorce #703: \$500.00

[+ Create new client matter](#)

Client Matters [Add new client matter](#) [Import client matter](#)

Search client matters...

Sort by Alphabet [+ Create new client matter](#) [List](#)

Unassigned initial funds
\$916.26

[Finish Allocating Funds](#)

ABC Co.   

Case #657
\$6,247.35
Client Matter Adjusted Balance

Outstanding checks (1): \$1,000.00

Bailey, James   

Case #610
\$11,867.52
Client Matter Adjusted Balance

Outstanding checks (4): \$31,050.00

Surround yourself with experts

Leverage partners who understand the legal space and the importance around IOLA/IOLTA

- Work with a bank (and banker) that has experience with IOLA/IOLTAs
- Take care when you set up and title accounts to help remove future headaches
- Confirm you set up the accounts so any fees are deducted from your operating account, not your IOLA/IOLTA
- Work with a CPA or bookkeeper that has experience dealing with attorneys
- If they are going to be assisting with IOLA/IOLTA oversight, ensure they have experience with 3-way reconciliation



IOLTA Audit Checklist

- 1 Records that show the **date, source/payee**, and description for each deposit or disbursement
- 2 Documentation of **the source of all funds** deposited and the names of all persons for whom the funds are held for
- 3 Copies of **retainer and compensation agreements** with clients
- 4 Copies of **accountings/records to clients or persons showing the disbursement of funds** to them or on their behalf
- 5 **Copies of bills for legal fees and expenses** rendered to clients
- 6 **Physical/electronic checkbook registers, bank statements, and records of deposit**
- 7 **Records of all electronic transfers** that show the **name of the person authorizing transfer**, the **date of transfer**, the **name of the recipient** and **confirmation from the financial institution** with date and transfer time
- 8 Copies of **monthly** client trial balances and quarterly reconciliations of the IOLTA

Source: Rule 1.15 of the ABA Model Rules of Professional Conduct

Law Firm Banking

For Solo & Small Law firms



Tim Jakubowski

✉ Tim@trustnota.com

SCAN FOR DEMO



Best in class features

- ❖ Assign funds to specific client matters
- ❖ Create categories to track income & expenses



Exclusive member benefits

- ❖ Enjoy extra benefits tailored to the unique needs of running a law firm



Integrations with your Legal tools

LAWPAY
AN AFFINIPAY SOLUTION



Concierge service

- ❖ Support from real humans who know law firms

Tim Jakubowski

Attorney Banking Consultant

Nota by M&T Bank

(m) 716.290.6396

tim@trustnota.com

<https://bit.ly/NotaDemoTim>

Thank You





[1] https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_15_safekeeping_property/

[2] https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/aba-model-rules-on-client-trust-account-records---rule-1/

[3] https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/fpreface/

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References to "IOLTA" or "Interest on Lawyers Trust Account" shall be interpreted to include "IOLA," or "Interest on Lawyer Account," and "IOTA," or "Interest on Trust Account," as applicable in a particular state.

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