

# KANSAS LAWYER TRUST ACCOUNT HANDBOOK

A resource and how-to guide created by the disciplinary  
administrator's office to support and encourage proper  
trust account management by Kansas lawyers.  
September 2023.

Office of the  
Disciplinary  
Administrator

# DISCLAIMER

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This handbook serves only as a resource. It is not a replacement for independent legal research, and nothing contained within is intended to address a specific inquiry. It remains the responsibility of the individual lawyer to ensure they are in compliance with the Kansas Rules of Professional Conduct (“KRPC”). **This handbook contains only general information, not legal advice.** If you have questions regarding the KRPC, please call the Office of the Disciplinary Administrator at 785-435-8200.

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# ACKNOWLEDGEMENTS

This handbook took inspiration and was adapted from other states' trust account handbooks, including North Carolina, California, and others. This handbook also used information from the Kansas Bar Foundation publication *Money of Others: Accounting for Lawyer Trust Accounts*; Kansas Bar Foundation (Rev. August 2017). Though trust account rules vary from one jurisdiction to the next, many basic principles are very similar.



# FORWARD



**From the Desk of:**

Gayle B. Larkin  
*Disciplinary Administrator*

September 25, 2023

Dear Kansas Lawyers,

It has been a pleasure working in this office for over two decades. Since becoming the disciplinary administrator in October 2021, I have been focusing on ways the disciplinary administrator's office can better assist members of the Bar. Once we restarted monthly Trust Account Compliance Examinations, it became clear that competent trust accounting can be a confusing area for many lawyers, particularly for solo practitioners.

I tasked members of my staff to put together this Trust Account Handbook for use by Kansas lawyers, new and experienced, to help navigate the rules and processes of trust accounting. Trust Account Auditor Jeff Baker, Counsel to the Board Krystal L. Vokins, Director of Investigations Crystalyn M. Ellis, and Legal Intern Shelby Goetz were instrumental in culling material from other state handbooks, trust accounting schools, and the Kansas Bar Foundation's website, and compiling the material into this easy-to-read, informative guide. The information provided accurately reflects appropriate trust account procedures in adherence to KRPC 1.15.

It is my hope this handbook helps lawyers feel confident in their trust accounting practice. The goal of my office is to ensure Kansas attorneys are competent and part of that goal is achieved with the educational materials provided yearly by the office, including this helpful guide.

Sincerely,

A handwritten signature in blue ink that reads "Gayle B. Larkin".

Gayle B. Larkin  
Disciplinary Administrator



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# INTRODUCTION

The Office of the Disciplinary Administrator is committed to maintaining the integrity of the Bar and proper management of trust accounts is imperative to that goal. Lawyers are granted a great deal of trust by virtue of our admittance to the Bar and oath to, among other promises, discharge our duties as lawyers to the best of our knowledge and abilities.

This handbook contains important and detailed information to assist Kansas lawyers in establishing and maintaining competent trust account practices to ensure that established rules and guidelines are followed to safeguard client and/or third person funds held by a lawyer.

In this handbook you will find relevant rules, templates, and practical tips for trust accounting, including:

1. information to determine if a lawyer needs a trust account,
2. the basic concepts for competent trust accounting,
3. a how-to guide for opening and maintaining a trust account as well as disbursement and reconciliation of transactions,
4. information about the disciplinary administrator's office Random Audit Program, and
5. tips to avoid mistakes in trust accounting.

We hope this information is helpful to all Kansas lawyers; whether you are just starting out in a role that requires trust accounts, or as an aide to seasoned lawyers in self-reviewing trust account practices to ensure compliance with the relevant rules and requirements.



## RESOURCES

### **Office of the Disciplinary Administrator:**

701 SW Jackson St, 1<sup>st</sup> Floor

Topeka, KS 66603

(p) 785-435-8200

(e) [attydisc@kscourts.org](mailto:attydisc@kscourts.org)

[www.kscourts.org/attorneys/office-of-disciplinary-administration](http://www.kscourts.org/attorneys/office-of-disciplinary-administration)

*A list of banks approved for lawyer trust accounts can be found on our website, along with instructions for requesting approval for a bank not listed.*

### **Kansas Lawyer's Assistance Program ("KALAP"):**

515 S. Kansas Ave

Topeka, KS 66603

(p) 785-368-8275

(e) [kalap@kscourts.org](mailto:kalap@kscourts.org)

[www.KALAP.com](http://www.KALAP.com)



# KEY CONCEPTS IN TRUST ACCOUNTING



## Key Concept 1: Importance of Trust Accounting.

- Taking responsibility for holding another person's money or other property in trust comes with associated responsibilities and obligations. Specifically, it creates a fiduciary relationship between the lawyer and the person for whom the lawyer is holding property. This fiduciary relationship comes with legal and ethical obligations. The lawyer's ethical obligations for safekeeping property stem primarily from KRPC 1.15. Failure to maintain these legal and ethical obligations can result in personal liability for the lawyer, fee disputes, loss of clients, and/or disciplinary action.
- Proper trust accounting allows a lawyer to assure the person for whom they hold funds that the funds are safe. If the lawyer were suddenly unable to maintain or manage their trust account, proper records will help ensure that whoever is tasked with carrying on that duty will be able to appropriately track which funds belong to which person.
- Trust accounting is not an extremely complicated process requiring years of training or natural mathematical ability. Trust accounting is also not as simple as opening a bank account and depositing client funds into it. It is a straightforward set of procedures that, when followed consistently and attentively, will ensure that a lawyer is able to track how much money the lawyer holds for each client or third person at any given time.



## Key Concept 2: What goes into the trust account and what does not?

- The following types of funds **DO** go into the trust account.
  - Funds that belong to the client or a third person outright.
  - Funds in which the lawyer and client have a joint interest.
  - Funds in which the client and a third person have a joint interest.

## Key Concepts

- Funds that do not belong to the client at all, but which the lawyer is holding as part of carrying out the lawyer's representation of the client.
- Funds belonging to the lawyer or law firm **DO NOT** go into the trust account.
  - There are two limited exceptions to this:
    - funds that belong in part to the lawyer or firm and in part to the client, so long as the portion belonging to the lawyer or firm is withdrawn when earned; and
    - lawyer or law firm funds that are "reasonably sufficient to pay bank charges" may be deposited into the trust account.
- A more detailed explanation of what may or may not be deposited into a trust account can be found under the "Start to Finish" section of this handbook.



### Key Concept 3: Separate clients (or third persons) are treated as separate accounts.

- While a lawyer might hold all trust funds in one pooled trust account, each client's (or third person's) funds are treated in practice as separate from each other's. One client's money has nothing to do with another client's money. A lawyer is not permitted to use one client's funds to pay another client's or the lawyer's own obligations.
- The way to keep track of each client's separate funds is to maintain separate client ledgers for each client. So, if the lawyer is holding funds for 20 separate clients, the lawyer must keep 20 separate client ledgers, one for each client. (There is a more detailed explanation on client ledgers in the "Recordkeeping" section of this handbook.)
- A lawyer is responsible for paying to each client or third person any interest or dividends the person's money earns while held in the trust account.
  - An exception to this is when a lawyer holds client funds in an Interest on Lawyer Trust Account ("IOLTA") account. Pursuant to KRPC 1.15(d)(3), IOLTA account interest is paid to the Kansas Bar Foundation IOLTA program instead of the client.

## Key Concepts

- Also, if the funds are held in a noninterest-bearing trust account, there is nothing earned to be paid to the client.
- If a lawyer is holding only \$100 for Client A, the lawyer cannot write a check for \$150 on behalf of Client A, even if the trust account has sufficient funds to cover the check.
- The following is an example of the type of error that can occur by not maintaining accurate client ledgers for each client's trust funds:

Attorney Trust Account	
Client A	\$500
Client B	\$1,500
Client C	\$2,500
Client D	\$500
Total Trust Account Balance	\$5,000

If the lawyer writes a check on behalf of Client A for \$1,000 from the trust account, \$500 of that check will be paid for using funds belonging to Clients B, C, and/or D. Under this scenario, the lawyer should be holding \$4,500 for Clients B, C, and D, but only has \$4,000 left in the trust account. If Clients B, C, and D all requested a refund of their trust balances, or needed those amounts utilized in their cases, the lawyer would not have enough funds in trust to make those payments for those clients. This is misappropriation of Clients B, C, and D's funds and a violation of KRPC 1.15.



## Key Concept 4: Trust accounts may not have a negative balance.

While doing personal accounting, an individual might write a check against money that has not yet been deposited into their bank account, and therefore record a negative balance. **This is not permitted for attorney trust accounts.**

- There are three possibilities in trust accounting, two of which comply with KRPC 1.15 and one of which is a problem.
  - The account has a positive balance while the attorney holds the money of others.

## | Key Concepts

- The account has a zero balance when all of the clients' and third persons' funds have been paid out.
- The account has balance of less than zero. This is a problem.
- Timing is very important to avoid a negative balance and ensure the lawyer is spending only what is in the trust account. Client funds are not available for spending until they have **irrevocably** cleared and have been credited to the attorney trust account. Even if the bank shows deposited funds as "available" for spending, this does not necessarily mean that the bank has actually received and cleared the deposited funds. Be sure to communicate with the bank to find out when certain types of transactions actually clear the banking transfer process. Different types of transactions, such as checks, ACH checks, wire transfers, and credit card deposits, all come with different processing times and requirements.
- A lawyer may feel pressured to pay amounts to clients, such as settlement proceeds, before the associated deposit has cleared. After all, KRPC 1.15(b) provides that "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." However, the client or third person is not entitled to receive funds that are not yet actually deposited into the lawyer's trust account. If a lawyer writes a check before funds are actually credited to the trust account, the check may bounce or the lawyer will be using other clients' funds to cover the check. If a lawyer is not sure whether a deposit has actually cleared and been credited to their trust account, they should ask their bank.



### Key Concept 5: Lawyers are ultimately responsible for delegated tasks.

- A lawyer may delegate certain tasks to a nonlawyer, including managing the trust account. A lawyer may hire a qualified employee or an accountant to assist the lawyer in tracking or auditing the trust account. However, the ultimate responsibility for properly maintaining the trust account remains with the lawyer.
- Lawyers "shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance" that a nonlawyer employee or contractor's "conduct is compatible with the professional obligations of the

## Key Concepts

lawyer.” KRPC 5.3(a). Further, “a lawyer who has direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person’s conduct is compatible with the professional obligations of the lawyer.” This includes the lawyer’s professional obligations under KRPC 1.15.

- A lawyer is responsible for the conduct of a nonlawyer to whom the lawyer delegates trust accounting duties if that person engages in conduct that would be a violation of the rules of professional conduct if engaged in by the lawyer and if: “(1) the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved; or (2) the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.” KRPC 5.3(c).



## Key Concept 6: Maintaining an Audit Trail.

- An “audit trail” is the series of original records created at the time of each transaction, such as cancelled checks, deposit slips, and receipts, that make it possible to trace what happened to the money that was handled.
- These records should be thorough. Do not just record bank account numbers and amounts. Be sure to include names of clients and other matter identifiers so that it is clear with which case the transaction is associated. Other important information to record is the payor or payee, date of the transaction, and the purpose of the transaction. **Never** write a trust account check to “cash” as this leaves no audit trail for the reason for the withdrawal.
- Examples of types of records that might be maintained as part of an audit trail:
  - receipts (one copy for the payor and one for the lawyer) for all payments received by the lawyer,
  - deposit slips for all funds deposited by the lawyer into the trust account (written on the deposit slip should not only be the date and amounts of the deposits, but also the client matter with which each deposit is associated),
  - check register and cancelled checks for each check written on the trust account (in the notes or memo line, the attorney should record the client matter and purpose of the payment),

## | Key Concepts

- invoices from contractors, such as investigators or court reporters,
  - receipts for electronic payments made on behalf of the client, and
  - bank statements for the trust account.
- Why an audit trail? Without one, the lawyer cannot show that trust funds were handled properly. An audit trail also makes it much easier (and saves time) for tracking down accounting errors and correcting them.

# BASICS OF TRUST ACCOUNTING

## WHAT IS A TRUST ACCOUNT?

- A trust account is a bank account maintained by a lawyer for the purpose of holding funds received on behalf of or belonging to a client or other person. The trust account must be:
  - a separate account from all other private, personal, or business accounts belonging to the law firm or lawyer,
  - labeled as a trust account,
  - maintained in the State of Kansas,
  - held in a federal or state chartered or licensed financial institution, insured by an agency of the federal or state government, and
  - held in a bank that has been approved by the disciplinary administrator's office as a depository for lawyer trust accounts.

## WHO NEEDS A TRUST ACCOUNT?

- Any lawyer who is engaged in the private practice of law in Kansas and, as a result of that practice, receives funds to be held for a client and/or third person must maintain a trust account.

## WHY ARE LAWYERS REQUIRED TO HAVE A TRUST ACCOUNT?

- KRPC 1.15(a) requires that lawyers appropriately safeguard all property in the lawyer's possession that is held on behalf of their client or a third person.
- The basis for KRPC 1.15 is the lawyer's fiduciary obligation to safeguard trust property and to keep it separate from the lawyer's own property. The lawyer also may not benefit personally from the possession of said property.

## Basics of Trust Accounting

- “The relationship between a lawyer and their client is a fiduciary one in which the lawyer occupies the highest position of trust and confidence.” KRPC 1.8, Cmt. 17.
- "A lawyer should hold property of others with the care required of a professional fiduciary. " KRPC 1.15, Cmt. 1.
- Competent trust accounting practices ensure that unearned funds paid in advance of work being performed, settlement funds, or other funds received over the course of representation in which the lawyer and one or more clients or third persons may have a shared interest, are kept separate until the money is accounted for and can be properly disbursed.
- The rules regarding trust accounting benefit both the lawyer and the person on whose behalf the funds are held and prevent unnecessary delay in disbursing funds earned or owed. Additionally, these practices allow a lawyer to hold funds for future work, ensuring that the attorney will be paid. The practices also allow a lawyer to accept a settlement check from which the lawyer’s earned fee will be taken without concern that a client will refuse payment of earned fees when the work was performed without the requirement of an advanced fee.

## TYPES OF TRUST ACCOUNTS

- **Single interest-bearing account per client/third person**
  - A separate interest-bearing account for each matter, on which the interest earned will be paid to the person whose funds are held.
- **Pooled noninterest-bearing account**
  - A pooled account that does not bear interest for the deposit of all trust funds, which are not invested for the benefit of the client(s) or third person(s).
- **Pooled interest-bearing account for multiple clients**
  - A pooled account for the deposit of all trust funds with subaccounting performed by the lawyer so that interest earnings are credited proportionately to the person for the benefit of whom the funds are held.



## | Basics of Trust Accounting

- **IOLTA**
  - A pooled interest-bearing account of funds that are nominal in amount or that are expected to be held for a short period of time and on which interest is not paid to the clients or third persons, but instead the interest earnings are paid to the Kansas Bar Foundation (“the KBF”) under the IOLTA program.
  - The bank remits interest to the KBF at least quarterly. The bank produces a statement and provides it to the KBF, as well as to the lawyer or law firm.

# START TO FINISH:

## HOW TO OPEN, USE, AND CLOSE A TRUST ACCOUNT

### Opening a Trust Account

- All client funds must be deposited in an identifiable account maintained in Kansas with a financial institution that is insured by a government agency.
- A lawyer should choose which type of trust account is appropriate for their circumstances. The types of trust accounts permitted are listed under comment 1 of KRPC 1.15 and described in further detail in the “Basics” section of this handbook. See pp. 9-10.
- Any trust account must meet the following requirements:
  - The trust account must be maintained in a financial institution in the state of Kansas that has been approved by the disciplinary administrator’s office.
    - A list of approved institutions can be found at: <https://www.kscourts.org/Attorneys/Office-of-Disciplinary-Administration/Banks-Approved-for-Lawyer-Trust-Accounts>
    - Financial institutions that are approved have filed an agreement with the disciplinary administrator’s office to report to the disciplinary administrator whenever a check (or other payable) is presented against the trust account when the account has insufficient funds.
  - The financial institution must be licensed or chartered by state or federal government.
  - The words “trust account” must appear in the name of the account.
    - This helps to clearly distinguish the trust account from other accounts, especially the operating account. It also helps ensure proper FDIC insurance coverage for each client or third person (depositor).
  - Deposits must be insured by state or federal government.
    - The FDIC insures up to \$250,000 in deposits per client per financial institution so long as the account is properly designated as a trust

## Start to Finish: How to Open, Use, and Close a Trust Account

account and accurate records, including individual client ledgers, are maintained.

- Any trust account should avoid the following:
  - There should not be overdraft protection on the trust account.
    - Approved financial institutions are required to report overdrafts of trust accounts to the disciplinary administrator's office.
  - No cash withdrawals should occur.
    - As a result, there should be no withdrawals via ATM.
  - No debit card should be associated with the trust account.
- If the account bears interest, the following interest rate specifics apply:
  - The rate of interest cannot be less than the rate paid by the institution to regular non-lawyer depositors.
    - For example, say the institution offers a 5% interest rate to a regular non-lawyer depositor. The attorney's interest rate must be at least 5%.
    - A higher interest rate may be obtained so long as there is no impairment of the right to withdraw or transfer funds immediately.

## Interest on Trust Account (IOLTA) Specifics

- An IOLTA account is for funds that are nominal in amount and/or will be held for a short period of time. All interest earned on the account is forwarded to the KBF which allocates a large portion of those earnings to the provision of civil legal services to low-income citizens.
- Declination: Lawyers are not required to enroll in IOLTA. If a lawyer has Kansas clients but chooses not to enroll, they must establish a non-IOLTA trust account and file a Notice of Declination.



### Enrollment in IOLTA

To enroll your account in the IOLTA program visit the Kansas Bar Foundation Website - <https://ksbar.org/?pg=IOLTA>. Or visit [ksbar.org](https://ksbar.org). In the "Foundation" drop down in the header, click "IOLTA For Attorneys." This website has the following steps.

1. Download, print, and complete the IOLTA registration form.
2. Take your completed form to a bank approved by the disciplinary administrator's office.
3. Mail, fax, or email a scanned copy of the completed and signed registration form to:

**Mail:**

Kansas Bar Foundation  
IOLTA Program  
PO Box 751080  
Topeka, KS 66675-1080

**Fax:** (785) 234-3813

**Email:** [iolta@ksbar.org](mailto:iolta@ksbar.org)

- A Notice of Declination shall be filed with the Clerk of the Appellate Courts on or before the beginning of the next annual registration period under Rule 206 or may be filed with the Clerk of the Appellate Courts when a decision to decline is effected.
- The lawyer must instruct the financial institution to do the following with interest earned on the IOLTA account:
  - send interest or dividends to the KBF on the average monthly balance at least quarterly,
  - with each payment to the KBF, send a statement showing:
    - the name of the lawyer or law firm for whom the payment is sent, and
    - the rate of interest applied,
  - at the same time a report and payment are sent to the KBF, send the same statement to the depositing lawyer or law firm showing:

- the amount paid to the KBF,
- the rate of interest applied, and
- the average account balance of the period for which the report is made.

## Money In, Money Out: Deposits and Disbursements

### DEPOSITS:

- What MUST be deposited.
  - Funds that belong to the client or a third person outright.
    - This includes advanced fees which are legal fees paid to a lawyer and are to be held in trust until the lawyer earns the legal fees. This can also include advanced expenses paid by the client for the case that have not yet been incurred. These funds belong to the client or third person who paid the funds to the lawyer until they are earned or incurred.
    - This also includes settlement fees received by the lawyer to be paid to a client.
    - Any amount, no matter how small, must be deposited into the trust account.
    - Irrespective of characterization as “fees” or “costs,” funds must be deposited.
  - Funds in which the lawyer and client have a joint interest, such as settlement proceeds from which a lawyer’s contingent fee will be paid or a client check that in part pays an outstanding invoice for legal fees owed and in part deposits an advanced fee.
  - Funds in which the client and a third person have a joint interest.

## Start to Finish: How to Open, Use, and Close a Trust Account

- Funds that do not belong to the client at all, but which the lawyer is holding as part of carrying out the lawyer’s representation of the client, such as when a lawyer represents a client who is an administrator of an estate or a trustee under a trust.
- What MAY be deposited.
  - Lawyer or law firm funds that are “reasonably sufficient to pay bank charges” may be deposited. KRPC 1.15(d)(1)(i). These funds are to pay bank charges necessary to maintain the trust account itself.
    - It would be an unusual circumstance if more than \$300.00 of a lawyer or law firm’s funds are held in the trust account at any one time for this purpose.
- What MAY NOT be deposited.
  - A lawyer’s own funds.
    - Funds that belong in total to the lawyer, such as an entire check to pay an invoice for legal fees which have *already been earned*, fall into this category, and cannot be deposited into the trust account.
    - Retainers are different from advanced fees. A true retainer is a fee paid to guarantee a lawyer’s time will be available in the future when required. True retainers are extremely rare these days, are earned upon receipt, belong to the lawyer, and must not be deposited into the trust account.



### HELPFUL TIP

Keep a bank charges ledger to track funds deposited for the purpose of covering bank fees.

## TRUST AND NON-TRUST FUNDS EXAMPLE

A lawyer sends her client an invoice for the client's domestic matter which includes: (1) an earned legal fee of \$150, (2) a filing fee of \$30 that the lawyer already paid on the client's behalf, and (3) a request for an advanced fee deposit of \$200, totaling \$380. The client writes one check to the lawyer for \$380.

- The check should first be deposited into the lawyer's trust account.
- Immediately after the check clears the banking process and the \$380 is deposited into the lawyer's trust account, the lawyer should disburse \$180 from the trust account to herself. This represents the \$150 in fees the lawyer already earned prior to sending the invoice and the \$30 filing fee expense the lawyer paid in advance on the client's behalf.
- The remaining \$200 should stay in the lawyer's trust account until it is earned by the lawyer, returned to the client, or otherwise disbursed for the client's case.

### DISBURSEMENTS:

- What SHOULD be disbursed.
  - Once legal fees are earned, they must be withdrawn, unless disputed by the client.
    - Disbursements may only be made for payments on behalf of a particular client from that client's trust account funds.
  - Disbursements necessary to properly handle the client's matter, such as filing fees and other case expenses.
  - Bank charges to keep the trust account open.
    - Bank charges not attributable to a particular client are paid by the lawyer or law firm and should be recorded on a separate "bank charges" ledger.
  - Interest received on the IOLTA account is disbursed automatically by the bank from the account to the KBF and need not be tracked or recorded by the law firm.

- What MAY NOT be disbursed.
  - A lawyer may not disburse funds held for a client or third person unless the funds have cleared the banking process and fully transferred from the payor account to the trust account.
    - Funds that are “available” are not necessarily “cleared” or “deposited.” Further discussion of what it means for funds to have “cleared” can be found in the “Key Concepts” section of this handbook.
    - If a lawyer disburses funds that have not fully cleared and been transferred to the trust account, the lawyer may be disbursing funds belonging to a different client and may be in violation of KRPC 1.15.
  - Disputed funds may not be disbursed from the trust account. Disputed funds must be held in the trust account until the dispute is resolved.
- How to Disburse Funds
  - Disbursements should only be made by check, wire transfer, or electronic transfer where the payee and other relevant payment information is sufficiently tracked.
  - Disbursements must be made promptly to those who are entitled to the funds.
  - Disbursements should never be made in cash or by instruments made payable to “cash.”
- Reporting and Recording Disbursements
  - A lawyer should notify a client promptly of any disbursements from the trust account and must provide a full accounting to the client upon request.
  - A lawyer should obtain the client’s agreement and understanding regarding disbursements via an engagement agreement or similar document.

### HELPFUL TIP



Have trust account checks made in one color and operating account checks made in a different color to help distinguish the two accounts when writing checks.



## Start to Finish: How to Open, Use, and Close a Trust Account

- All disbursements should be properly recorded and corresponding documentation maintained. (See section on Recordkeeping of this handbook.)
- Outstanding Checks and Abandoned Funds
  - Lawyers should investigate and make reasonable attempts to contact the payee of an outstanding check written from the trust account.
  - If the payee cannot be found after reasonable attempts have been made, a lawyer should review substantive law, such as the Disposition of Unclaimed Property Act KSA 58-3934, *et seq.* or other law, to determine next steps.
  - If a lawyer is appointed by a district court to manage another lawyer's trust account pursuant to Rule 235, then "after reasonable efforts to identify the owner" of trust funds, the district court may "transfer any property that is unidentifiable to the Lawyers' Funds for Client Protection under Rule 241." Rule 235(a)(2)(C).

## Closing a Trust Account

- Closing a Trust Account
  - If a lawyer has a trust account that the lawyer no longer uses, but funds remain in the account, the lawyer can either transfer the funds from the old account into a new trust account or disburse the funds to the owners as shown on the client ledgers for the account.
  - Any funds on deposit for a client who is no longer represented by the lawyer or the law firm should be disbursed to the owner(s) of the funds. If transfer to a new account is appropriate, the lawyer must document the transfer of the funds from the old account to the new account and accurately note the deposit of funds on the appropriate clients' ledgers. If there are unclaimed or unidentified funds in the account, see the discussion of outstanding checks and abandoned funds above.
- Sale of Law Practice
  - If a trust account is closed due to the sale of a lawyer's law practice, KRPC 1.17 applies and must be followed by both the selling lawyer and the purchasing lawyer. The selling lawyer should consult with all clients in the area(s) of practice being sold regarding what each client wants to have done with trust funds in the selling lawyer's trust account.

## Start to Finish: How to Open, Use, and Close a Trust Account

- Law Firm Dissolution and Withdrawal from Practice
  - The property of clients entrusted to the firm should be protected during the dissolution of a law firm. A lawyer who is part of a firm dissolution or who is withdrawing from the practice of law should follow the suggestions listed above for closing a trust account if the dissolution or withdrawal includes the closing of a trust account.
- Succession Planning
  - Lawyers should have a plan in place for management of the lawyer's law practice and trust account if the lawyer becomes incapacitated, passes away, or is otherwise unable to manage his or her practice.

### CHECKLIST FOR CLOSING A TRUST ACCOUNT

*These are some things lawyers may want to consider when closing a trust account.*

- ✓ Reconcile the trust account. Remaining funds should correspond with specific clients or the nominal law firm funds deposited to cover bank charges as permitted by KRPC 1.15(d)(1)(i).
- ✓ Contact the bank to determine whether there will be any charges associated with closing the account and deposit enough funds to cover the charge (client funds should not be used for this).
- ✓ Prepare and send final client bills, if necessary.
- ✓ Disburse funds that belong to clients or third persons.
- ✓ Withdraw earned fees.
- ✓ Ensure all outstanding checks have cleared before closing the account.
- ✓ If there are any unclaimed funds, refer to the Outstanding Checks and Abandoned Funds section above.
- ✓ Shred unused checks and deposit slips after the account is closed.
- ✓ Keep the check register, general ledger, client ledgers, bank statements, and other trust account records for at least five years after termination of the representation.

# RECORDKEEPING

KRPC 1.15(a) does not mandate any particular client trust accounting system. However, keep in mind that an absence of records can subject you to discipline. You can hire consultants to set up a system, buy computer accounting software, use pen and paper – whatever works for you – as long as you get the results and keep the records that the rules require to fulfill your personal fiduciary responsibility for accounting for the money you hold for others.

Keeping records is the way you do the “accounting” part of client trust accounting. Recordkeeping must be done consistently and keeping incomplete records is just as great a breach of your professional responsibility as keeping no records at all.

KRPC 1.15(a) and KRPC 1.15(d)(2)(iii) require you to keep complete records of all funds, securities, and other property of a client coming into possession of the lawyer. **This will necessarily include two kinds of records: (1) records created by the bank that show what went into and out of your client trust bank accounts; and (2) records created by you to explain the transactions reflected in the bank documents.**

## HOW LONG MUST YOU KEEP THE RECORDS?

KRPC 1.15(a) requires you to keep trust accounting records for five years after termination of the representation, unless they relate to a matter under disciplinary investigation. In that case, you must retain the records until the investigation is concluded as part of your duty under KRPC 8.1(b) and Rule 210 to cooperate and participate in a disciplinary investigation.

## WHAT RECORDS DO YOU HAVE TO CREATE?

Creating the following three kinds of records allows you to know at all times what you are doing with your clients’ money: (1) the client ledger, (2) the lawyer funds/bank charges ledger, and (3) the trust account ledger.

**1. The client ledger(s).** It is important that you keep a *written (or computerized/digital) ledger* for each client whose money you hold. This client ledger must give the name of the client, detail all money you receive and pay out on behalf of the client, and show the client’s balance following every receipt or payment. Maintaining a client ledger is like keeping a separate checkbook for each client, regardless of whether the client’s money is being held in your pooled client trust account. Every receipt and payment of money for a client must be recorded in that client’s ledger. After you record each receipt, you

## Recordkeeping

must *add* the amount to the client's old balance and write in the new total. After you record each payment, you must *subtract* the amount from the client's old balance and write in the new total.

The following information should be listed with each transaction in the client ledger:

1. the name of the client or third person,
2. identification of the client matter for which the property is being held,
3. the date of the deposit, withdrawal, or transfer,
4. the amount of each deposit, withdrawal, or transfer,
5. the check number, if any, for each deposit, withdrawal or transfer,
6. the payor or payee for or from which trust funds were deposited, withdrawn, or transferred, and
7. the balance of the funds held on behalf of the client or third person after each deposit, withdrawal, or transfer.

When you deposit more than one check at a time for a client (i.e., using one deposit slip for all the checks), you should record each check as a separate deposit in your trust account ledger. If you do not, it will be harder to reconcile your books and answer any questions that may come up later.

You will find it much easier to keep your records straight if you do not put more than one client's records on a given page. Also, you should not use the front of a page for one client and the back of the page for another. This practice means wasting some paper, but it will enable you to file all the client ledger pages that refer to a given client in chronological order and find those pages faster if you need them. If you are handling more than one case for the same client, it may be helpful to maintain a separate client ledger for each matter. If you do not, make sure that it's clear which case the transaction is related to when you record your client's receipts and payments.

## Recordkeeping

### Example Client Ledgers

Client A, Matter 111111						
Reconciled?	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
✓	Deposit	1/2/2023	Deposit - Advanced Fee		\$250	\$250
✓	1001	1/4/2023	Court - Filing Fee	\$35		\$215
✓	Elec. Transfer	1/29/2023	Transfer to Operating Acct. - Earned Fees Inv. # 1011	\$200		\$15

Client B, Matter 222222						
Reconciled?	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
✓	Deposit	1/6/2023	Deposit - Advanced Fee		\$750	\$750
✓	Elec. Transfer	1/10/2023	Transfer to Operating Acct. - Earned Fees Inv. # 1008	\$450		\$300
✓	1002	1/13/2023	Client B. - Refund	\$300		\$0

Client C, Matter 333333						
Reconciled?	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
✓	Deposit	1/13/2023	Deposit - Advanced Fee		\$1,000	\$1,000
✓	Elec. Transfer	1/17/2023	Transfer to Operating Acct. - Earned Fees Inv. #1009	\$550		\$450
✓	Elec. Transfer	1/25/2023	Transfer to Operating Acct. - Earned Fees Inv. #1010	\$400		\$50

## Recordkeeping

**2. Lawyer funds/bank charges ledger.** You must record every bank charge against your trust account in the trust account ledger, and KRPC 1.15(d)(i) permits you to keep your own money in your pooled client trust account to pay these bank charges. If you keep your own money in the client trust bank account to pay these charges, you should create a separate ledger where this money, and all the bank charges you pay with it, are recorded. We will call this the “bank charges ledger.” You should keep the bank charges ledger the same way you keep your client ledgers; recording every deposit, every charge the bank makes against the account, and the running balance of money you have left to cover the charges.

### Example Bank Charges Ledger

Administrative: Bank Charges, Matter 999999						
Reconciled?	Number	Date	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
✓	Deposit	1/1/2023	Deposit to Open Account		\$50	\$50
✓	Elec. Transfer	1/30/2023	Check printing charge	\$25		\$25

**3. The trust account ledger (sometimes referred to as the check register or general ledger).** You should keep a *written (or computerized/digital) ledger* for each trust account. This trust account ledger must give the name of the bank account, detail all money you receive and pay out, say which clients you received or paid out the money for, and give the account balance after every receipt or payment.

Maintaining a trust account ledger is very similar to keeping a client ledger. In fact, for your individual client trust bank accounts (i.e., accounts in which you keep only one client’s money), you only need to keep the client ledger. But for your pooled client trust account, keeping the trust account ledger is the only way you can know how much you have in the account at any given time. This means that for every trust account transaction, you record that transaction *two times* – once in the appropriate client ledger, and once in the trust account ledger. If you maintain the trust account ledger properly, you should never bounce a trust account check unless there is a bank error.

In the trust account ledger, you must record every deposit into and payment out of the trust account. After you record each deposit, you have to *add* the amount to the trust account’s old balance and write in the new total. After you record each payment, you have to *subtract* the amount from the trust account’s old balance and write in the new total.

## | Recordkeeping

The following information should be listed with each transaction in the account ledger:

1. individual entries for all deposits, withdrawals, and transfers,
2. identification of the client matter for each deposit, withdrawal, or transfer,
3. the date of the deposit, withdrawal, or transfer,
4. the amount of each deposit, withdrawal, or transfer,
5. the check number, if any, for each deposit, withdrawal or transfer,
6. the payor or payee for or from which trust funds were deposited, withdrawn, or transferred, and
7. the lawyer trust account balance after each deposit, withdrawal, or transfer.

When you deposit more than one check at a time (i.e., using one deposit slip for all the checks), you should record each check as a separate deposit in your trust account ledger. If you do not, you will not be able to indicate how much was deposited for each client.

If you are keeping your own money in the account to cover bank charges, you should also record every deposit of your own funds and every bank charge in the trust account ledger. For interest-bearing trust accounts other than IOLTA accounts, you must also record any interest the bank credits to the account.

## Recordkeeping

### Example Trust Account Ledger

Trust Account Ledger							
Reconciled ?	Number	Date	Matter	Description of Transaction (Payor/Payee)	Payment	Deposit	Balance
✓	Deposit	1/1/2023	Admin. 999999	Deposit to Open Account		\$50	\$50
✓	Deposit	1/2/2023	Client A 111111	Deposit - Advanced Fee		\$250	\$300
✓	1001	1/4/2023	Client A 111111	Court - Filing Fee	\$35		\$265
✓	Deposit	1/6/2023	Client B 222222	Deposit - Advanced Fee		\$750	\$1,015
✓	Elec. Transfer	1/10/2023	Client B 222222	Transfer to Operating Acct. - Earned Fees Inv. # 1008	\$450		\$565
✓	Deposit	1/13/2023	Client C 333333	Deposit - Advanced Fee		\$1,000	\$1,565
✓	1002	1/13/2023	Client B 222222	Client B. - Refund	\$300		\$1,265
✓	Elec. Transfer	1/17/2023	Client C 333333	Transfer to Operating Acct. - Earned Fees Inv. #1009	\$550		\$715
✓	Elec. Transfer	1/25/2023	Client C 333333	Transfer to Operating Acct. - Earned Fees Inv. #1010	\$400		\$315
✓	Elec. Transfer	1/29/2023	Client A 111111	Transfer to Operating Acct. - Earned Fees Inv. # 1011	\$200		\$115
✓	Elec. Transfer	1/30/2023	Admin. 999999	Check printing charge	\$25		\$90



## BEST PRACTICES FOR RECORDKEEPING

- Never round off figures in these records. That means all receipts and payments must be recorded to the penny.
- These records can be handwritten, typed, or printed out from a computer file. However, they should be complete, neat and legible, and stored in such a way that you can find them – and read them – later. Handwritten records should be kept in ink – not pencil or magic marker – in bound accounting books, and typed records or computer printouts should be filed in binders. As with bank-created records, you can save yourself time and trouble by labeling the covers of the books and binders with complete account or client names and the dates the records cover.
- Paper records should be backed up electronically on a regular basis and electronic records should also be kept in paper format to protect the trust account records. In the event of a flood, fire, or other natural disaster, paper records can be destroyed. Likewise, in the event of a computer breakdown or malicious hacking, electronic information can be compromised. Trust account records should be maintained in both formats in a secure manner, i.e., paper records should be kept in a locked room or filing cabinet and electronic records should be protected using passwords, encryption, and other appropriate security measures.
- All deposits and payments should be recorded to the account journal and client ledger within 24 hours. Waiting longer increases the chance that you will forget to record a transaction or will record it incorrectly. It also means that your records are not up-to-date, and that you might be spending money your clients do not have. Also, retain copies of client trust bank account deposit slips and copies of cancelled checks.
- Reconciliations should be done monthly and records of the reconciliations should be retained. This would include the reconciliation of the bank statement to the trust account ledger, and the triple reconciliation which is the reconciliation of the total of client ledgers to the trust account ledger and the reconciled bank statement.
- Copies of trust account monthly bank statements should be retained for reconciliation purposes and records retention requirements under KRPC 1.15. Some attorneys do not take their duty to keep bank-created records seriously because they think they can always get copies from their bank. This is not true. If your bank fails, merges with or is taken over by another bank, you may find that

## | Recordkeeping

copies of your statements are no longer available from your bank. Also, your bank may limit the amount of time it preserves records before destroying them.

- Other records should be prepared or retained as they are created or received, including, but not limited to, copies of fee agreements, copies of billing statements, and copies of invoices for client costs paid by the lawyer.
- A lawyer must maintain an inventory of all other property held by a lawyer on behalf of a client or third person that includes the name of the person on whose behalf the property is held, a description of the property, the date the lawyer received the property, the location of the property, the date the lawyer distributed the property, and the name of the person to whom the lawyer distributed the property.
- A lawyer must report all deposits to the client “promptly” as required by KRPC 1.15(d)(2)(i).

# RECONCILIATION

KRPC 1.15(a) requires the lawyer to keep complete records of the trust account. As part of the recordkeeping process, it is essential that you prepare records of your “monthly reconciliation (balancing)” of your client ledgers, trust account ledger/checkbook register (referred to collectively in this section as the “trust account ledger”) and bank statements. “Reconciliation” means checking these three basic records you have for the trust account – (1) the bank statements, (2) the client ledgers, and (3) the trust account ledger – against each other so you can find and correct any mistakes.

Mistakes can happen anytime people keep track of money. Because of this, you should reconcile your client trust bank account records monthly. 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 eliminate these mistakes. Also, an undiscovered and uncorrected error indicates that you are not properly maintaining and safeguarding client funds.

When a transaction occurs in the trust account, it must be recorded twice: (1) in your client ledger and (2) your trust account ledger. Each month, you need to check these records against each other and against the bank's records. For example, say you deposit a check for \$1,000 into your 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 trust account ledger, you record the check correctly and add \$1,000 to your trust account ledger's running balance. How will you find the mistake? The trust account ledger balance is right, so you will not find the mistake by bouncing a check. The numbers in the client ledger all add up – there is no way to tell you made a mistake. Unless you compare your client ledger balance to your trust account ledger balance, you will not be able to find the recording error. And unless you compare your client ledger and trust account ledger against the bank statement, you will not know which entry was right – \$10,000 or \$1,000.

This is the triple reconciliation process. The theory is that it is unlikely that the same mistakes will be made in three different records – the client ledgers, the trust account ledger, and the bank statement – so if those records are all checked against each other, any mistakes will show up and can be quickly corrected.

Your trust account records should be reconciled every month, and you should create a written record that shows you went through the reconciliation process. It is alright to use accounting software applications and to hire a properly supervised bookkeeper or the equivalent, especially if you lack accounting skills. However, you are still personally responsible for accounting to your clients and to the disciplinary administrator's office for the money in your trust accounts. Therefore, even if you do not personally carry out

## Reconciliation

the monthly reconciliation, you should understand the process and exercise supervisory oversight.

# MONTHLY RECONCILIATIONS

## Reconcile Bank Statement to Trust Account Ledger

You cannot prepare a reconciliation for a month until you are sure you have correct balances in all your client ledgers and trust account ledger for the previous month. Because of this, you will need to go back to the last date the account was reconciled, and ensure it is reconciled for each month forward in time from that date. 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 reconciliation 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 in your 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.

The monthly reconciliations should be reviewed by you if prepared by nonlawyer employees or independent contractors.

## Triple Reconciliation

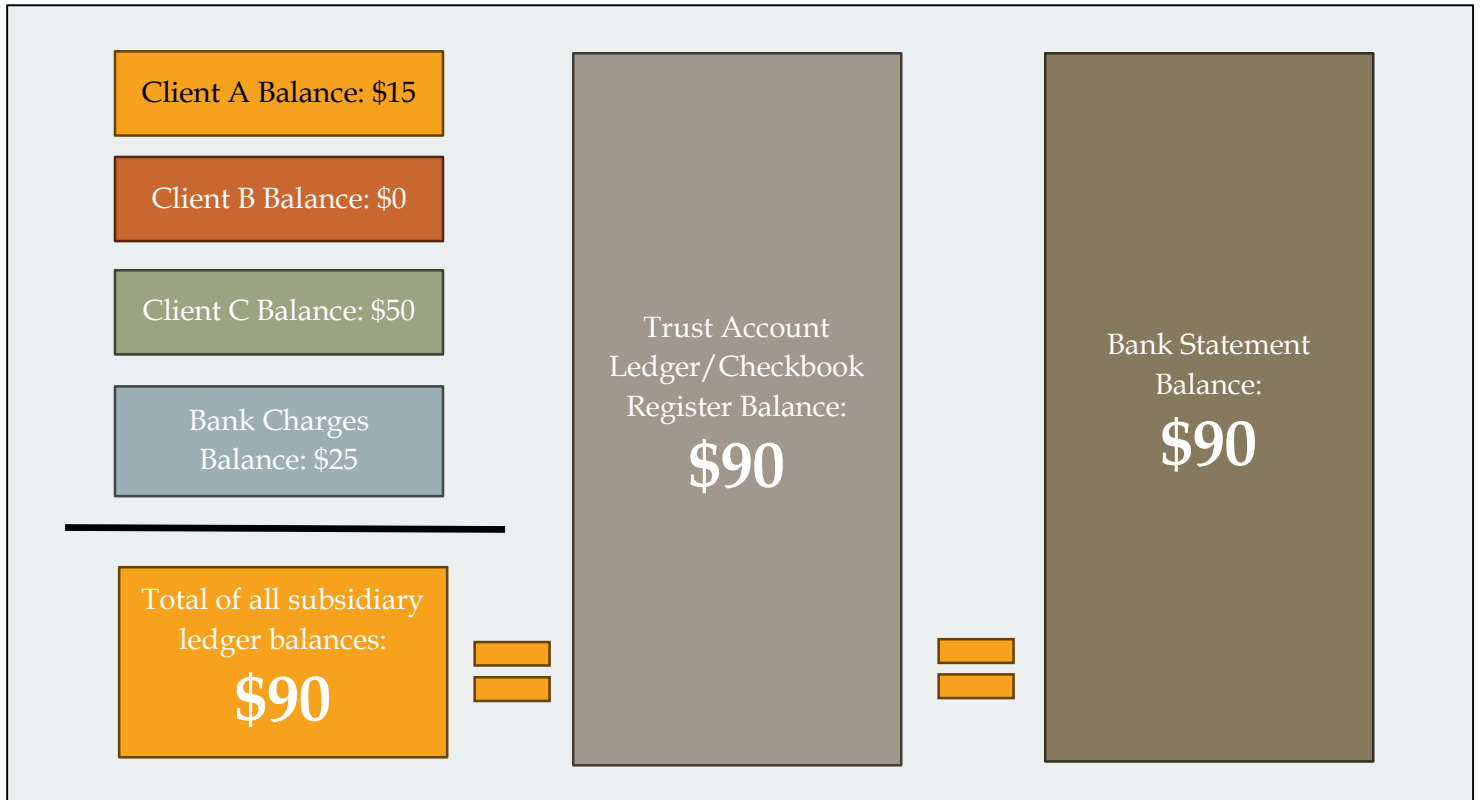
Each month, you should prepare a triple reconciliation that shows all of the following balances and verifies that they are identical.

- A. The balance that appears in the trust account ledger as of the reporting date.
- B. The total of all subsidiary (client and bank charge) ledger balances in the general trust account. This total is determined by listing and totaling the positive balances in the individual client ledgers and the administrative bank charge ledger maintained for servicing the account, as of the reporting date.
- C. The adjusted bank balance, determined by adding outstanding deposits and other credits to the ending balance in the monthly bank statement and

## Reconciliation

subtracting outstanding checks and other deductions from the balance in the monthly statement.

Triple reconciliations promote accurate accounting for client funds by ensuring that the running balances for each client, when totaled, equal the total funds on deposit in the trust account.



Remember that a triple reconciliation should be conducted **every month** for **every** client trust account.

When completing the triple reconciliation, it is a good idea to use an adding machine or other calculator that will produce a printed record of the calculation you performed. An electronic spreadsheet listing the amounts and using the SUM feature could also be used. That way, if your records do not match, you can easily check to see if the reason is a mathematical mistake made while performing the reconciliation.

Automating your trust account recordkeeping process using a software program can reduce the amount of data entry and calculation errors. You can search and find trust account information quickly, and perhaps from remote locations. Automating can organize the routine process of maintaining your trust account. It can save you space, but the best practice is to also print physical copies of your client ledgers, general ledger, and monthly reconciliations.

## Reconciliation

Triple reconciliations should be reviewed by a lawyer and you are required to retain these records and the reconciliation reports for five years to satisfy the recordkeeping requirement in KRPC 1.15(a).

### Example of Triple Reconciliation

The detailed example below illustrates a manual method that can be used to perform the triple reconciliation on a trust account that should be performed each month.

We will use the data in the example client ledger, bank charges ledger, and trust account ledger from the “Recordkeeping” section above. Below are (1) an example trust account bank statement and (2) a trust account reconciliation sheet for the triple reconciliation.

## Reconciliation

### Bank of Kansas

Anna Turney, Esq.  
Anna Turney's IOLTA Trust Account  
1234 Main Street, Suite #2B  
Westview, KS 00006

Account Number: 009001001961  
Activity Through 1/1/2023 – 1/31/2023

Beginning Balance            \$0.00  
**Ending Balance                \$90.00**  
**1/31/2023**

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#### Deposits/Credits

<u>Type</u>	<u>Dollar Amount</u>	<u>Date</u>
Deposit	\$50.00	1/1/23
Deposit	\$250.00	1/2/23
Deposit	\$750.00	1/6/23
Deposit	\$1,000.00	1/13/23

**Total Deposits/Credits    \$2,050.00**

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#### Withdrawals/Debits

<u>Check #</u>	<u>Dollar Amount</u>	<u>Date</u>
1001	\$35.00	1/4/23
1002	\$300.00	1/13/23

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#### Other Withdrawals/Debits

<u>Type</u>	<u>Dollar Amount</u>	<u>Date</u>
Elec. Transfer to Operating Acct.	\$450.00	1/10/23
Elec. Transfer to Operating Acct.	\$550.00	1/17/23
Elec. Transfer to Operating Acct.	\$400.00	1/25/23
Elec. Transfer to Operating Acct.	\$200.00	1/29/23
Check Printing Fee	\$25.00	1/30/23

**Total Withdrawals/Debits \$1,960.00**

Trust Account Reconciliation Report

Date: 2/5/2023

General Information

- Complete one form for each trust account
Attach the following: (1) list of clients with corresponding balances, (2) copy of general ledger/checkbook register, (3) list of outstanding deposits, (4) list of outstanding checks, and (5) corresponding bank statement.

Reconciliation of Lawyer's Trust Account Records

- 1. Total of positive client ledger balances as of 1/31/2023 \$90
2. Trust account ledger/checkbook register balance as of 1/31/2023 \$90

Bank Statement Reconciliation

- 3. Account Balance as of 1/31/2023 (per appended bank statement) \$90
Plus: Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) + \$0
Number of deposits in transit 0
Less: Outstanding (uncleared) checks (checks issued through end of month not reflected in bank statement) -\$0
Number of outstanding checks 0
4. Subtotal = \$90
5. Other Adjustments (describe and attach supporting documentation)

- 6. Adjusted Trust Account Bank Balance (as of end of report month) \$90

Reconciliation prepared by: Employee for Anna Turney
Name and Position

Reconciliation reviewed by: Anna Turney, Esq.
Lawyer Name



## TRIPLE RECONCILIATION: STEP-BY-STEP

### Reconcile the Trust Account Ledger with the Client Ledgers

The first part of reconciliation is to reconcile the trust account ledger with the client ledgers. The purpose of this step is to make sure that the entries in your client ledgers agree with the entries in your trust account ledger.

#### **STEP 1:**

Enter the total of positive client ledger balances as of the cut-off date on the bank statement (in this case, January 31, 2023). This includes any administrative funds ledger or bank charges ledger that you maintain to service the account. **Do not include balances that are negative.** On another page, explain the reason for the negative balance and show your corrective action. Attach a list of clients and their respective balances to the worksheet.

#### **STEP 2:**

List the balance shown on your trust account ledger as of the cut-off date on the bank statement. Using the same cut-off date on all documents is imperative to avoid mismatched numbers. If the "Total of Client Ledger Balances" does not match the "Trust Account Ledger Balance," then you must determine why before moving on to the next step of the reconciliation process.

When the "Total of Client Ledger Balances" *does not* exactly match the "Trust Account Ledger Balance," do not panic; you have found a mistake, and that is what reconciliation is for. You can call in a bookkeeper to help you or make the correction yourself. Since you record every deposit and withdrawal twice, if you systematically compare each entry in the trust account ledger with the corresponding entry in the client ledger and check the new balance you entered after each entry, you will always find the mistake.

When you have found and corrected any mistakes, attach a copy of your trust account ledger to the worksheet and move on to Step 3.

### Reconcile the Trust Account Ledger with the Bank Statement

#### **STEP 3:**

List the ending balance as shown on the bank statement. On the next line, list the deposits that have yet to appear on the bank statement (probably because they were made at the end of the month). You should provide a list of these outstanding deposits and note the number of these deposits in the provided line. Do the same for outstanding/uncleared checks. Take this time to examine the list of outstanding checks and to investigate why those checks have not cleared.

## TRANSACTIONS NOT YET SHOWN ON THE BANK STATEMENT

Generally, the bank sends out statements a few days after the end of the month. As a result, by the time you reconcile the account, you will usually have made deposits or withdrawals that are not shown on the bank statement because they have not cleared by the time the bank produced the statement, and so those check or deposit amounts will not be reflected in the account balance shown on the bank statement.

To compare the balance of the bank statement for the end of the month with the balance your trust account ledger shows for the end of the month, you will have to adjust the trust account ledger balance by *adding* all uncredited deposits and *subtracting* all undebited withdrawals.

To find out which transactions have not been posted, you will have to compare the entries on the bank statement with the entries in your trust account ledger.

- Go through each entry on the bank statement and compare it to the corresponding entry in your trust account ledger. If the entry in the trust account ledger exactly matches the entry on the bank statement, mark off the entry in the trust account ledger to show that the money has cleared the banking process, and mark off the entry on the bank statement to show that you have verified it against the trust account ledger.
- The marks in the trust account ledger will help you keep track of items like checks that are never cashed, which otherwise can become those small, inactive balances that make your account harder to reconcile.
- The marks should be permanent (i.e., in ink) and clearly visible, but should not make it hard to read the entries. You should use the same mark consistently, to avoid confusion later.

The purpose of these steps is to make sure that the bank's records of the deposits and withdrawals you have made to your general trust account during the past month match your records. Since you have already reconciled the client ledgers with the general ledger, you know that the entries in the client ledgers agree with the ones in the general ledger. Therefore, unless you find a mistake during this stage of the reconciliation process you only have to compare the bank statement with the general ledger.

## Reconciliation

When you are finished, all the entries on the bank statement should be checked off to show that you have verified them against the corresponding entries in the trust account ledger. Now go back through the trust account ledger to find any entries that are unmarked; these transactions have not yet been debited or credited by the bank.

As you go through the bank statement, there are two kinds of mistakes you may find:

1. **A deposit or withdrawal listed on the bank statement that is not in your trust account ledger.** To correct this mistake, go through your canceled checks (if it is a withdrawal) or deposit slips (if it is a deposit) until you find the one that reflects the transaction on the bank statement. If you cannot find a canceled check or deposit slip that matches the entry on the bank statement, contact your banker and ask him or her to help you track down the transaction. DO NOT record the bank statement entry in your records until you verify that the transaction occurred; banks make mistakes, too.
2. **An entry in the bank statement is different from the corresponding entry in the trust account ledger.** You correct this mistake the same way you correct a transaction you forgot to record. First, find the canceled check or deposit slip that shows the transaction to figure out which record is correct—the trust account ledger or the bank statement. If you cannot find a canceled check or deposit slip for this transaction, contact your banker and ask him or her to help you track it down before you make any changes in your records.

If the canceled check or deposit slip shows that the bank statement is wrong, write a note on the bank statement that clearly describes the mistake, then contact your banker and tell him or her to correct their records. If it shows that your trust account ledger is wrong, record the correction in the trust account ledger *and* the appropriate client ledgers. These must be entered twice in both the trust account ledger and the client ledger for the client on whose behalf you deposited or paid out the money.

When you have found and corrected any mistakes, move on to Step 4.

### **STEP 4:**

*Add* the outstanding deposits to the ending balance and *subtract* the outstanding checks to find your Subtotal.

### **STEP 5:**

This section is provided for lawyers to explain any necessary adjustments to their reconciliation. Adjustments might be required if, for example, you identify bank errors in your review of the bank statement. Adjustments that are made to balances must be explained with documentation. Do not use this section to explain/correct negative balances.

Make sure that bank charges reflected on the bank statement are also reflected in your records. Since you may not know what these bank charges are until you receive the

## Reconciliation

bank statement, you need to enter them into your records after you receive the bank statement.

All bank charges must be recorded in the trust account ledger. If a bank charge was incurred on behalf of a specific client (as for example, a charge for wiring money to a client), the charge must also be entered in that client's ledger. (This ensures that the trust account ledger balance will continue to match the total of the individual client ledger balances.) If the charge was not for a specific client (for example, a charge for printing general trust account checks), the charge must also be entered in the administrative funds/bank charges ledger.

### Calculate the Adjusted Balance

#### **STEP 6:**

Calculate the following to find your adjusted balance:

1. ending bank statement balance
2. *plus* all outstanding deposit amounts
3. *minus* all outstanding check amounts
4. *plus* or *minus* any necessary adjustments listed in Step 5.

#### **STEP 7:**

The balances listed in Steps 1, 2, and 6 should all match. If they are different, attach an explanation and show how this imbalance has been corrected. The lawyer should review the monthly reconciliations and supporting documents. Save this reconciliation and other trust account documents for five years as required in KRPC 1.15(a).

### Trust Account Reconciliation Sheet

The disciplinary administrator's office has created a Trust Account Reconciliation Sheet for lawyers to use when reconciling trust accounts. The completed sheet shown on a previous page reflects the reconciliation completed above. A blank copy of this sheet can be found in the *Appendix* and a fillable form is available on the disciplinary administrator's website.

# RANDOM AUDIT PROGRAM

## INTRODUCTION

Rule 236 permits the disciplinary administrator's office to perform random compliance examinations of lawyer trust accounts. The purpose of the random trust account audits is to reduce the incidence of misappropriation and mishandling of clients' funds by monitoring compliance with the procedures and recordkeeping requirements established by the Kansas Rules of Professional Conduct. The focus is on recordkeeping and, when needed, education of lawyers in the proper management of client funds and trust accounts.

## AUTHORITY FOR RANDOM AUDITS

The authority for the random trust account audits is granted in Rule 236 of the Supreme Court Rules Relating to Discipline of Attorneys, where it states:

The disciplinary administrator may conduct a compliance examination of any trust account or other fiduciary account held by an attorney or the attorney's law firm.

The Kansas lawyer is required to provide all trust account records for review to an auditor appointed by the disciplinary administrator's office. Notice of the trust account examination will be provided well in advance to the lawyer, and the examination will take place at the lawyer's office or by correspondence. After the examination, a report of the results will be provided to the lawyer, and the lawyer will have fourteen days after receipt of the report to correct any deficiencies in trust account procedures. The rule requires cooperation of Kansas lawyers in this procedure. Any discovery of misconduct with respect to trust account procedures would result in a more comprehensive investigation and possible disciplinary proceedings.

## SELECTION PROCESS

Occasionally, a lawyer may conclude that they are being audited because they have done something to draw attention to themselves. However, lawyers are not picked for a trust account audit because they have drawn attention to themselves or they "fit a profile." Rather, attorneys are selected for random trust account audits by use of a random number generator. Each month the disciplinary administrator's trust account auditor examines the trust accounts of three lawyers.

## Random Audit Program

The trust account auditor reviews the list of three attorneys and if they have been audited in the prior five years, another attorney is randomly selected. The lawyer selected for random audit does not have to be a signatory on the trust account or a partner or shareholder in the law firm: all general, dedicated, and fiduciary accounts for a law firm are reviewed when any lawyer practicing with the firm is selected for random audit. Lawyers who do not maintain trust accounts (e.g., judges, prosecutors, public defenders, corporate lawyers, etc.) are eliminated from the list.

## SCOPE OF AUDIT

Random audits will evaluate the internal controls, accounting policies, and other procedures of the law firm and include a substantive inquiry into a lawyer's handling of client funds. The trust account auditor has the authority to take appropriate steps to ensure that the audited lawyer corrects procedural problems discovered during a random audit. Lawyers selected for random audit are required to produce all records necessary to demonstrate compliance with the recordkeeping requirements of the Kansas Rules of Professional Conduct concerning activity during the preceding year. Audits are scheduled in advance by agreement whenever possible. There are no surprise inspections. When a lawyer associated with or belonging to a law firm is selected for random audit, the auditor inspects the records for any trust account maintained by the lawyer or by the law firm.

During an audit, the records for the past 12 months of activity are examined. The audit includes the examination of canceled checks, deposit slips, bank statements, ledger cards, and the bookkeeping/software system (i.e., check stubs, receipts, disbursement journals, software registers, etc.). During an audit, the lawyer does not have to be at the auditor's beck and call. Usually, an appropriate member of the lawyer's staff can answer the auditor's questions.

After the auditor has reviewed the results of the audit with the disciplinary administrator, a report from the auditor outlining any procedural deficiency is provided to the lawyer. If the compliance examination report specifies deficiencies in the lawyer's or law firm's records or procedures, the lawyer must provide written assurance to the disciplinary administrator's office within 14 days that certain deficiencies will be corrected. In rare instances, the audit uncovers serious violations of KRPC 1.15. In that event, a complaint will be docketed for a full disciplinary investigation.

The goal is to raise the overall level of compliance with and understanding of the rules governing lawyer trust accounts.

# APPENDIX



*In re Hawkins*, 310 Kan. 988, 453 P.3d 295 (2019)

- **Commingling:** The respondent was disbarred for, among other rule violations, violating KRPC 1.15 by commingling the respondent's personal funds with her clients' funds in her lawyer trust account. There was no evidence to suggest that the respondent converted trust funds to her own use, however the act of depositing her own funds into her lawyer trust account where she held funds of clients resulted in a finding the respondent failed to hold client property separate from her own property in violation of KRPC 1.15(a).

*In re Buckner*, 308 Kan. 427, 421 P.3d 226 (2018)

- **Disputes over funds:** Among other rule violations, the respondent violated KRPC 1.15(c) by failing to keep trust funds, over which there was a dispute as to who the proceeds should be paid to, in his lawyer trust account until the dispute was resolved. Instead, the respondent deposited the funds directly into his operating account, violating KRPC 1.15(d)(1)(ii), which prohibits a lawyer from withdrawing funds from a trust account if the owner of the funds is disputed by the client.

*In re Biscanin*, 305 Kan. 1212, 390 P.3d 886 (2017)

- **Prompt delivery of trust funds:** The respondent violated KRPC 1.15(a), (b), (d)(1), and (d)(2) by failing to deposit client funds into his lawyer trust account, failing to maintain complete lawyer trust account records, and failing to promptly return funds the client was entitled to receive. The Supreme Court held, regarding whether funds are promptly delivered according to KRPC 1.15 that "'prompt' is defined in this sense to mean: 'On time: PUNCTUAL. 2. Done without delay'" and that "[w]hether one acts on time and without delay will often be determined by the particular circumstances of a transaction." *Biscanin*, 305 Kan. at 897.

*In re Thurston*, 304 Kan. 146, 371 P.3d 146 (2016)

- **Flat Fees:** A lawyer may charge a flat fee to a client to undertake a specific task. When a lawyer receives a flat fee from a client, the lawyer must deposit the fee into the lawyer trust account and the lawyer may not withdraw the fee until it is earned. A lawyer earns a flat fee by completing an agreed-upon task. The entire flat fee must remain in the lawyer trust account until the task is completed unless the lawyer and client otherwise agree in writing to partial withdrawals based on the amount earned for the completion of specified subtasks.



*In re Quinn*, 286 Kan. 301, 184 P.3d 235 (2008)

- **Inadequate tracking:** Despite a previous hearing panel’s admonition that the respondent “seek counsel in the appropriate maintenance of a lawyer’s trust account,” the respondent continued to utilize a “system of monitoring her trust account . . . [that had] been her practice for years and . . . [had] worked for her,” she claimed. *Quinn*, 286 Kan. at 316. However, this system resulted in the respondent’s trust account being overdrawn because “checks written based upon an assumption that checks given to Respondent for lawyer’s fees had been deposited into the account.” *Id.* The Supreme Court held that the respondent’s statement about how she handled her trust account was “an admission of a breach of her duty to properly hold and safeguard property held for clients and a third party.” *Id.*

*In re Potter*, 279 Kan. 937, 112 P.3d 216 (2005)

- **Unearned fees deposited into operating account:** The respondent was indefinitely suspended from the practice of law for, among other rule violations, violating KRPC 1.15(a) by depositing unearned legal fees into his operating account instead of his trust account, and KRPC 1.15(b) for failing to promptly deliver to clients their unearned fees and financial documentation the respondent was holding on their behalf.

*In re Jenkins*, 258 Kan. 779, 907 P.2d 825 (1995)

- **Property other than Funds:** The respondent received certain items of personal property on behalf of his client from an opposing party, but did not “inspect, inventory or receipt for such items received and they were apparently placed in a garage at the home of respondent’s wife.” *Jenkins*, 258 Kan. at 780. The respondent was also involved in a divorce action himself at the time and did not have access to the garage. The Supreme Court upheld the hearing panel’s finding that the respondent violated KRPC 1.15 and the respondent was indefinitely suspended from the practice of law.



## BLANK FORMS

### Client Ledger

Client Name: _____						
Matter: _____						
Reconciled?	Type/Number	Date	Description of Transaction (Payor/Payee)	Debit (+)	Payment (-)	Balance

Appendix

Bank Charges Ledger

<b>Administrative: Bank Charges</b>						
<b>Reconciled?</b>	<b>Type/Number</b>	<b>Date</b>	<b>Description of Transaction (Payor/Payee)</b>	<b>Debit (+)</b>	<b>Payment (-)</b>	<b>Balance</b>

Appendix

Trust Account Ledger/Checkbook Register

Trust Account Ledger							
Reconciled?	Type/Number	Date	Matter	Description of Transaction (Payor/Payee)	Debit (+)	Payment (-)	Balance

Trust Account Reconciliation Sheet

Trust Account Reconciliation Report

Date:

[Redacted]

General Information

- Complete one form for *each* trust account
- Attach the following: (1) list of clients with corresponding balances, (2) copy of general ledger/checkbook register, (3) list of outstanding deposits, (4) list of outstanding checks, and (5) corresponding bank statement.

Reconciliation of Lawyer's Trust Account Records

7. Total of **positive** client ledger balances as of [Redacted] .....\$ [Redacted]  
(Attach a list of clients with corresponding balances).
8. Trust account ledger/checkbook register balance as of [Redacted] .....\$ [Redacted]  
(Attach copy of general ledger/checkbook register).

Bank Statement Reconciliation

9. Account Balance as of [Redacted] (per appended bank statement) .....\$ [Redacted]  
*Plus:* Deposits in transit (deposits made to the account through end of month yet not reflected on bank statement) .....+\$ [Redacted]  
Number of deposits in transit ..... [Redacted]  
(Attach list of outstanding deposits)
- Less:* Outstanding (uncleared) checks (checks issued through end of month not reflected in bank statement) .....-\$ [Redacted]  
Number of outstanding checks ..... [Redacted]  
(Attach list of outstanding checks)
10. *Subtotal* .....=\$ [Redacted]
11. *Other Adjustments (describe and attach supporting documentation)*

12. *Adjusted Trust Account Bank Balance* (as of end of report month) .....\$ [Redacted]

Reconciliation prepared by: [Redacted]  
Name and Position

Reconciliation reviewed by: [Redacted]  
Lawyer Name

# IOLTA REGISTRATION

## NOTICE TO KANSAS BAR FOUNDATION

*Your bank can assist you in completing this form. Present it when opening the account. It is the attorney's responsibility to ensure the form is sent to the Kansas Bar Foundation (see contact info below).*

Financial Institution Name: \_\_\_\_\_

Address: \_\_\_\_\_

City, State Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Financial Institution Routing Number: \_\_\_\_\_ Date: \_\_\_\_\_

The undersigned elect(s) to participate in the interest-bearing trust account program authorized by the Kansas Supreme Court (Rule No. 226 at KRPC 1.15(d)(3)). *Please include the word "IOLTA" in the name of your account. For example: Anderson Law IOLTA Account.*

Account Number: \_\_\_\_\_

Account Name: \_\_\_\_\_

Address: *(Use your address. Do not use the KBF PO Box address.)*

\_\_\_\_\_

City, State Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Email Address: \_\_\_\_\_

Interest on the average monthly balance in the account, or as otherwise computed in accordance with your standard accounting practice (net any service charges or fees), should be remitted at least quarterly to the Kansas Bar Foundation. The remittance of the interest can be done by check, automated clearinghouse, or any other method provided by the Federal Reserve System. The Foundation is a 501 (c) (3) charitable organization and the IRS does not require a Form 1099 for this program. If your financial institution does elect to send out a W-9 Form, it should reflect the Kansas Bar Foundation as the payee, should contain the Kansas Bar Foundation tax identification number (48- 6116429), and should be sent to the Kansas Bar Foundation.

## Appendix

The establishment of trust accounts by law firms, including professional corporations, to implement this program has been approved by the Federal Reserve System, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation.

Your cooperation and support for this important program benefiting the residents of Kansas is appreciated.

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Authorizing trust account signature  
(Attorney's signature)

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(Attorney's printed name)

Attorneys - Please email, fax, or mail this completed form to:

Kansas Bar Foundation

Director of Public Services

PO Box 751080

Topeka, KS 66675-1080

Fax: 785-234-3813

info@ksbar.org (put IOLTA Application in the subject line)

785-234-5696