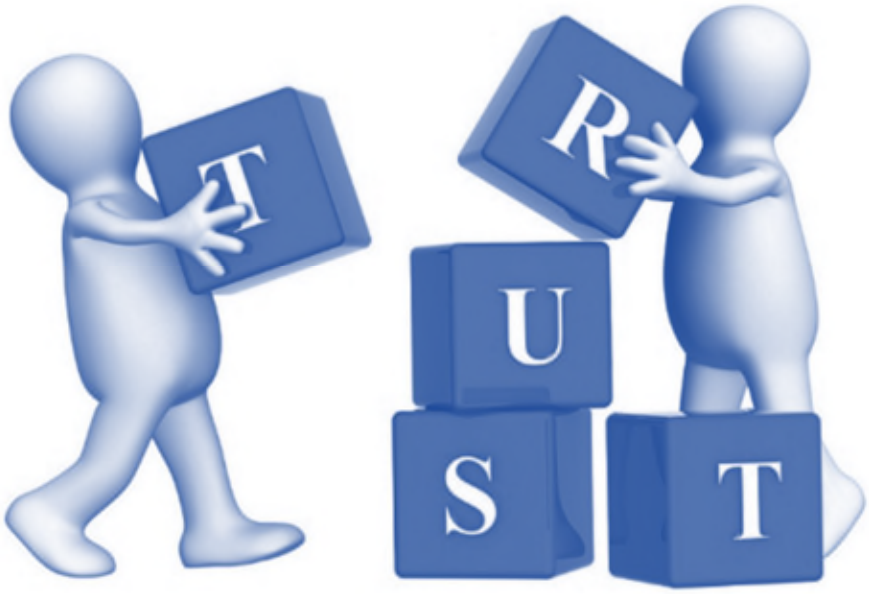
New Hampshire
Attorney Discipline Office
Client Trust Account
Guidelines



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New Hampshire Attorney Discipline Office Client Trust Account Guidelines

Disclaimer

This handbook contains legal information, not legal advice. While the ADO makes every effort to update this handbook as necessary, it is the responsibility of each lawyer to ensure they are adhering to the most current versions of the rules governing client trust accounts. Nothing contained in this handbook is intended to address any specific inquiry or fact pattern, nor is it a substitute for independent legal research to original sources, or for obtaining the advice of legal counsel with respect to legal issues.

Acknowledgements

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I. Trust Account Basics

a. What is a client trust account?
A trust account is a bank account maintained incident to a lawyer's law practice in which the lawyer holds funds received in a fiduciary capacity on behalf of or belonging to a client, or otherwise incident to the representation of a client.

b. Who must maintain a client trust account?
Any lawyer who receives funds in a fiduciary capacity in the context of his or her law practice must have access to or maintain a trust account. The lawyer must have access to or establish a trust account before receiving such funds. Lawyers who do not receive funds belonging to or on behalf of clients do not have to have a trust account (*i.e.* a government lawyer).

c. Do you need more than one client trust account?
Generally speaking, a lawyer needs only one trust account to handle monies received in trust which are either nominal in amount or held for a short period of time. Within this common account—called a "general trust account"—the funds of many clients may be commingled so long as adequate records are kept identifying the funds of each client. If desired, a lawyer may have multiple trust accounts for administrative purposes. For example, lawyers often have trust accounts for real estate transactions which are distinct from the trust accounts used for other client matters. Also note, if your client's money can earn income because the funds are large enough in amount or are held for a long period of time, then you cannot place the funds in a general trust account. The funds must be deposited in an account dedicated to that client or transaction.

d. What are the requirements of a client trust account?
Since a lawyer has an ethical obligation to pay or deliver client funds promptly as instructed by the client, trust accounts are generally demand accounts with check writing privileges. Every general trust account must be an interest-bearing account,

and the interest earned on such accounts is remitted by the depository bank directly to the New Hampshire Bar Foundation. The Bar Foundation maintains a list of banks that comply with the rules governing IOLTA accounts. It can be accessed on their website at: https://www.nhbar.org/nh-bar-foundation/where-to-bank/

II. Key Concepts in Trust Accounting

a. You are a fiduciary: this means strict accountability. A lawyer should hold the property of others with the care required of a professional fiduciary. This means that you should act for the benefit of your client in the context of a relationship characterized by great confidence and trust on the part of the client, and good faith and candor on your part. If you are familiar with what executors or trustees do, then you should be familiar with at least the broad concepts that govern your care of client funds in your client trust account. The fiduciary nature of the relationship and the need for public confidence in the legal profession places several burdens on the lawyer. Those are discussed in more detail below.

b. It's not your money! (Think 2 "buckets")
The touchstone of trust accounting is that a trust account *may not hold funds of the lawyer*. The single exception to this is that you may place enough of your money into the CTA as may be necessary to cover "bank service charges" on the CTA, "but only in an amount appropriate for that purpose." So, for example, it normally would not be appropriate to leave $500 in your CTA for bank services charges. An amount between $100 and $200 would be appropriate in most cases.

Otherwise, funds in your CTA are not your money, and the CTA should never hold your money. This means you do not deposit personal funds into the CTA at any time, and you do not make disbursements from the CTA except for express client purposes or for fees earned.

This means that any and all law-firm related expenses (i.e. rent, payroll, cable/wireless bills) must never be paid from the CTA, nor should your Amazon purchases or groceries.

A retainer is not your money until it has been earned, in which case it should be reasonably promptly disbursed from your CTA into an operating or personal account.

Funds not related to a client representation should not be kept in the CTA, even if those funds are not the lawyer's funds. For example, an attorney who owns rental property and holds a tenant's security deposit cannot keep the security deposit in the CTA.

c. Separate clients are separate accounts
Client A's money has nothing to do with Client B's money. Even when you keep them in a general trust account, each client's funds are completely separate from those of all your other clients. In other words, you are **NEVER** allowed to use one client's money to pay another client's or your own obligations.

In a general trust account, the way to distinguish one client's money from another's is to keep a client ledger of *each individual client's funds*. A client ledger tells you how much money you've received on behalf of one single client, how much money you've paid out on behalf of that client, and how much money that client has left in your general trust account.

If you are holding money in your general trust account for ten clients, you have to maintain ten separate client ledgers. If you keep each client's ledger properly, you will always know exactly how much of the money in your general trust account belongs to each client. If you don't, you will lose track of how much money each client has, and when you make payments out of your general trust account, you won't know which client's money you are using.

d. <u>You can't spend what you don't have</u>
Each client has only his or her own funds available to cover their expenses, no matter how much money belonging to other clients is in your general trust account. Your general trust account might have a balance of $100,000, but if you are only holding $10 for a certain client, you can't write a check for $10.50 on behalf of that client without using some other client's money.

The following example graphically illustrates this concept. Assume you are holding a total of $5,000 for four clients in your general trust account as follows:

Client A	$1,000.00
Client B	$2,000.00
Client C	$1,500.00
Client D	$500.00
Total	$5,000.00

If you write a check for $1,500 from the general trust account for Client D, $1,000 of that check is going to be paid for by Clients A, B, and C. The funds you are holding in trust for them are being used for Client D's expenses. You should have a total of $4,500 for Clients A, B, and C, but you only have $3,500 left in the trust account. In disciplinary matters, the failure to maintain a sufficient client trust account balance can support a finding of misappropriation.

e. <u>There's no such thing as a "negative balance," only being "out of trust"</u>
It's not uncommon in personal checkbooks for people to write checks against money they haven't deposited yet or a check that has not cleared yet, and show this as a "negative balance." In client trust accounting, there's no such thing as a negative balance. A "negative balance" is at best a sign of negligence and, at worst, a sign of theft.

In client trust accounting, there are only three possibilities:

- You have a **positive** balance (while you are holding money for a client);
- You have a **zero** balance (when all the client's money has been paid out); or
- YOU HAVE A PROBLEM because the balance is **less than zero** (a so-called "negative balance").

f. Timing is everything

It takes anywhere from a day to several weeks after you make a deposit before the money becomes "available for use." A client's funds aren't "available" for you to use on the client's behalf until they have cleared the banking process and been credited by the bank to your general trust account. (This is especially true when you receive an insurance company's settlement draft — which cannot clear until the company actually receives the draft at its home office during the bank collection process and honors the draft. Thus, insurance company settlement drafts will take longer to clear your account.) If you write a check for a client at any time *before* that client's funds clear the banking process and are credited to your general trust account, ordinarily either the check will bounce or you will be using other clients' money to cover the check.

The time it takes for trust account funds to become available after deposit depends on the form in which you deposit them. Every bank has different procedures, so when you open your trust account, get the bank's schedule of when funds are available for withdrawal (sometimes banks call this "good funds"). Depending on the instrument, you may have to wait as many as 15 working days before you can be reasonably confident that the funds are available. For example, even if you make a cash deposit, the money may not be available for use until the following day. If you deposit a personal check from an out-of-state bank, the money will take longer to be available. Either way, *until the bank has credited a deposit to your general trust account, you can't pay out any portion of that money for that client*.

You also need to know what time your bank has set as the deadline for posting deposits to that day's business and for paying checks presented to it. Otherwise, even when you have deposited cash, you may end up drawing on uncollected funds. For example, let's say your bank credits any deposit made after 3 PM on the following day, but stays open for business until 5 PM. Your client arrives at 3:30 and gives you $5,000 in cash, which you immediately deposit. At 4 PM you write a general trust account check against that money to pay an investigator. If the investigator presents the check for payment at the bank before it closes at 5 PM, the check will either bounce or be covered by other clients' money.

You may be tempted to do your client a favor by writing a check from your trust account to the client for settlement proceeds before the settlement check has cleared because you know there's money belonging to other clients in your general trust account to cover this client's check. Some clients may insist that you do this. DON'T. If you do, you'll end up writing a check to one client using another clients' money. You should never help one client at the expense of your obligations to your other clients. In other words, no matter how expedient or kind or convenient it seems, don't make payments on your clients' behalf before their deposited funds have cleared. Otherwise, sooner or later, you'll end up spending money your clients don't have.

g. You can't play the game if you don't know the score

In client trust accounting, there are two kinds of balances: the "running balance" of the money you are holding for each individual ***client***, and the "running balance" of the ***general trust account.***

A "running balance" is the amount you have in an account after you add in all the deposits (including interest earned, etc.) and subtract all the money paid out (including bank charges for items like wire transfers, etc.). In other words, the running balance is what's in the account at any given time. The running balance for each ***client*** is kept on the **client ledger**, and the running balance for the ***trust account*** is kept on the **check register**.

Maintaining a running balance for a client is simple. Every time you make a deposit on behalf of a client, you write the amount of the deposit in the client ledger and ***add*** it to the previous balance. Every time you make a payment on behalf of the client, you write the amount in the client ledger and ***subtract*** it from the previous balance. The result is the running balance. That's how much money the client has left to spend.

You figure out the running balance for the general trust account the same way. Every time you make a deposit to the general trust account, you write the amount of the deposit in the check register and ***add*** it to the previous balance. Every time you make a payment from the general trust account, you write the amount in the check register and ***subtract*** it from the previous balance. The result is the running balance. That's how much money is in the account.

Every transaction into or out of your trust account is entered twice. Once on the client ledger card, and once on the check register. If you keep your own money in the CTA for bank service charges, you should maintain a separate ledger card for that money. Likewise, if your bank does not withdraw the interest earned on the money in the CTA in the same month as it is deposited into the account, you should have a separate ledger card for the IOLTA interest.

Since "you can't spend what you don't have," you should check the running balance in each client's ledger before you write any general trust account checks for that client. That way, if your records are accurate and up to date, it's almost impossible to pay out more money than the client has in the account.

In fact, some trust accounting software will prohibit you from writing a check for a particular client if there is not enough funds for that client. These built-in protections are an added benefit of choosing the right trust account software.

h. <u>The final score should always be zero</u>

The goal in client trust accounting is to make sure that every dollar you receive on behalf of a client is ultimately paid out to the client at the conclusion of the representation, to you as earned fees, or to third parties on the client's behalf. What comes in for each client must equal what goes out for that client; no more, no less.

Many lawyers have small, inactive balances in their general trust accounts. Sometimes these balances are the result of a mathematical error, sometimes they are part of a fee you forgot to take, and sometimes a check you wrote never cleared or wasn't cashed.

Whatever the reason, as long as the money is in your general trust account, you are responsible for it. The longer these funds stay in the bank, the harder it is to account for them. Therefore, you should take care of those small, inactive balances as soon as

possible, including, if necessary, following up with payees to find out why a check hasn't cleared.

If you take steps to take care of these small balances and are still unable to pay out the funds, you should consider whether the unclaimed monies must be escheated to the state. For more information on abandoned or unclaimed funds, go to https://www.findnhmoney.gov/.

III. What Goes In? What Doesn't?

a. What can be deposited into my client trust account?

Retainers and cost deposits

Retainers and cost deposits are funds given to you by clients to pay for future fees and costs; these are fees you have not yet earned or costs you have not yet paid. Retainers and cost deposits are considered client funds and must be deposited into the trust account because the client expects that the funds will be safeguarded until needed. If you receive retainers, you need a trust account.

Flat Fees

Rule 1.15(d) states: "A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred." As a general matter, nonrefundable flat fees are prohibited in New Hampshire as being "unreasonable" under Rule 1.5.

Flat fees may only be withdrawn from the IOLTA account as those fees are earned. An attorney may use benchmarks to determine when portion of the flat fee has been earned, but there must be a "proportional relationship between the amount of the fee withdrawn and the value of the services provided." See Practical Suggestions for Flat Fees or Minimum Fees in Criminal Cases available at https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2008-01.

Settlements

Settlements are considered client funds and must be handled in accordance with Rule 1.15 and Sup. Ct. R. 50. In addition, Rule 1.5(c) requires that at the conclusion of a contingent fee matter, the lawyer must provide the client with a settlement statement, *i.e.*, a written statement showing the settlement amount recovered, the fees and costs deducted therefrom, and the portion being remitted to the client. (Also remember that Rule 1.5 requires that all contingent fee arrangements must be in writing and signed by the client.)

Escrow Funds

Escrow and other funds incident to closing real estate or personal property transactions must be deposited and held in a trust account. The same is true if a lawyer is representing a party in divorce and holds funds in which each of the divorcing parties has an interest (for example, the proceeds from the sale of the marital home).

Recall that if a lawyer for a party is also an escrow agent for funds in which a third party has an interest, the lawyer owes a fiduciary duty to the third party to safeguard those funds and account for them upon request. This situation can

become extremely problematic if the clients ask a lawyer to handle escrow funds in a manner to which the third party does not agree. The lawyer's duty to her client is now at odds with her fiduciary duty to the third party, *i.e.* a conflict of interest. In this instance, a lawyer must not disburse any funds from escrow whatsoever (even with an angry, insistent client asking her to) until the dispute has been resolved, whether by agreement of the parties or by court order. Rule 1.15(f). If an agreement cannot be reached, the lawyer can file a motion for instruction or move to interplead the funds.

Funds Held in Other Fiduciary Capacities
If you are holding funds *in connection with a representation* in which you are also acting as a trustee, agent, escrow agent, guardian, personal representative, or executor, those funds must be deposited and held in a trust account.

b. <u>What must NOT be deposited into my client trust account?</u>
Knowing what must *not* go into the trust account is just as important as knowing what does go into the trust account. Depositing earned fees or personal funds into a trust account changes the nature of the account and allows it to be subject to a lawyer's creditors. *This is called commingling and violates the Rules*. The following are some types of funds that must not be deposited into the trust account.

Fully earned fees (i.e., payments of bills)
This is money you receive from your client that is already earned. If your client is paying the exact amount shown on your invoice (or less), that payment does not go into the trust account.

Availability Retainers. The New Hampshire Rules of Professional Conduct permit availability retainers (sometimes referred to as a general retainer, classic retainer, or engagement retainer). This is a fee paid to an attorney "in exchange for the attorney's promise to be available to perform, at an agreed upon price, legal services of a specified or general type that arise during a specified time period. Because this retainer is given in exchange for availability and not for the rendition of legal services, it is deemed to be earned when paid." *See* New Hampshire Ethics Committee comments to Rule 1.15, footnote 1. Because a true availability retainer is deemed earned upon receipt, this payment does not go into the trust account.

Reimbursements for litigation expenses that have been advanced by a lawyer
RPC 1.8(e) authorizes lawyers to advance the expenses of litigation, provided the client remains ultimately liable, or to pay court costs and expenses of litigation on behalf of indigent clients. Any such advances by the lawyer should be paid out of the general business account, not the trust account. These advances are usually paid by the lawyer when there are no client funds on deposit and therefore using the trust account would not be appropriate. When you bill the clients for these costs and they make a full or partial payment, you should deposit the funds into your general business account.

Sometimes the reimbursements for costs advanced will be paid from a settlement when it is received. Because part of the settlement belongs to the client, the entire settlement must be deposited into the trust account. The lawyer's portion to cover

costs and fees is then withdrawn after the settlement check clears the bank and a settlement statement has been provided to the client.

Lawyer's personal or business transactions
Deposits related to a lawyer's personal or business transactions must not be placed in the trust account. The trust account is designed to hold client funds, not funds relating to employees, stockholders, outside counsel, friends, businesses of the lawyer, and/or personal real estate transactions. Make sure trust account deposits are for your clients and connected with a representation before depositing the funds into the trust account.

c. Commingling: it works both ways
The ADO often pursues discipline based on two kinds of commingling. Sometimes a lawyer leaves his earned fees in his CTA, or pays office-related or personal expenses out of the CTA. The other form of commingling involves the lawyers personal or operating account, wherein he deposits retainers or settlement checks into these accounts. In this second scenario, it is often the case that the retainer is ultimately earned, or the settlement funds are properly disbursed. Still, this is unauthorized commingling.

IV. Day-to-Day Operations and Recordkeeping: Rule 50(2)(B)

a. Minimum records per the rule: Let's start with the trifecta of client trust records. Each of these forms of record-keeping is required in order to perform a proper "three-way reconciliation" as required by Rule 50(C)(vi):

   i. THE CHECK REGISTER, or, as defined in the Rule: "receipt and disbursement journals or comparable records containing a record of deposits to and withdrawals from each client trust account, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;"

   ii. INDIVIDUAL CLIENT LEDGERS FOR EACH CLIENT, or, as defined in the Rule: "ledger or comparable records showing, for each separate trust client or beneficiary, the source of all funds deposited in a client trust account for or on their behalf, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;"

   iii. BANK STATEMENTS, or, as defined in the Rule: "the physical or electronic equivalents of all checkbook registers, statements, records of deposits, and canceled checks, provided by a financial institution;"

b. Other records you are required to maintain include:

   i. "copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf." This would include settlement statements in personal injury matters (required by Rule 1.5(c)), or settlement statements for a real estate transaction.

ii. "copies of records showing disbursements on behalf of clients or third parties;" this would include canceled checks, wire transfers, and underlying documents.

iii. "records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;"

1. Electronic transfers out of a client trust account are only authorized if the lawyer ensures, and keeps a record of, the information that would be required for any other disbursement, e.*g.* name of the client, the amount of the transaction, and the name of the recipient.

iv. "copies of monthly reconciliations of the client trust accounts maintained by the lawyer." *See Section V, infra*.

Before delving in the details of performing a monthly reconciliation, you should know the basics on what deposits into your CTA should "look like," as well as withdrawals.

c. Deposits

What do I deposit into the trust account?

Any deposit containing client funds must be deposited directly into the trust account. While seemingly simple, the concept that client funds must be deposited to a trust account and lawyer funds must never be deposited to a trust account gets complicated when put into practice. Your firm will receive funds from many different sources and for many different purposes. To decide if these funds must be deposited to a trust account, you need to determine if the client still has an ownership interest in any portion of the funds when you receive them.

For example:

a. If you have sent the client a billing statement for legal services performed and the client gives you a check in the amount of the billing statement, these are clearly earned fees and must be deposited to your general business account.

b. If your client gives you a cost advance to be disbursed on his/her behalf as costs related to litigation are incurred, these funds must be deposited to your trust account.

c. If your client sends a check that contains both earned fees and additional retainer and/or cost advance, the check must be deposited to your trust account. Once the funds have cleared the banking system and been collected, transfer the earned fees to your general business account. You cannot deposit one check into two accounts.

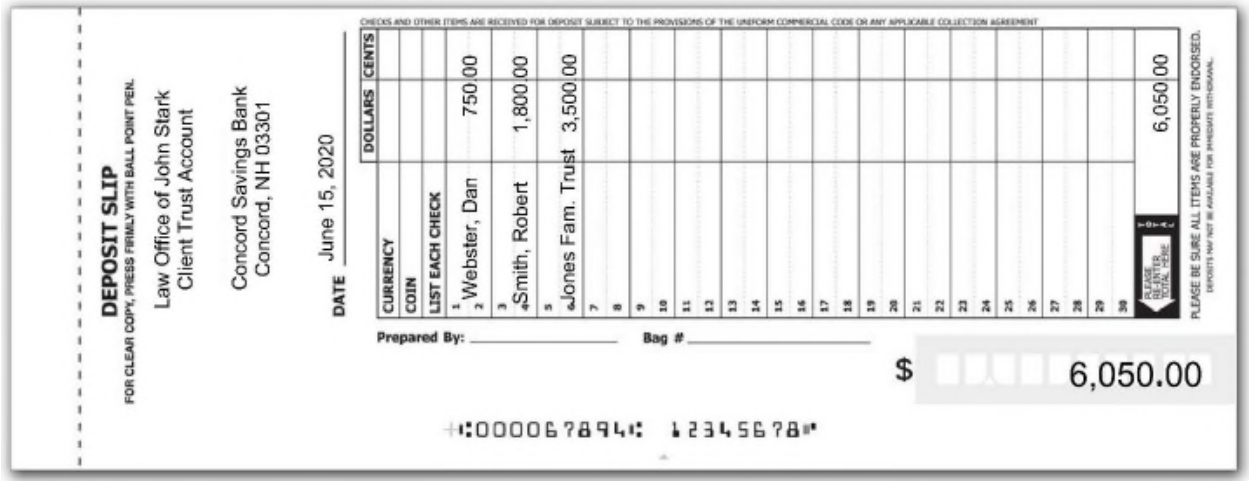
What about credit cards?

Lawyers are allowed to accept credit card payments from clients for advance fees and cost deposits, as well as earned fees. The New Hampshire Bar Association

Ethics Committee has published an excellent article on this topic. *How to Accept Credit Card Payments the Ethical Way*, New Hampshire Bar News (March 16, 2016), available at: https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2016-03.

How do I keep proper deposit records?

To help keep proper records, clearly identify the client by name or file number on the deposit slip (see example below). Keep copies of deposit slips for your records. In addition, it is a good idea to make copies of the deposited items to back up your deposit slips. If a deposit is made to the trust account via bank or electronic transfer, keep a copy of the transfer confirmation. Should you forget to record the deposit; the copy will be available for reference.


DEPOSIT SLIP
FOR CLEAR COPY, PRESS FIRMLY WITH BALL POINT PEN.
Law Office of John Stark
Client Trust Account
Concord Savings Bank
Concord, NH 03301
DATE June 15, 2020
CHECKS AND OTHER ITEMS ARE RECEIVED FOR DEPOSIT SUBJECT TO THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE OR ANY APPLICABLE COLLECTION AGREEMENT
DOLLARS CENTS
CURRENCY
COIN
LIST EACH CHECK
1 2 Webster, Dan 750 00
3 4 Smith, Robert 1,800 00
5 6 Jones Fam. Trust 3,500 00
6,050 00
Prepared By: _____ Bag # _____
$ 6,050.00
PLEASE BE SURE ALL ITEMS ARE PROPERLY ENDORSED.
:000006?894: 123456?8"

d. Disbursements

How do I disburse funds from a client trust account?

Funds may only be disbursed in accordance with the understanding between you and your client. Although this may be a verbal agreement, it is preferable (mandatory, in contingent fee cases) to have a written agreement acknowledging receipt of the funds and designating their purpose.

After establishing entitlement to the funds, disburse trust account funds promptly. Note however, that such disbursements should be made only after the deposit behind the funds has cleared the banking system. Rule 1.15(d) allows a lawyer to disburse funds deposited in the form of bank cashier's check, certified check, or electronic transfer of funds as soon as the financial institution acknowledges receipt and makes the funds available.[1] However, if the deposit

[1] Rule 1.15(d) states "Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier's check, certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution."

instrument does not clear, the financial institution will reverse the deposit and the lawyer will then be out of trust. This can occur when the bank cashier's check or certified check is a fraudulent or fake instrument. The best practice is to not disburse funds on any deposit until the deposit clears into the account. *See* Appendix F for more information on fraudulent and fictitious bank checks.

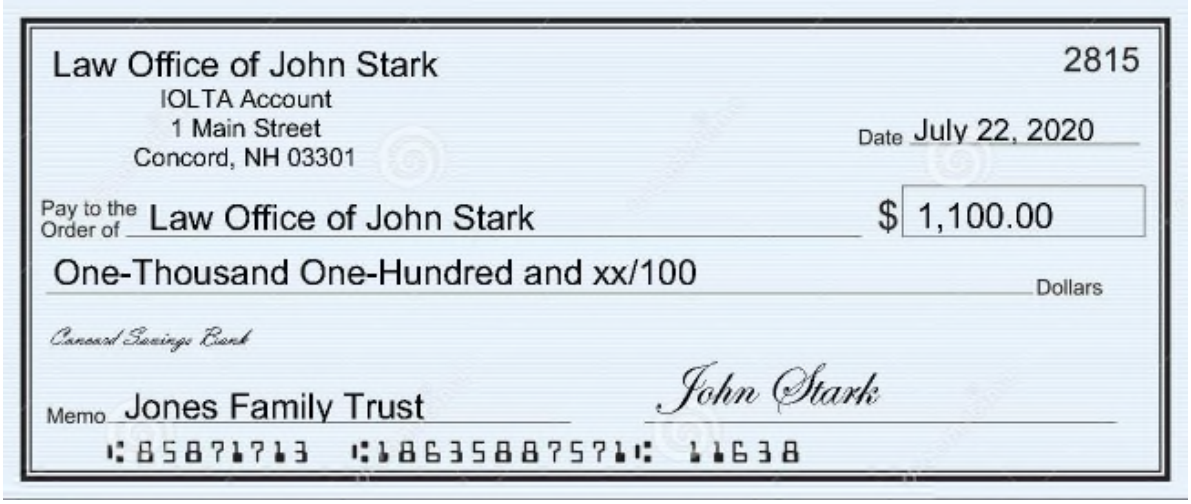
When a deposited item has cleared the banking system it becomes collected funds. Do not confuse collected funds with available funds. Often banks make funds available for withdrawal before those funds have been collected due to the requirements under Federal Reserve Regulation CC. As a general matter, cash and electronic deposits, such as wire transfers, are considered collected when deposited. All other deposit items including cashier's checks, money orders, and certified checks, will have varying times for collection; check with your bank to determine the appropriate wait time before making a disbursement.

Have written evidence supporting issuance of each check. You may never remove funds from a trust account without being able to document undisputed entitlement to those funds. If the client funds in the trust account are understood to be a retainer, such fees must be promptly removed from the trust account, ideally after the client has had an opportunity to review the billing to which they relate.

Ideally, you should wait a reasonable amount of time between sending your client a bill and paying yourself your fees. The amount of time you need to wait before withdrawing the earned fees will depend, in part, on where your clients are located. You should allow enough time for your client to receive the invoice and review it. Should a client dispute the billing, the disputed portion of the fee must remain in the trust account until the dispute is resolved. If you have already withdrawn your fees from the CTA and the client disputes the bill, your must return the disputed portion of the bill to the CTA. Similarly, if a client disputes a proposed settlement distribution, you are required to promptly disburse the undisputed funds and retain the disputed funds in the trust account until the dispute is resolved. You are further required to take reasonable action to resolve these disputes, including, when appropriate, interpleading the disputed funds.

All checks drawn on the trust account must be written to a *named payee*. You cannot make a check payable to "cash." In addition, you cannot make cash or ATM withdrawals from the trust account. All withdrawals must be made by check or electronic transfer.

Identify the client on the face of each check. If the check covers more than one client, show the breakdown by client and amount. Attach a breakdown to your copy of the check. If you make an electronic transfer, keep a copy of the transfer acknowledgement document.



V. Reconciliations

"Reconciliation" means checking the three basic records you are required to keep—the client ledgers, checkbook register, and the bank statements, —against each other so you can find and correct any mistakes.

Rule 50 requires you to reconcile your client trust account records because mistakes are bound to happen when people keep track of money. Even banks make mistakes when it comes to recording money transactions. That is because when you are working with numbers, mistakes are easy to make and difficult to notice. No amount of training can completely eliminate these mistakes.

To make sure that you find and correct these mistakes, you must record every client trust account transaction twice (in your client ledger and your checkbook register) and check these records against each other and against the bank's records. For example, let's say you deposit a check for $1,000 into your client trust account but mistakenly record it as "$10,000" in your client ledger and add $10,000 to your client's running balance. In your checkbook register, you recorded the check correctly and added $1,000 to your client trust account's running balance. How will you find the mistake? The checkbook register balance is right, so you won't find the mistake by bouncing a check. The numbers in the client ledger all add up so there is no way to tell you made a mistake. Unless you compare your client ledger balance to your checkbook register balance, you won't be able to find the recording error. And unless you compare your client ledger and checkbook register against the bank statement, you won't know which entry was right - $10,000 or $1,000.

We have just described the reconciliation process. The theory is that it is unlikely that the same mistakes will be made in three different records—the client ledgers, the checkbook register, and the bank statement—so if those records are all checked against each other, any mistakes will show up.

Rule 50 requires that the monthly reconciliations of the trust account balance to the current bank statement for a trust account.

a. Monthly Reconciliations

You cannot do reconciliation for a month until you are sure you have correct balances in all your client ledgers and checkbook register for the previous month. If you have not recently reconciled your books, or if you are worried that they are wrong, you may want to bring in a bookkeeper to straighten them out before you take on the monthly reconciliations yourself.

Once you have correct balances for the previous month, you are ready to reconcile. The steps required for this type of reconciliation are not unlike those necessary to balance a personal checking account.

There are two main steps in reconciling monthly:

1. From the balance shown on the bank statement for the monthly reporting period, subtract all outstanding checks. To this amount, add all deposits that have not cleared the bank. This is the current bank balance.
2. Confirm that the current bank balance equals the total balance for the trust account as shown on the lawyer's records (if using manual accounting, this would include check stubs or the account register).

The cut-off date for the bank statement and the trust account balance must be the same or the two balances may not reconcile. Note that the "Reconciliation Summary" produced by accounting software will typically satisfy the monthly requirement to reconcile the current bank balance to the total trust account balance (a different software report may be necessary for the monthly reconciliation).

If a nonlawyer employee reconciles the trust account, best practices dictate that this employee should not be a signatory on the trust account. Note that there are special rules for having non-lawyers be signatories on trust accounts. See below at Section VI(a).

b. Samples:

Blank client ledger cards and three-way monthly reconciliation forms are included at the end of these materials, along with completed examples of these forms.

VI. Other Client Trust Account Safeguards: Rule 50(2)(C)

a. Who can be a signatory to a client trust account?
   - *i.* Only a lawyer licensed to practice law in this jurisdiction, OR a non-lawyer working under the direct supervision of the lawyer *who is also bonded. See* Supreme Court Rule 50(2)(C)(i).

b. The buck stops with you
   - i. "attorneys . . . shall remain responsible for any and all transactions authorized by [nonlawyers with signatory power]"
   - ii. This is important. This means that even if you have a competent bookkeeper who conducts the reconciliations, you have a duty under Supreme Court Rule 50 and also Rule 5.3 of the Rules of Prof. Conduct to properly supervise that bookkeeper. At a minimum, you should:
     1. Review the bank statement and all canceled checks to ensure that all of the transactions were authorized (e.g. check for forged checks).

2. Review the list of outstanding (uncleared) checks for stale checks. Checks which remain outstanding for a prolonged period of time should be reissued or turned over to the State as unclaimed property. See above.
3. Review the list of all ledger cards to ensure that none of the ledger cards have a negative balance.
4. Compare the reconciled balance in the bank account with the total of all of the ledger cards. They must be equal.
5. Compare the reconciled balance in the bank account with the balance from, the check register. They must be equal.

c. Deposits must be "intact"
   i. You may not do a "split deposit." A split deposit means depositing a single check into two accounts. This is prohibited by N.H. Supreme Ct. Rule 50(2)(C)(iv). So, if an attorney receives a settlement check, part of which is for the attorney's legal fees and part is client funds, the attorney must deposit the entire check into the IOLTA account and wait for the check to clear before writing a check from the IOLTA account for the earned fees.
d. Withdrawals from a client trust account must be only (1) by check payable to a named payee, OR (2) via "authorized" electronic transfer. This means no ATM or debit card withdrawals.
e. RECONCILE MONTHLY
f. Retainers in a client trust account can only be withdrawn *as they are earned*; and should be reasonably promptly withdrawn once earned.

VII. Miscellaneous/FAQ's

What do I do with unclaimed trust account funds?
Unclaimed funds result from either a balance left in the trust account for a client you can no longer locate, or from outstanding checks which you are unable to reissue. Any unclaimed trust funds must be dealt with pursuant to NH RSA 471-C (Custody and Escheat of Unclaimed and Abandoned Property).

What do I do when I issue a check that never gets cashed?
As part of your monthly bank reconciliation, you should have a list of checks that have not cleared your account. A good practice is to send letters to the payees of any checks older than six months. The letter should indicate that you issued a check that remains outstanding. Ask the payee to cash the check or to contact you for a replacement if necessary. If a letter is returned unclaimed, handle the funds in accordance with NH RSA 471-C (Custody and Escheat of Unclaimed and Abandoned Property)as noted above.

Must I notify the New Hampshire Bar Association if I want to open or close a trust account, or move my client funds to another bank?
You are not required to notify the New Hampshire Bar Association if you decide to open or close a trust account, or want to move your trust account to another bank. You will simply report whatever trust accounts you have open on your Trust Accounting Compliance Certification during the next licensing period.

If you are closing a trust account, or moving your funds to a new trust account, be sure you leave enough funds in the old account to cover any outstanding checks.

If I am licensed to practice in more than one state, where should I maintain my trust account?

If trust account funds accrue as a result of a lawyer's practice under the lawyer's New Hampshire license, then those funds should be handled as required by the New Hampshire rules. The key consideration is whether the representation of the client was undertaken using your New Hampshire license.

What should I do if I cannot obtain my client's taxpayer identification number in order to set up a separate trust account for the client's benefit?

Your client's funds should remain in the IOLTA trust account until you have the correct taxpayer identification number for a separate interest-bearing account. You should document your efforts to obtain the identification number by keeping a record of telephone calls, copies of letters, etc. You should not, however, use your own or your firm's taxpayer identification number on the separate client account pending the receipt of the client's identification number.

What is the required waiting period between deposit and disbursement?

The time period depends on what was deposited and your financial institution's requirements regarding collected funds. Funds may be deposited in many different forms: checks, warrants, drafts, money orders, cashier's checks, electronic transfers, etc. Each financial institution has its own schedule, based on regulatory requirements and internal banking procedures, for recognizing collected funds. Discuss this with the financial institution handling your IOLTA trust account. They should be able to provide you with a schedule for the routine items you deposit. See the discussion on disbursements and collected funds on above in Section IV(d).

What should I do if I receive an overdraft notice on my client trust account from my bank?

You should immediately contact your bank and take whatever steps are necessary to correct the deficiency in your client trust account. If necessary, deposit your own funds to make up any shortfall until the cause of the overdraft is determined.

When you complete your annual Trust Accounting Compliance Certification, you are required to disclose any instances where the account was out of trust. You should also promptly report the overdraft to the Attorney Discipline Office, along with an explanation as to how the overdraft occurred and the steps you have taken to correct it.

What should I do when a client wants to pay by credit card?

You can accept credit card payments. You must decide which type of credit card payments you will accept. There are two kinds: advance fee/cost deposits and earned fees. You can accept payments for both types or accept only one type of payment. If you decide to accept credit card payments for both earned fees and advance fees/costs, you must have two merchant accounts. Advance fees and costs cannot be deposited into a non-trust account with earned fees and then transferred to a trust account.

Please note that when you accept payments by credit card, it sometimes takes several days for the merchant services provider to process the card payment and have the funds deposited into your account. As with any other items deposited into your trust account, you must wait for those funds to clear that process before you disburse them.

The New Hampshire Bar Association Ethics Committee has published an excellent article on this topic. How to Accept Credit Card Payments the Ethical Way, New Hampshire Bar News (March 16, 2016), available at: https://www.nhbar.org/resources/ethics/ethics-corner-practical-ethics-articles/2016-03 .

What should I do about credit card fees?

Credit card companies charge a fee for credit card payments. You may be able to arrange for credit card fees related to the trust account to be charged to the general business account. However, if the fees are charged to the trust account, you should deposit your own funds in the trust account to cover these fees.

Some lawyers may choose to charge credit card fees to their clients. This is not directly addressed under the Rules; however, at a minimum, the lawyer should ensure that the client is aware of the fees, that the fee charged reasonably reflects the actual cost incurred by the lawyer, and that there is nothing in their merchant services agreement prohibiting them from doing so.

Can I deposit one check into two accounts at the same time (commonly called a split deposit)?

No. A split deposit is not allowed. N.H. Supreme Ct. Rule 50(2)(C)(iv) states: "(iv) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item;" If you receive a payment from a client that contains earned fees and unearned fees, the payment must first be deposited into the trust account. After the funds have been collected by the bank, withdraw the earned fee portion. The remaining funds can be returned to your client or remain in the trust account to be used for future work.

I have very little activity in my trust account. My bank closes the account when the balance is $0. What can I do?

First you must decide if you need a trust account. If you do, you can deposit a small amount of your money in the account to keep it open. Some banks will allow you to do this with as little as $1; check with your bank to determine the minimum amount required. You should keep as little of your money in the account as necessary. This is permitted by Rule 1.15(b).

How long must I retain my trust account records?

N.H. Supreme Ct. Rule 50(2)(B) states the trust account records must be retained for at least six years from the time of final distribution.

Sample Client Ledger Card

Client Name/Number: _____ Date Opened _____

Matter Name/Number: _____

Date	Item # or Type of Transaction	Description	Disbursements	Receipts	Balance

Smith & Smith, PLLC – Client Ledger Card

Client Name/Number: John P. Jones (Client # 0120) Date Opened 1/14/2019

Matter Name/Number : In the Matter of John P. Johns and Maria S. Jones (Divorce)

Date	Item # or Type of Transaction	Description	Disbursements	Receipts	Balance
1/14/2019	Deposit	Initial Retainer paid by John Jones		3,500.00	3,500.00
1/28/2019	Chk #1012	Smith & Smith, PLLC - Earned Fees	320.00		3,180.00
2/5/2019	Chk #1028	State of NH – Divorce Filing Fee	250.00		2,930.00
2/28/2019	Chk #1035	Smith & Smith, PLLC – Earned Fees	1,420.00		1,510.00
3/29/2019	Chk #1044	Smith & Smith, PLLC – Earned Fees	110.00		1,400.00
4/30/2019	Chk #1068	Smith & Smith, PLLC – Earned Fees	900.00		500.00
5/10/2019	Chk #1072	Bank of America – Subpoena Fee	128.20		371.80
5/23/2019	Deposit	Replenish Retainer – John Jones		1,500.00	1871.80
5/28/2019	Chk #1081	Smith & Smith, PLLC – Earned Fees	280.00		1591.80
6/28/2019	Chk #1095	Smith & Smith, PLLC – Earned Fees	880.00		711.80
7/22/2019	Chk #1110	State of NH – Cert. Copy of Decree	40.00		671.80
7/31/2019	Chk #1115	Smith & Smith, PLLC – Earned Fees	240.00		431.80
7/31/2019	Chk #1116	John P. Jones – Balance of Retainer	431.80		0.00

Bank Account Reconciliation Worksheet

Page 1

Month Ending: _____

Step 1

Enter Ending Balance from Bank Statement: $_____ **(A)**

Step 2

Enter Deposits not on Bank Statement

Date	Description	Amount
	Total:	

(B)

Step 3

Enter Checks/Other Withdrawals not on Bank Statement

Date	Payee	Check #	Amount
		Total:	

(C)

Ending Balance from Bank Statement	
Plus Total Deposits not on Statement	+
Subtotal	=
Minus Total Checks/Withdrawals not on Statement	--
Reconciled Bank Balance	=
Balance from Check Register	

(A)

(B)

(C)

Reconciled Bank Balance must equal Check Register Balance and Total Balance Per Client Ledger Cards.

Bank Account Reconciliation Worksheet

Page 2

Month Ending: _____

Total Balance per Client Ledger Cards: _____ **(D)**

Compare with the Balance from Check Register and the Reconciled Bank Balance

Enter Each Ledger Card Client/Matter Name	Enter each Ledger Card Ending Balance
Total:	

(D)

Sample Bank Account Reconciliation Worksheet

Month Ending: January 31, 2020

Step 1

Enter Ending Balance from Bank Statement: $118, 201.29 **(A)**

Step 2

Enter Deposits not on Bank Statement

Date	Description	Amount
2/1/2020	L. Nelson Retainer	$4,000.00
	Total:	$4,000.00

(B)

Step 3

Enter Checks/Other Withdrawals not on Bank Statement

Date	Payee	Check #	Amount
1/18/2020	H. Rogers	1082	$425.00
2/2/2020	State of NH (Jones Divorce)	1088	$40.00
2/2/2020	Concord Hospital (P. Townsend)	1089	$427.45
2/2/2020	Concord Audiology (P. Townsend)	1090	$400.00
		Total:	$1,292.45

(C)

Ending Balance from Bank Statement	118,201.29	**(A)**
Plus Total Deposits not on Statement	+ 4,000.00	**(B)**
Subtotal	= 122,201.29	
Minus Total Checks/Withdrawals not on Statement	- 1,292.45	**(C)**
Reconciled Bank Balance	= 120,908.84	
Balance from Check Register	$120,908.84	

Reconciled Bank Balance must equal Check Register Balance and Total Balance Per Client Ledger Cards.

Sample Bank Account Reconciliation Worksheet

Month Ending: January 31, 2020

Total Balance per Client Ledger Cards: $120,908.84 **(D)**

Compare with the Balance from Check Register and the Reconciled Bank Balance

Enter Each Ledger Card Client/Matter Name	Enter each Ledger Card Ending Balance
Smith v. Smith Divorce Escrow	$25,218.45
H. Jones – Divorce	$1,825.00
L. Nelson Post-Divorce Matters	$4,000.00
P. Townsend Personal Injury (Settlement)	$52,918.25
M. Smith – Divorce Retainer	$1,245.00
R. Kozlowski – Landlord/Tennant	$1,800.00
R. Starr – Litigation Retainer	$23,840.00
N. Wilson – Divorce	$10,000.00
J. Landsbury – Divorce	$62.14
Total:	$120,908.84

(D) Total Balance Per Client Ledger Cards must equal Check Register Balance and Reconciled Bank Balance.

Appendices

A. Rule of Professional Conduct 1.15
B. Supreme Court Rule 50
C. Supreme Court Rule 50-A
D. Checklist: Opening an IOLTA Account
E. Beware of Fictitious Cashier's Checks (Article)

Appendix A - Rule of Professional Conduct 1.15

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property, in accordance with the provisions of the New Hampshire Supreme Court Rules.

The lawyer shall maintain the minimum financial records with respect to the client and third party funds as may be required by the New Hampshire Supreme Court Rules and shall comply with every other aspect of those Rules. Sufficient records of all other property of clients or third persons shall be kept by the lawyer and shall be preserved for a period of six years after final distribution of such other property or any portion thereof. All client and third party property shall be identified as such and appropriately safeguarded.

(b) A lawyer may deposit the lawyer's own funds in a client trust account for the sole purpose of paying bank service charges on that account, but only in an amount appropriate for that purpose.

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Funds may be disbursed from lawyer trust accounts upon (A) (i) deposit, receipt of which is acknowledged by the receiving financial institution, of cash, bank cashier's check, certified check, or electronic transfer of funds at least equal to the sum of such disbursements, or (ii) clearance of any other form of deposit by such receiving financial institution, and (B) availability of such funds to the lawyer from the receiving financial institution.

(e) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and upon request by the client or third person, shall promptly render a full accounting regarding such property.

(f) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

Ethics Committee Comment

New Hampshire Supreme Court Rule 50(2)B provides that: all cash property of clients received by attorneys shall be deposited in one or more clearly designated trust accounts (separate from the attorney's own funds) in financial institutions. Any attorney depositing client funds into an out-of-state financial institution shall file a written authorization with the Clerk of the Supreme Court authorizing the Court or its agents to examine and copy such out-of-state account records. Under no circumstances may an attorney use out-of-state banks other than those located in Maine, Vermont or Massachusetts.

Paragraphs (a) and (b), which differ from ABA Model Rule 1.15(a), were drafted with the provisions of Rule 50 in mind, especially, 50(2)B. Paragraphs (c), (d), (f), and (g) follow the language of ABA Model Rule 1.15 (b), (c), (d) and (e).

With respect to the broader question regarding retention of client files generally, see Practical Ethics: Ethical Considerations and the Retention of Client Files (http://nhbar.org/pdfs/PEA3-99.pdf, 1999). That article discusses an amendment to the New Hampshire Rules of Professional Conduct, proposed in 1997 but never formally approved, providing that client files be retained for at least six years or beyond any applicable period of statute of limitations on actions, whichever is longer. The article concludes that "an attorney's analysis of whether, when, and how to discard a client or former client's file materials must begin and end with the attorney's continuing obligation to avoid prejudicing the client's interest, Rule 1.16(d)." The article also incorporates the Guidelines For Client File Retention/Disposition found in ABA Informal Opinion 1384.

While ABA Model Rule 1.15 describes the circumstances under which funds must be deposited in a lawyer's trust account, it does not specify when funds may be disbursed. This issue arises most frequently when the deposited funds are received via check or other negotiable instrument. Because funds are frequently received in this manner and oftentimes must be immediately disbursed to third parties as an integral part of transactions that lawyers are engaged in on behalf of their clients, needed guidance in this area is provided in paragraph (e). See generally RSA 382-A:3-411 which supports this treatment of bank cashier's and certified checks.

Rule 1.15 (d) provides that funds may only be withdrawn from a trust account when fees are "earned" or expenses are "incurred." This new rule, while implicitly recognizing that so-called flat fees and minimum fees are both permissible, raises questions about when such fees have been "earned" for purposes of transfer from a trust account to an attorney's business or operating account (or perhaps directly into a personal account). Rule 1.5's requirement that any fee must be reasonable is the overarching principle governing all fee issues.[1] Because this requirement may necessitate the return of some portion of a flat or minimum fee when the lawyer cannot complete representation because of conflict or other early termination of the attorney/client relationship, such fees should be considered "earned" only when work of comparable value has been performed. Fees that may be required to be returned under Rule 1.5 must be retained in the lawyer's trust account. Lawyers should deposit all flat fees or minimum fees into their trust accounts to be periodically withdrawn only upon a determination that the value of services provided is in reasonable proportion to the percentage of the total fee withdrawn. Good practice

[1] Rule 1.5 does not permit a retainer for services that is absolutely non-refundable because such a fee agreement is inconsistent with the Rule's requirement that a fee must always be reasonable. However, the use of a general retainer, sometimes referred to as a "classic retainer" or an "engagement retainer," continues to be recognized as permissible. This retainer reflects an agreement between attorney and client in which the client agrees to pay a fixed sum to the attorney in exchange for the attorney's promise to be available to perform, at an agreed upon price, legal services of a specified or general type that arise during a specified time period. Because this retainer is given in exchange for availability and not for the rendition of legal services, it is deemed to be earned when paid.

suggests that the lawyer and client enter into a written agreement in advance of payment of the fee setting reasonable mileposts for withdrawal. For example, in a criminal case the lawyer might withdraw a certain amount upon initial assessment of the case, further funds for pre-trial practice, and the remainder upon completion of the trial or a negotiated plea.

The question of non-refundable, earned upon receipt retainers was addressed in Doherty's Case, 142 N.H. 446 (1997) in the context of bankruptcy court proceedings. In that case, the bankruptcy court had found that in a bankruptcy proceeding there was no such thing as a non-refundable, earned upon receipt retainer and a lawyer's failure to segregate a client's retainer into a separate client trust account violated Rule 1.15(a)(1). The attorney admitted to this violation and the Supreme Court affirmed the referee's ruling that the attorney had violated Rule 1.15(a)-(c).

Appendix B - Supreme Court Rule 50

Rule 50. Trust Accounts.

(1) Interest-Bearing Pooled Trust Accounts. In addition to any individual client trust accounts, a member of the New Hampshire Bar who is not exempt from this requirement pursuant to Rule 50(1)(F) shall create or maintain a pooled, interest-bearing trust account known as "Interest on Lawyers Trust Accounts program" or "IOLTA" account for clients' funds which are nominal in amount or to be held for a short period of time and must comply with the following provisions:

A. An interest-bearing trust account shall be established with any bank or savings and loan association authorized by federal or State law to do business in New Hampshire and insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or other financial institution with adequate federal insurance covering client funds ("financial institution"). Funds in each interest-bearing trust account shall be subject to withdrawal upon demand.

B. The rate of interest payable on any interest-bearing trust account shall be the same rate of interest paid by the depository institution for all other holders of similar accounts. Interest rates higher than those offered by the institution on regular checking or savings accounts may be obtained by a lawyer or law firm on some or all deposited funds so long as there is no impairment of the right to withdraw or transfer principal immediately.

C. Lawyers, law firms or others acting on their behalf when depositing clients' funds in a pooled, interest-bearing account shall direct the depository institution:

(i) to remit interest or dividends, as the case may be, at least quarterly, to the New Hampshire Bar Foundation; and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the account number(s), and rate of interest applied for the reporting period; and

(iii) to transmit to the depositing lawyer or law firm at the same time a report showing the accounts number(s), rate of interest applied for the reporting period, and amount paid to the Foundation.

(iv) to provide the New Hampshire Attorney Discipline Office with a notice whenever a trust account contains insufficient funds or shows a negative balance. Such notice shall be a duplicate of the standard depository institution notice provided to the customer. The Attorney Discipline Office will determine what investigation and further action may be appropriate. The direction to a depository institution to provide a copy of the notice to the Attorney Discipline Office is between the depository institution and the lawyer, law firm or other acting on its behalf only. This requirement is for the sole purpose of alerting the Attorney Discipline Office that there has been an overdraft of the trust account. It is not the intention of this requirement to create any direct or third party beneficiary rights.

D. The interest or dividends received by the Foundation shall be used solely by the Foundation for the following purposes:

(i) for the support of civil legal services to the disadvantaged;

(ii) for public education relating to the courts and legal matters;

(iii) for such other programs as may be approved by the supreme court.

Such income shall be applied only to activities permitted to be conducted by organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1954, as from time to time amended.

E. Attorneys, either individually or through their firm organizations, shall complete an annual Trust Accounting Compliance Certification by July 1 of each year which includes a listing of all interest-bearing trust account(s) for clients' funds under paragraph (1). Any pooled non-interest bearing client trust account(s) must be converted to interest-bearing trust account(s) under provisions of Rule 50(1).

Each attorney who has been on active status at any time during a reporting year must make such a certification. An attorney who is requesting a change in membership status from active to inactive or retired status, or who is resigning from the New Hampshire Bar, must make such a certification prior to the submission of the request for change in status or resignation.

F. A lawyer is exempt from the requirement that he or she create or maintain a pooled, interest-bearing trust account known as “Interest on Lawyers Trust Accounts program” or “IOLTA” account if:

(i) the lawyer is not engaged in the private practice of law;

(ii) the lawyer is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

(iii) the lawyer is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

(iv) the nature of the lawyer’s practice is such that the lawyer does not hold IOLTA-eligible funds of any client or third person; or

(v) the lawyer does not have an office within the State of New Hampshire, does not have a trust account in a financial institution within the State of New Hampshire, and any trust accounts the lawyer has in a foreign jurisdiction are maintained in compliance with the rules and regulations of that jurisdiction.

G. This rule may be subsequently amended to effectuate its purposes or to comply with any amendments to the Internal Revenue Code.

(2) Attorney's Financial Records:

A. Account Designation. All funds of clients or third parties received by attorneys in connection with a representation shall be deposited in one or more clearly designated trust

accounts (collectively, "client trust accounts"), separate from the attorney's own funds in financial institutions. Any attorney depositing client or third party funds into an out-of-state financial institution shall file a written authorization with the Clerk of the Supreme Court authorizing the Court or its agents to examine and copy such out-of-state account records. Under no circumstances may any attorney deposit client or third party funds with out-of-state financial institutions other than those located in Maine, Vermont, Massachusetts, or the state in which the attorney's office is situated, without obtaining prior written approval from the Supreme Court.

B. Recordkeeping Generally. A lawyer who practices in this jurisdiction shall maintain current financial records as provided in these Rules and required by Rule 1.15 of the New Hampshire Rules of Professional Conduct, and shall retain the following records for a period of six years from the time of final distribution:

(i) receipt and disbursement journals or comparable records containing a record of deposits to and withdrawals from each client trust account, specifically identifying the date, source, and description of each item deposited, as well as the date, payee and purpose of each disbursement;

(ii) ledger or comparable records showing, for each separate trust client or beneficiary, the source of all funds deposited in a client trust account for or on their behalf, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed;

(iii) copies of accountings to clients or third persons showing the disbursement of funds to them or on their behalf;

(iv) copies of records showing disbursements on behalf of clients or third parties;

(v) the physical or electronic equivalents of all checkbook registers, statements, records of deposits, and canceled checks, provided by a financial institution;

(vi) records of all electronic transfers from client trust accounts, including the name of the person authorizing transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed;

(vii) copies of monthly reconciliations of the client trust accounts maintained by the lawyer.

C. Client Trust Account Safeguards. With respect to client trust accounts required by Rule 1.15 of the New Hampshire Rules of Professional Conduct:

(i) only a lawyer admitted to practice law in this jurisdiction or, to the extent such person is bonded, a person under the direct supervision of the lawyer shall be an authorized signatory on or may authorize transations with respect to a client trust account;

(ii) attorneys who have authorized persons under their direct supervision to deal with a client trust account shall remain responsible for any and all transactions authorized by such persons;

(iii) each transfer of funds to or from a client trust account by way of electronic funds transfers must be specifically authorized by a party described in Rule 50(2)(C)(i).

(iv) receipts shall be deposited intact and records of deposit should be sufficiently detailed to identify each item;

(v) withdrawals shall be made only by check payable to a named payee and not to cash, or authorized electronic transfer;

(vi) each account at a financial institution that is required by Rule 50, except those accounts excluded by Rule 50-A(3), shall be reconciled by the lawyer or law firm on a monthly basis. Such reconciliation shall disclose (a) the balance of the account according to the financial institution's records; (b) the balance of the account according to the lawyer or law firm's records; (c) a detailed listing of all differences between items (a) and (b); (d) a listing of all clients' and third parties' funds in the accounts as of the reconciliation date; and (e) a detailed listing of all differences between items (b) and (d);

(vii) funds received as retainers shall not be withdrawn from the client trust account of the attorney or law firm until earned;

(viii) all funds received as proceeds of collections or awards on behalf of a client shall be deposited in gross in a client trust account, and shall not be charged with a fee until authorized or permitted distribution; and

(ix) the practice of law in the form of an entity that is permitted by these Rules shall not relieve an attorney from the obligation of compliance with this Supreme Court Rule.

D. Availability of Records. Records required by Rule 50(2)(B) and (C) may be maintained by electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer and shall not be dependent upon or solely available to the attorney via access to third party electronic sources.

E. Dissolution of Law Firm. Upon dissolution of a law firm, the lawyers shall make reasonable arrangements for the maintenance of the client trust account records specified in Rule 50(2)(B) and (C). The specific details of the arrangements must be provided to the Attorney Discipline Office and to the New Hampshire Bar Association.

F. Sale of Law Practice. Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in Rule 50(2)(B) and (C). The specific details of the arrangements must be provided to the Attorney Discipline Office and the New Hampshire Bar Association.

Appendix C - Supreme Court Rule 50-A

Rule 50-A. Trust Accounting Certification Requirement.

(1) (A) In order to assure compliance with the requirements of Rule 50 and in order to ascertain that the records and accounts described in Rule 50 are properly maintained, all attorneys and foreign legal consultants licensed to practice in the State of New Hampshire, whether in private practice or not, other than those in inactive status, shall individually or through their firm organizations complete an annual Trust Accounting Compliance Certification in such form as the court shall prescribe. The Compliance Certification shall be completed on or before July 1st of each year and shall certify compliance with the requirements of Rule 50 for the reporting period beginning on June 1 of the preceding year and ending on May 31 of the reporting year.

The New Hampshire Bar Association shall make the Compliance Certification form available to attorneys and foreign legal consultants annually with the annual dues and court fees assessments.

For purposes of this rule, an attorney shall not be considered to be "in inactive status" if the attorney's New Hampshire Bar Association membership status was active at any time during the one-year reporting period. The certification requirements of this rule shall not apply to any full-time judge, full-time marital master or full-time supreme, superior, or circuit court clerk or deputy clerk, except that the certification requirement shall apply where such judge, marital master, clerk or deputy clerk was in the active practice of law at any time during the reporting period.

(B) The Trust Accounting Compliance Certification shall certify to one of two things:

(1) That the attorney or foreign legal consultant does not maintain a trust account and does not possess any assets or funds of clients; or

(2) That client funds maintained by the attorney or foreign legal consultant are held in accounts in full compliance with the requirements of Rule 50.

The certification may be completed by the attorney or foreign legal consultant or by a private accountant employed for this purpose by the attorney or foreign legal consultant. The completed Trust Accounting Compliance Certification shall be filed through the New Hampshire Bar Association by July 1st of each year.

(C) The certification procedure shall be supplemented by annual compliance checks by an accountant selected by the Supreme Court. The accountant's purpose in conducting a compliance check will be to determine whether the minimum standards set forth in Rule 50 are being maintained. All information obtained by the accountant shall remain confidential except for purposes of transmitting notice of violations to the Professional Conduct Committee or the Supreme Court. The information derived from such compliance checks shall not be disclosed by anyone in such a way as to violate the attorney-client privilege except by express order from the Supreme Court.

(2) An attorney or foreign legal consultant who fails to comply with the requirements of Rule 50 with respect to the maintenance, availability, and preservation of accounts and records, who

fails to file the required annual Trust Accounting Compliance Certification, or who fails to produce trust account records as required shall be deemed to be in violation of Rule 1.15 of the Rules of Professional Conduct and the applicable Supreme Court Rule. Unless upon petition to the Supreme Court an extension has been granted, failure to file the required annual Trust Accounting Compliance Certification by July 1st shall, in addition, subject the attorney or foreign legal consultant to one or more of the following penalties and procedures:

A. On August 1, attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications shall be assessed a delinquency fee of $50.00. On September 1, attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications shall be assessed an additional delinquency fee of $250.00.

B. On or after September 1, the New Hampshire Bar Association shall provide the Supreme Court with the names of attorneys and foreign legal consultants who have not filed their Trust Accounting Compliance Certifications. The court shall initiate proceedings to suspend the attorneys from the practice of law or to suspend the licenses of the foreign legal consultants.

C. An audit of the attorney's or foreign legal consultant's trust accounts and other financial records, at the expense of the attorney or foreign legal consultant, may be required.

Delinquency fees provided for by this rule shall be collected by the New Hampshire Bar Association for the benefit of the Attorney Discipline Office. The delinquency fee may be used by the Attorney Discipline Office to pay for audits of the trust accounts of attorneys or foreign legal consultants, or for other purposes related to trust accounting compliance upon approval of the Supreme Court.

Reinstatement following a suspension ordered pursuant to Rule 50-A(2)(B) above shall be only by order of the Supreme Court, upon petition to the court following the filing of the Trust Accounting Compliance Certification and payment of all fees. A petition for reinstatement shall be accompanied by the required filing fee. If the petition is filed more than one year after the date of the order suspending the person from the practice of law in this State, the petition shall be accompanied by evidence of continuing competence and learning in the law or evidence that the foreign legal consultant meets the eligibility requirements of Rule 42D(1), and evidence of continuing moral character and fitness. If the evidence of continuing competence and learning in the law or evidence of continued eligibility to serve as a foreign legal consultant, and evidence of continuing moral character and fitness, are satisfactory to the court, the court may order reinstatement upon such conditions as it deems appropriate.

If the evidence of continuing competence and learning in the law or evidence of continued eligibility to serve as a foreign legal consultant is not satisfactory to the court, the court shall refer the petition for reinstatement to the Professional Conduct Committee for review. The Professional Conduct Committee shall review the petition and conduct such proceedings as it deems necessary to make a recommendation to the court as to whether the petition should be granted. The Professional Conduct Committee shall file its recommendation and findings, together with the record, with the court. Following the submission of briefs, if necessary, and oral argument, if any, the court shall enter a final order.

If the evidence of continuing moral character and fitness is not satisfactory to the court, the court shall order the attorney or foreign legal consultant to file with the committee on character

and fitness and with the clerk of the supreme court the petition and questionnaire referred to in Supreme Court Rule 42(VI)(c). Further proceedings shall be governed by Rule 42.

(3) Except for requirements of Rule 50, subparagraph (2)A, requiring the inclusion of probate accounts in the index of trust accounts, the provisions of Rule 50, paragraph (2), and of this Rule 50-A shall not apply to probate accounts (including estate, testamentary trusts, guardian, and conservator accounts).

(4) The Supreme Court may at any time order an audit of such financial records or trust accounts of an attorney or foreign legal consultant, and take such other action as it deems necessary to protect the public.

Appendix D - Checklist: Opening an IOLTA Account

Note: It is the lawyer's responsibility to ensure compliance with Rule 1.15, not the bank's.

Requirements:

- The lawyer must use a bank from the NH IOLTA approved bank list. Visit https://www.nhbar.org/nh-bar-foundation/iolta/ for more details. Note that certain banks pay higher interest rates on IOLTA Accounts. See the above website for details.
- Title of Account: "IOLTA" or "CLIENTS FUNDS" should appear in the title of the account, along with the attorney or firm name and address. This information must also appear on all other account documents, such as checks and deposit slips.
- Tax Identification Number: The account will show the New Hampshire Bar Foundation's taxpayer identification number (02-0333762)
- Service Charges: Virtually every financial institution participating in the IOLTA program in New Hampshire opts to waive all routine service charges on IOLTA accounts due to the charitable nature of the program. In no cases shall bank charges be deducted from the principal. (Note that attorneys are encouraged to keep an appropriate amount of their own money in the IOLTA account to cover potential bank fees, such as overdraft fees).
- Form to open an IOLTA account: IOLTA accounts are established with the Authorization to Financial Institution form. This form authorizes the institution to enroll the account in the IOLTA program, to forward earned interest to the Foundation on a monthly basis, to notify the Attorney Discipline Office of any negative balances and to name the New Hampshire Bar Foundation, taxpayer identification number 02-0333762, as the recipient of interest. A copy of the form with the new account information should be emailed to info@nhbarfoundation.org or mailed to the New Hampshire Bar Foundation, 2 Pillsbury Street, Suite 300, Concord, NH 03301. (It is the attorney's responsibility to forward this form to NH Bar Foundation.)
- Overdraft protection must be disabled on the trust account.
- No Debit Cards are to be issued for the trust account.
- Signature authority may only be granted to (1) lawyers and (2) nonlawyer employees who are bonded. See NH Supreme Court Rule 50(2)(C)(i).

Recommendations:

- If lawyer maintains other accounts at bank, he or she should use different colored trust account checks.
- Legible check images are to be provided with the bank statements.
- Safeguards to protect inadvertent wires and ACHs should be discussed with banker.

- If lawyer wants to use online banking to transfer funds from the trust account to different accounts, the bank must have a text/memo box on the transfer page that allows lawyer to properly attribute all transactions to particular clients.
- The lawyer should learn the bank's deposit deadlines, the funds availability policy, and inquire about typical length of time for checks to clear.
- The lawyer should develop an office policy regarding trust account procedures (reconciliations, deposits, disbursements, etc.).
- While not prohibited, as a security measure, the use of signature stamps or pre-printed signature lines is strongly discouraged.
- Check stock should be kept in a secure place and employees without signature authority should not have access to blank checks.

Appendix E - Beware of Fictitious Cashier's Checks (Article)

This article was originally published in the October 16, 2019, New Hampshire Bar News.

Beware of Fictitious Cashier's Checks

The Attorney Discipline Office has learned of an increased number of attempted fictitious cashier check scams directed at New Hampshire attorneys. These scams aim to pass a fake cashier's check to the targeted attorney, who will deposit it into an IOLTA account. The attorney will then be asked to either pay the client or a third party a portion of the funds, often by wire transfer. A few days later, the bank check will be returned as fake or fictitious and the deposit into the IOLTA account will be reversed. This leaves the attorney's IOLTA account out of trust. Efforts to recover the wire will almost certainly prove unsuccessful.

How the scam works

The fake cashier's check scam comes in many variations, but there are some common characteristics. The attorney will be contacted by e-mail or through the firm's website by a new potential client. The potential client will seek to have the attorney handle a transaction or litigation matter. The scammer "client" will communicate only by e-mail and, once the attorney is "hired" to perform the work, the attorney will receive a cashier's check in the mail. If the case was a litigation matter, the purported opposing party will quickly settle the claim by sending a cashier's check to the attorney. If it was a transactional matter, one of the parties to the transaction will send the attorney a cashier's check as a deposit or payment. The attorney will then be instructed to deposit the cashier's check into his or her IOLTA account and wire a portion of the funds to either the client, or to a third party.

In a matter recently brought to the Attorney Discipline Office's attention, the attorney was hired to draft an equipment lease and received a cashier's check as a deposit from the alleged lessee. Shortly after receiving the cashier's check, the attorney was instructed to deposit the cashier's check and wire a portion of the funds to a third party for equipment inspection fees. The attorney deposited the cashier's check into an IOLTA account and the next day confirmed that the funds were available. The attorney then wired equipment inspection fees to the third party. Three days later, the cashier's check was returned as fictitious and the attorney's bank reversed the deposit into the IOLTA account, leaving the attorney with a large overdraft.

In another matter, the attorney was hired to collect on a debt allegedly owed to the client. The attorney was able to quickly settle the claim and received a cashier's check in the mail. The client then asked the attorney to wire the client's portion of the settlement to him. A few days after wiring the funds, the cashier's check was returned as a fake.

These scams all take advantage of the fact that most banks will make funds deposited via a cashier's check available the same day or the next day. However, there is a difference between funds being available and the funds clearing into the account. When a bank makes the funds available, the bank will honor withdrawals on the account against those funds. However, it is not until the cashier's check is honored by the issuing bank that the funds will actually clear into the

account. If the cashier's check is not honored by the purported issuing bank, the cashier's check will be returned, and the depositing bank will reverse the transaction.

Red Flags

There are often red flags that will signal to you that the cashier's check in question is fraudulent. However, as these scams have become more sophisticated, they are much harder to detect.

Invariably, the fake check is purportedly issued by a bank that is out of state. In one case, the check was ostensibly issued by a Canadian bank. Another very common circumstance is that the client will only communicate by email.

When the fake cashier's check is carefully examined, the attorney will often find that the fake checks contain the usual security features one would expect to find. The fake check will have security threads, watermarks, microprints, color-shifting ink, and other common security features. While examining the cashier's check for missing security features may tip you off that the check is a fake, the existence of these security features is no guarantee that the check is legitimate. Scammers can purchase blank check stock at office supply stores and over the internet.

The scammer will often be impersonating a legitimate business, so if an attorney investigates the parties, he or she will find that they appear to be an actual entity. However, sometimes the scammer may choose the wrong business to impersonate. In one case, the scam involved a lease of underwater oil drilling equipment. However, the alleged lessee of the equipment was a home heating oil delivery company.

Often, the scammer will set up an email address that is deceptively similar to the email address used by the company being impersonated. For example, a scammer attempting to impersonate the New Hampshire Bar Association might set up an email account with the domain name www.NHBarAssoc.org. Sometimes, the domain name used for the fraudulent e-mail account may contain an extra letter or other error that will be difficult to spot. Carefully examining the email addresses of the client and other parties may tip you off that something is amiss.

Avoiding the Scam

The most effective way to protect yourself from this scam is to contact the bank that issued the cashier's check. If you receive a suspicious cashier's check that appears to have been issued by a local bank, you can always take the check to a local branch and ask them to verify that the check is valid. Otherwise, call the issuing bank to verify that the cashier's check is not fake. Do not use the phone number on the check because that phone number may go directly to the scammer. Instead, get contact information for the issuing bank from a public source.

What to do if You Have Been Scammed

If you have been a victim of a fake cashier's check scam, you should contact your bank to see if it possible to recover the funds that were sent out. In addition, you should contact law

enforcement to report the crime. You should also explore whether you have business liability insurance that may cover some or all of the stolen funds.

Finally, you must report the matter to the Attorney Discipline Office. If your IOLTA account is ever out of trust, you are required to report the incident on your annual Trust Account Compliance Certification. Do not wait to report the matter until the certification is due. By reporting the matter immediately, you are better able to explain how the out of trust event occurred. Furthermore, it allows the Attorney Discipline Office the opportunity to warn others of the scam.