

LAWYERS PROFESSIONAL RESPONSIBILITY BOARD

Repealed: January 26, 2006
[now Appendix 1 to 2005 MRPC]

OPINION NO. 9 MAINTENANCE OF BOOKS AND RECORDS

Every attorney engaged in the private practice of law must maintain the books and records described in this Opinion to comply with the applicable provisions of the Minnesota Rules of Professional Conduct (MRPC) relating to funds and property received and disbursed on behalf of clients or otherwise held in a fiduciary capacity. Equivalent books and records demonstrating the same information in an easily accessible manner and in substantially the same detail are acceptable. Books and records may be prepared manually or by computer.

I. Trust Account Records. The following books and records must be maintained for funds and property received and disbursed in a fiduciary capacity, whether for clients or for others:

1. An identification of all trust accounts maintained, including the name of the bank or other depository, account number, account name, date account opened, and an agreement with bank establishing each account and its interest bearing nature. A record should also be maintained showing clearly the type of each such account whether pooled, with net interest paid to the Lawyers Trust Account Board (IOLTA account), pooled with allocation of interest, or individual, including the client name. See Rules 1.15(e), (f)(1), and (f)(2), MRPC.
2. A check register for each trust account that chronologically shows all deposits and checks.
 - a. Each deposit entry must include the date of the deposit, the amount, the identity of the client(s) for whom the funds were deposited, and the purpose of the deposit.
 - b. Each check entry must include the date the check was issued, the payee, the amount, the identity of the client for whom the check was issued (if not the payee), and the purpose of the check.
3. Subsidiary ledgers for each client matter for whom the attorney receives trust funds.
 - a. For every trust account transaction, attorneys must record on the appropriate client subsidiary ledger the date of receipt or disbursement, the amount, the payee and check number (for disbursements), the purpose of the transaction, and the balance of funds remaining in the account on behalf of that client matter. An attorney shall not disburse funds from the trust account that would create a negative balance on behalf of an individual client matter.

- b. A separate subsidiary ledger for nominal funds of the attorney held in the trust account pursuant to Rule 1.15(a)(1), MRPC, to accommodate reasonably expected bank fees and charges. This ledger should also record any monthly service charges not offset or waived by the bank in the same month. A separate ledger should be maintained to record interest accrued but not transferred by the bank to the Lawyers Trust Account Board in the same month it is credited.
 - c. An attorney maintaining non-IOLTA accounts pursuant to Rule 1.15(f), MRPC, shall record on each client subsidiary ledger the monthly accrual of interest, and the date and amount of each interest disbursement, including disbursements from accrued interest for costs of establishing and administering the account.
- 4. A monthly trial balance of the subsidiary ledgers identifying each client matter, the balance of funds held on behalf of the client matter at the end of each month, and the total of all the client balances. No balance for a client matter may be negative at any time.
- 5. A monthly reconciliation of the checkbook balance, the subsidiary ledger trial balance total, and the adjusted bank statement balance. The adjusted bank statement balance is determined from the month-end bank statement balance by adding outstanding deposits and subtracting outstanding checks.

Sample trial balances and reconciliations are available from the Office of Lawyers Professional Responsibility.

- 6. Bank statements, canceled checks or copies of canceled checks if they are provided with the bank statements, and duplicate deposit slips. Cash fee payments must be documented by copies of receipts countersigned by the payor. All disbursements must be by check, except when payment by check would be economically imprudent or when exigent circumstances require a transaction by wire transfer. For withdrawal by wire transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The wire transfer must be entered in the check register and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Opinion.
 - 7. **Electronic Record Retention.** An attorney who maintains trust account records by computer must print and retain, on a monthly basis, the checkbook register, the trial balance of the subsidiary ledgers, and the reconciliation report. The checkbook register must contain all of the information identified in paragraph 2. Electronic records should be regularly backed up by an appropriate storage

device. The frequency of the back up procedure should be directly related to the volume of activity in the trust account.

8. A record showing all property, specifically identified, other than cash, held in trust from time to time for clients or others, provided that routine files, documents and items such as real estate abstracts which are not expected to be held indefinitely need not be so recorded but should be documented in the files of the lawyer as to receipt and delivery.

II. Business Account Records. An attorney or law firm must maintain at least one bank account, other than the trust account, for funds and property received and disbursed outside the attorney's fiduciary capacity. The following books and records should be maintained for such accounts:

1. A record in the form of a fees book or file of copies of billing invoices reflecting all fees charged and other billing to clients.
2. Copies of receipts, countersigned by the payor, for all cash fee payments.
3. Check registers, bank statements, canceled checks, and duplicate deposit slips sufficient to establish the receipt of earned fee payments from clients, costs advanced on behalf of clients, and similar receipts and disbursements.
4. A periodic reconciliation of the checkbook balance and the bank statement balance.

Adopted: September 10, 1976.

Amended: June 22, 1977, June 23, 1983, December 4, 1987, September 15, 1989,
September 18, 1998, August 1, 1999, January 27, 2005.

Repealed: January 26, 2006.

1998 Committee Comments

In the 9 years since the Lawyers Professional Responsibility Board last revised this Opinion, there have been significant changes in the ways attorneys may maintain their trust account books and records, most notably the rise of the personal computer and bookkeeping software as essential office equipment. Moreover, the Director's Office has reviewed hundreds of lawyers' trust accounts since 1990 through the administration of the overdraft notification program. This experience has given the Director insight into the most common record-keeping pitfalls and confirmed the types of records that lawyers must maintain to satisfy their ethical obligations to protect client funds.

The revised Opinion eliminates the requirement of separate cash receipts and disbursements journals, in favor of a more detailed chronological check register that records all trust account

transactions, including the identity of the client and the purpose of the transaction. This simplifies manual record-keeping and comports with most software packages that allow input of all relevant information into one computer screen.

Routine monthly printing of hard copies of electronic records is required to allow reconstruction of trust account records in the event of a hardware failure. Attorneys should implement electronic backup procedures depending on the volume of activity in the trust account. For moderate to high volume trust accounts, weekly or even daily backups to floppy disks or mirrored network servers may be appropriate.

Wire transfers may be used for large denomination transactions provided that the lawyer or law firm creates the proper written authorization. The Board does not recommend that attorneys use wire transfers for transactions under \$10,000; checks signed by an attorney remain the primary means of properly disbursing funds from a trust account.