

**Garden State CLE Presents:**

**When Your Number Is Up**  
**Get Ready For Your Random Trust**  
**Account Audit!**



**Instructors**



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Presenters for  
our Next  
Lunchtime  
Learning Event:



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**Lesson Plan**

# **Part I**

## **Introduction**

The Random Audit Compliance Program has been in effect in New Jersey since July 1981. According to the Office of Attorney Ethics, at any given time, New Jersey law firm trust accounts hold more than \$3 billion on behalf of clients. The vast majority of attorneys are able to fulfill their obligations related to maintaining client trust funds without any problem. In the 39 years of the program's existence, on 1.4% of the audits have uncovered serious misconduct.

### **a) The Random Audit Program has three goals.**

**1) Education.** The central purpose of the program is to educate New Jersey attorneys on the proper method of compliance with the record-keeping and ethical responsibilities under Court Rule 1:21-6 and Rule of Professional Conduct 1.15.

**2) Deterrence.** Just knowing that there is an active auditing program is an incentive to keep good records and to avoid temptation to misuse trust funds.

**3) Detection of Misappropriate.** The random selection process does occasionally uncover some lawyer theft. Those cases are investigated and prosecuted and, very often, result in automatic disbarment for the knowing misappropriation of clients' funds.

**b) Selection:** Selection of attorneys for a random audit is determined on an algorithm produced by Microsoft Corporation and is based upon the law firm's office telephone number. This system, first used in 1991 is intended to guarantee that every law firm, regardless of size, has an equal chance of being selected.

**c) Notice:** Once selected, the targeted law firm will receive an advance notice of the audit in writing between 10-days and two weeks before the audit date. The audit typically will take one full day. At the conclusion, the managing attorney will be given a deficiency notice that sets forth all the findings of the audit along with the necessary corrections. Any deficiency must be corrected and supported by a certification to the OAE within 45 days. A failure to cooperate with the correction procedure will result in professional discipline. In re Schlem, 165 N.J. 536(2000).

**d) Disciplinary Outcomes:** In the year 2020, 13 attorneys were subject to discipline as a result of the random audit program, of whom one was disbarred by consent due to a knowing misappropriation of client funds. In the 39 years that the program has existed, the following levels of discipline have been imposed as a result of trust account violations due to a random audit:

**106 Disbarments**

**19 Suspension**

**20 Censures**

**62 Reprimands**

**27 Admonitions**

Please note that of the 234 attorneys listed here, many others were subject to discipline as a result of trust account violations that were uncovered from other sources.

**Part II**  
**Controlling Rules of Professional Responsibility**

**R.P.C. 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. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.
- b) 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.
- c) When in the course of representation, a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.
- d) A lawyer shall comply with the provisions of Rule 1:21-6 (“Recordkeeping”) of the Court Rules.

## Part III Controlling Rules of Court

### OAE's Summary of Rule 1:21-6

**a) Two bank accounts are required.** All attorneys who engage in the private practice of law in New Jersey are required to maintain at least two bank accounts: an attorney trust account and an attorney business account. In addition, Rule 1:21-6 clearly defines the type of accounting records attorneys are required to keep, and imposes the requirement that these records must be fully reconciled with one another at least monthly.

**b) Trust accounts hold client funds.** An attorney trust account is a special bank account, usually a checking account, into which must be placed all funds which are entrusted to the attorney's care while the attorney is acting in a legal representative capacity on behalf of a client.

**c) Trust accounts cannot be used for other purposes.** An attorney trust account should **not** be used for funds which an attorney receives while acting in any special fiduciary capacity, such as executor, guardian, receiver or trustee; these funds are to be placed into separate fiduciary accounts.

**d) Trust accounts can be used temporarily to hold funds due to the attorney.** Funds that are entrusted to the attorney's care that belong partly to a client and partly to an attorney, presently or potentially, must also be deposited into the attorney trust account. The attorney's portion may be withdrawn when due unless the client disputes the withdrawal after receiving proper notice of the attorney's bill. In that event, the disputed portion must remain in the trust account until the dispute with the client is resolved.

**e) All accounts must be in banks approved by the New Jersey Supreme Court.** An attorney may have one or more accounts, depending on need. They must be maintained in a financial institution located in New Jersey and approved by the Supreme Court of New Jersey, which annually publishes a list of such approved institutions. In order to be approved, a financial institution must agree to notify the Office of Attorney Ethics whenever an attorney's trust account check is presented against insufficient funds. A financial institution is defined as being a national or state-chartered bank; a savings bank; savings and loan association; or a credit union.

**f) Trust accounts must be clearly labeled.** Attorney trust accounts must include the prominent designation, Attorney Trust Account. The checks and deposit slips for the account must be imprinted with that title.

**g) Cash withdrawals cannot be made from trust accounts.** Withdrawals from an attorney trust account must be made to named payees, and not to cash. Only attorneys admitted to practice in New Jersey are permitted to sign attorney trust account checks.

**h) Money used to cover service fees can be deposited in trust accounts.** An attorney may deposit a minimal amount of personal funds into the attorney trust account to pay service charges and other fees incurred in connection with the account. The limit suggested by the Random Audit Program is \$250. These funds must be recorded on a ledger and all service charges properly reflected there.

**i) Earned legal fees must be withdrawn promptly so as not to commingle funds.** No other personal funds of the attorney may be deposited into the trust account because it would constitute active commingling of personal funds with trust funds. Moreover, earned legal fees must be withdrawn promptly from the trust account when due. Aggregating large sums of earned legal fees for extended periods of time constitutes passive commingling. Both active and passive commingling are unethical practices.

**j) Attorneys cannot receive the interest on trust accounts.** Attorney trust accounts may be interest-bearing, but the attorney may **never** be the recipient of interest earned on the portion of funds belonging to clients or other persons being held in the trust account. All interest or other income earned on an attorney trust account belongs to the clients or persons whose money generated the interest, or to the IOLTA Fund.

**k) Attorneys must have a business account.** All legal fees received by an attorney for professional services that have been rendered must be placed into an attorney business account. The business account is also traditionally used to pay the operating expenses of a law office. Attorneys may maintain more than one business account. The checks and deposit slips on these accounts must include the designation of either "Attorney Business Account," or "Attorney Professional Account," or "Attorney Office Account." In contrast to a trust account, a non-attorney (for example, a secretary) may be a signatory for a business account.

**l) Fee retainers and advanced costs can be held in either type of account.** If an explicit understanding has been reached with a client that a fee retainer for legal

services, or advanced costs for court fees and litigation expenses, are to be placed into an attorney trust account until such time as the fee is earned or the cost is incurred, then that is where these funds must be deposited. Otherwise, these funds may be maintained in either a trust account or a business account.

An attorney has an ethical obligation to refund unearned legal fees or unspent advanced costs to a client whenever the attorney completes or withdraws from representation, or the attorney is discharged by the client.

**m) Basic trust and account records are required.** A basic trust accounting system consists of a trust receipts journal, a trust disbursements journal, and a trust ledger book containing the individual ledger accounts for recording each financial transaction affecting that client's funds.

Each individual client ledger account should be maintained as a separate page in the attorney's trust ledger book. At a minimum, each ledger account should reflect the date, source, and a description of each item of deposit, as well as the date, payee, and purpose of each withdrawal. While no specific accounting system is required, all financial records must be kept in accordance with generally accepted accounting practice. Manual and computerized systems are both acceptable.

**n) Accounts must be maintained daily.** All source documents such as duplicate deposit slips, bank statements, canceled checks, and check stubs must be preserved for seven years. An attorney should also preserve copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with a client.

**o) A running balance must be maintained at all times for all ledgers and checkbooks.** The balances in the trust ledger book must be reconciled, at least monthly, with the balances in the trust receipts and disbursement journals, the trust account checkbook, and the bank statements. Records of these monthly reconciliations must be maintained for seven years.

**p) Other records also must be maintained for seven years.** This includes:

- client retainer and fee agreements
- statements to clients showing disbursements of funds
- bills rendered to clients
- records showing payments to other attorneys or non-employees for services rendered.

In the event of dissolution of a law firm, appropriate arrangements must be made for the maintenance of the firm's records, whether by a former partner or the successor law firm.

**q) Consequences for non-compliance are serious.** The knowing misuse of trust funds by an attorney will almost invariably result in disbarment. Major record-keeping deficiencies, or negligent misuse of trust funds resulting from the failure of an attorney to properly maintain trust account books and records, will result in the imposition of discipline ranging from an admonition to a reprimand or a period of suspension.

**Part IV**  
**What They Will Ask You During the Audit**

DISCIPLINARY QUESTIONNAIRE

I. GENERAL INFORMATION:

1. Admission Information -- Jurisdictions/Year Admitted

(Check all applicable jurisdictions and state year of admission)

- New Jersey \_\_\_\_\_                       Pennsylvania \_\_\_\_\_  
 New York \_\_\_\_\_                       \_\_\_\_\_  
 Any other jurisdiction(s) w/year admitted \_\_\_\_\_

2. Practice Information

Describe main area of practice (solo/firm/partnership) and list areas of practice during audit period.

II. ACCOUNTING INFORMATION

1. Have you ever taken an accounting class?  
2. Have you ever taken the Skills & Methods course?

(if admitted after 1987 attorney had trust & business accounting)

3. Have you (office/firm) ever been the subject of a random audit?

If yes, when? \_\_\_\_\_

4. Are you familiar with NJ Recordkeeping rule 1:21-6?

5. Did you have an accountant during audit period?

Accountant's name, address & telephone number:

Dates employed:

Description of Responsibilities:

Was the accountant made aware of R.21-6 requirements?

6. Did you employ a bookkeeper during the audit period?

Bookkeeper's name, address & telephone number:

Dates employed:

Description of Responsibilities:

Was the bookkeeper made aware of R.21-6 requirements?

7. If neither an accountant nor a bookkeeper was employed, who was responsible for your trust and business accounts during the audit period?

## 8. ATTORNEY ACCOUNTS

a. Primary Attorney **Trust** Account

**BANK:**

Account Designation:

Account #:

Date Opened:

Date Closed:

Is there a master account with subaccounts for individual clients?

Authorized Signatory(ies) during audit period:

Is a signature stamp ever used for trust account checks?

Check box of all records maintained for the trust account during the audit period and identify who prepared those records:

- checkbook
- client ledger sheets
- checks (original/digital)
- monthly reconciliations
- receipts journal
- disbursements journal
- deposit slips (original/digital)

Prepared by:

Indicate in what format(s) the records are maintained:

- manual
- computerized (software?)
- one-write
- accu-track
- other \_\_\_\_\_

**b. Primary Attorney Business Account**

**BANK:**

Account Designation:

Account #:

Date Opened:

Date Closed:

Is there a master account with subaccounts for individual clients?

Authorized Signatory(ies) during audit period:

Check box of all records maintained for the trust account during the audit period and

identify who prepared those records:

- checkbook
- disbursements journal
- deposit slips (original/digital)
- receipts journal
- checks (original/digital)

Prepared by:

Indicate in what format(s) the records are maintained:

- manual
- computerized (software?)
- one-write
- accu-track
- other \_\_\_\_\_

## 9. ACCOUNTING PRACTICES

Describe your office procedure for handling trust funds in general, providing names and titles of those involved.

- a) Preparing and signing checks
- b) Preparing and making deposits (including electronic transfers)
- c) Reviewing monthly bank statements
- d) Preparing monthly reconciliations

10) List any other accounts maintained during the audit period, whether in New Jersey or elsewhere – including other trust or business accounts, payroll accounts, cost accounts, estate accounts, receiverships, guardianship accounts,

conservatorships, any other fiduciary accounts, dormant accounts or accounts that were closed during this time. All accounts for which you are an authorized signatory should be included. Be specific as to the type of account, dates opened/closed, what records are maintained for each account, the format of those records, whether monthly reconciliations are prepared and who prepares the reconciliations. (Attach a separate sheet if necessary.)

Type of Account:

Bank:

Account Designation:

Account #:

Date Opened:

Date Closed:

Authorized Signatory(ies) during audit period:

Type of Account:

Bank:

Account Designation:

Account #:

Date Opened:

Date Closed:

11) Have client funds, including cash, ever been deposited in an account other than an attorney trust account or kept elsewhere?

If yes, explain.

12) Have you deposited non-client funds in a trust account other than personal funds for bank charges?

If yes, explain.

13) Have you ever transferred funds from the trust account electronically?

If yes, explain.

- Are there written transfer instructions signed by you (if not, who signed?)
- Written confirmation from bank with date, payee and amount?

14) Do you have an ATM card for the trust account(s)?

15) Are there any CASH withdrawals from the trust account(s)?

If yes, explain/identify:

16) Do you have overdraft protection for the trust account(s)?

17) Do you maintain your bank records and client files for 7 years?

18) Were there any unidentified/unclaimed funds held in the trust account(s) during the audit period?

If yes, explain how long funds have been in the account; the amount; if possible, identify the client and state any and all efforts to identify/disburse the funds.

19) Are legal fees withdrawn from trust promptly when earned?

20) Are all legal fees deposited to a business/office/professional account?

21) Are you an administrator, executor guardian or trustee?

If yes, please list.

22) Did you have signatory authority over any other fiduciary accounts during the audit period?

If yes, please list.

23) Do you have Power of Attorney for anyone, clients or non-clients?

If yes, please list.

24) Have you ever borrowed trust funds or other monies from a client?

If yes, identify the client(s), explain the circumstances, provide the date of the loan(s) and answer the following questions:

Client(s): \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

- a) Were formal loan agreement prepared?
- b) Was the client advised to seek independent counsel?
- c) Did the client consent in writing to the loan transaction?
- d) Is there borrowed money from any client that has not yet been repaid?
- 25) Did you ever loan money to a client?

If yes, identify the client(s), explain the circumstances and state whether there is any written documentation regarding the loan and whether the loan has been repaid.

- 26) Have you ever engaged in a business transaction with a client(s)?

If yes, identify the client(s), explain the transaction and state whether there is any written documentation regarding the transaction.

Was client(s) advised to seek independent counsel?

- 27) Were any of the records produced for this audit prepared for you after you received the audit notice?

If yes, please identify what records were prepared for the audit, when the records were prepared and by whom.

III. MISCELLANEOUS

- 1) Have you ever filed for bankruptcy?
- 2) Has the firm ever filed for bankruptcy?
- 3) Are you holding any valuables, other than money, for clients?

If yes, identify what is being held and where.

- 4) Do you collect any mortgages or other investments for clients?

If yes, identify what you collect, the amount and where the funds are deposited.

- 5) Do you hold any public offices? (If yes, check appropriate boxes.)

- |                                   |                                    |
|-----------------------------------|------------------------------------|
| <input type="checkbox"/> elective | <input type="checkbox"/> appointed |
| <input type="checkbox"/> local    | <input type="checkbox"/> county    |
| <input type="checkbox"/> state    | <input type="checkbox"/> federal   |

Please list the title held and dates of service. \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

- 6) Are you incorporated or do you operate as a PC or LLP?
- 7) Do you carry malpractice insurance? If so, what are the policy limits?

\_\_\_\_\_

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8) Do you meet current CLE requirements?

9) Have you ever been sued for malpractice?

10) Have you ever been the subject of an ethics grievance; if so, what was the result?

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11) Have client funds, including cash, ever been deposited in an account other than an attorney trust account or kept elsewhere?

If yes, explain.

12) Have you deposited non-client funds in a trust account other than personal funds for bank charges?

If yes, explain.

13) Have you ever transferred funds from the trust account electronically?

If yes, explain.

- Are there written transfer instructions signed by you (if not, who signed?)
- Written confirmation from bank with date, payee and amount?

14) Do you have an ATM card for the trust account(s)?

15) Are there any CASH withdrawals from the trust account(s)?

If yes, explain/identify:

16) Do you have overdraft protection for the trust account(s)?

17) Do you maintain your bank records and client files for 7 years?

18) Were there any unidentified/unclaimed funds held in the trust account(s) during the audit period?

If yes, explain how long funds have been in the account; the amount; if possible, identify the client and state any and all efforts to identify/disburse the funds.

19) Are legal fees withdrawn from trust promptly when earned?

20) Are all legal fees deposited to a business/office/professional account?

21) Are you an administrator, executor guardian or trustee?

If yes, please list.

**OFFICE OF ATTORNEY ETHICS  
OF THE  
SUPREME COURT OF NEW JERSEY**



**RANDOM AUDIT COMPLIANCE PROGRAM  
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**OUTLINE OF RECORD KEEPING  
REQUIREMENTS UNDER  
RPC 1.15 AND R.1:21-6**

**Prepared by:  
Random Audit Staff**

**Revised: February 2017**

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*The funds in the hands of an attorney that belong to a client or others must be kept inviolate.*

[In Re Banner, 31 NJ 24, 28 (1959)]

*It is no defense for lawyers to design an accounting system that prevents them from knowing whether they are using client's trust funds. Lawyers have a duty to assure that their accounting practices are sufficient to prevent misappropriation of trust funds.*

[In Re Fleischer, Schultz and Schwimer, 102 NJ 440, 447 (1986)].

**I. RESPONSIBILITIES OF THE ATTORNEY UNDER RPC 1.15, SAFEKEEPING PROPERTY (see Appendix A)**

**A. Duties imposed by RPC 1.15**

1. Duty to properly maintain required trust and business account books and records set forth in R.1:21-6. [RPC 1.15(d)]
2. Duty to fully account to clients for funds or property entrusted to attorney's care. [RPC 1.15(a)]
3. Duty to notify clients promptly upon receipt of funds or property in which a client has interest. [RPC 1.15(b)]
4. Duty to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive. [RPC 1.15(b)]
5. Duty to keep client funds separate from lawyer's own property. [RPC 1.15(a) and (c)]
6. Duty not to use those funds for any purpose whatsoever, other than as directed by the client. [RPC 1.15(b) and (c)]

**B. Summary of Duties**

1. IDENTIFICATION
2. PRESERVATION
3. ACCOUNTABILITY

**II. OUTLINE OF R.1:21-6, THE RECORD KEEPING RULE (see Appendix B)**

**A. ATTORNEY TRUST ACCOUNTS**

1. All funds which an attorney receives while acting in a legal representative capacity on behalf of a client must be placed in an Attorney Trust Account (ATA).

- (a) Examples are deposit funds in a real estate transaction, settlement funds in a personal injury action, receipts in a collection matter, funds recovered or awarded in a matrimonial action.
  - (b) An ATA should not be used for funds which the attorney receives while acting in any special fiduciary capacity such as an executor, guardian, receiver or trustee; these funds are to be placed into separate fiduciary account(s).
2. The attorney may maintain more than one ATA
3. The basic requirements for ATAs are as follows:
- (a) they must be maintained in a New Jersey financial institution approved by the Supreme Court
  - (b) they must be in the name of the attorney, the partnership, the professional corporation, or employer attorney or firm.
  - (c) they must be designated "**ATTORNEY TRUST ACCOUNT**" or if applicable, "**IOLTA ATTORNEY TRUST ACCOUNT**" (see below)
    - i. if the designation "**ATTORNEY TRUST ACCOUNT**" is used, it must appear on:
      - (1) the signature card
      - (2) the bank statement
      - (3) the checks
      - (4) the deposit slips
    - ii. if the "**IOLTA ATTORNEY TRUST ACCOUNT**" designation is used, it must appear on the signature card and the bank statement; however "**IOLTA**" should not appear on the checks and deposit slips.
  - (d) only New Jersey attorneys may sign trust account checks; this function may not be delegated to a non-attorney (e.g., a secretary), and no rubber stamp facsimiles are permitted to be used.
4. **Do's and Don'ts for ATAs**
- (a) **Mandatory Deposits - what funds must go into ATAs**
    - i. all funds held on behalf of clients in a legal representative capacity.

- ii. all funds in which the attorney and client claim an interest arising out of legal representation.
- iii. all funds in which the client and a third party have an interest which come into the attorney's possession during representation of the client.
- iv. general retainers for legal services and advances for costs, where there is an explicit understanding with the client that they will be separately maintained in the ATA.

(b) Permissive Deposits - what may go into ATAs

- i. general retainers for legal services and advances for costs where no explicit understanding has been reached with the client that they will be maintained in either the trust or the business account.
- ii. funds of the lawyer that are reasonably sufficient to pay bank charges (limited to \$250)

(c) Prohibited Deposits - what funds may not go into ATAs

- i. funds coming into the attorney's hands while acting as an executor, administrator, guardian, trustee, receiver, or any similar fiduciary capacity; these funds must be placed into separate fiduciary accounts.
- ii. the attorney's personal funds
- iii. business and investment monies of the attorney
- iv. payroll taxes on employee wages

5. **ATA Bookkeeping in a Nutshell**

- (a) the basic "books" for the ATA are the Receipts Journal and the Disbursements Journal, also known as the books of original entry in a double-entry bookkeeping system, since it is upon these journals that receipts and disbursements are initially entered.
- (b) the secondary books for the ATA are the individual client ledgers which collectively comprise the Client Trust Ledger; these are also known as the subsidiary ledgers since, after entries first are posted to the appropriate journal, the same entries then are made to these ledgers.

- (c) the source documents for the entries posted to the above journals and ledgers are the Check Book and the Deposit Slips which keep track, with the help of the monthly bank statement, of the funds which the bank acknowledges as being on account in the ATA.

6. **Required Bookkeeping Records for ATAs**

- (a) Trust Receipts Journal - for each ATA which an attorney maintains, there must be separate receipts journal to record all deposits and credits to that account.

- i. for each deposit and credit the following details must be recorded

- (1) date
- (2) source of deposit funds or explanation of credit
- (3) client matter/description
- (4) amount

- ii. Appendix C is a sample Trust Receipts Journal

- (b) Trust Disbursements Journal - for each ATA which an attorney maintains, there must be a separate disbursements journal to record all withdrawals and debits from that account.

- i. for each withdrawal and debit the following details must be recorded.

- (1) date
- (2) check number
- (3) payee
- (4) client matter/purpose of disbursement
- (5) amount

- ii. trust account withdrawals cannot be made payable to "cash". ATM withdrawals are not permitted.

- iii. Electronic Fund Transfers (wire and computer)

- (1) Must be authorized by attorney
- (2) Signed written instruction is required authorizing each transfer.
- (3) Blanket authorization covering all future transfers does not comply.

- iv. Appendix D is a sample Trust Disbursements Journal

- v. Appendix D-1 is a sample of a Funds Transfer Request Form.
- (c) Client Trust Ledger - for each ATA which an attorney maintains, there must be a Client Trust Ledger containing separate pages, sheets or cards for each individual client matter for which funds have been received into the account.
- i. the following details are required to be recorded on the individual client ledger for each receipt to or disbursement from that sub-account.
    - (1) client matter
    - (2) date of deposit or withdrawal
    - (3) source of deposit funds or explanation of credit
    - (4) check number for withdrawals
    - (5) payee of withdrawals and description/purpose
    - (6) amount of deposit or withdrawal
  - ii. the running balance of funds held for each client matter must be kept on the individual client ledger.
  - iii. Appendices E-1 through E-7 are samples of individual client trust ledger pages, sheets or cards and collectively represent a sample of a Client Trust Ledger.
- (d) Trust Checkbook - only pre-numbered checks may be used and a running checkbook balance must always be maintained on the check stubs; see samples at Appendices F and G
- i. Deposit Slips - items deposited must be identified by client name or file number on the duplicate deposit slip, and the slips must be retained with the accounting records; see sample at Appendix H (Note: the bank identification code on the check being deposited may also be put on the deposit slip for identification purposes) All checks, withdrawals, and deposit slips shall include a distinct area identifying the client's name or file number.
  - ii. Schedule of Client Trust Ledger Balances
    - (1) a listing of the balances taken from all open client trust ledgers must be made at least monthly and added up.
    - (2) the total of all individual ledger balances should always agree to the checkbook balance.

- (3) this schedule and reconciliation must be documented and retained. See sample at Appendix J and discussion below on the three way reconciliation.
- (e) Other required Accounting Records – in addition to the above records, the following items must also be maintained for ATAs
  - i. bank statements
  - ii. image processed or canceled checks
  - iii. copies of retainer and compensation agreements
  - iv. copies of all statements to client showing disbursement to them or on their behalf
  - v. copies of all bills to clients
  - vi. copies of records showing payments to attorneys, investigators or other persons not in the attorney's regular employ, for services rendered or performed.

#### **7. Interest Bearing ATAs**

- (a) ATAs may be interest bearing, but the attorney may never be the recipient of interest earned on the client portion of funds being held in the trust account; only clients or the IOLTA Fund of the Bar of New Jersey may receive interest earned on the client funds in the trust account.
- (b) Attorneys must register pursuant to R.1:28A-2 with the IOLTA Fund and must establish an IOLTA ATA if the circumstances outlined in that rule require the attorney to do so.
- (c) Further information may be obtained from:

IOLTA Fund of the Bar of New Jersey  
New Jersey Law Center  
One Constitution Square  
New Brunswick, NJ 08901-1520  
(732) 247-8222

#### **B. ATTORNEY BUSINESS ACCOUNT**

- 1. All legal fees received by an attorney for professional services which have been rendered must be placed into an Attorney Business Account (ABA).
  - (a) General retainers for legal services and advanced costs may also be deposited into an ABA where no explicit understanding has been reached with clients that these funds will be separately maintained in the ATA.

- (b) Payroll and other business expenses may also be processed through and ABA, but it is often more practical for the attorney to establish separate accounts for these purposes.
2. Attorneys may maintain more than one ABA
  3. The basic requirements for ABAs are the same as those ATAs (see above) with the following differences:
    - (a) The ABA must be designated  
“ATTORNEY BUSINESS ACCOUNT”  
“ATTORNEY PROFESSIONAL ACCOUNT” or  
“ATTORNEY OFFICE ACCOUNT”
    - (b) Secondary designations, e.g. “Attorney Business Account – Retainers” are permissible
    - (c) A non-attorney (e.g., a secretary) may be signatory on an ABA.
  4. Funds which may never go into an ABA
    - (a) Client trust funds
    - (b) Funds held by the attorney in another fiduciary capacity (e.g. executor, guardian, receiver or trustee); these funds must be placed into separate fiduciary accounts
  5. Required Bookkeeping Records for ABAs
    - (a) Business Receipts Journals (see sample at Appendix K)
    - (b) Business Disbursements Journal (see sample at Appendix L)
    - (c) Business Checkbook with Deposit Slips and Reconciliations
    - (d) Other required records for ABAs – same as ATAs (see above)
  6. Interest - Bearing ABAs
    - (a) ABAs may be interest - bearing
    - (b) Attorneys may retain the interest earned on these accounts.

**C. REQUIREMENTS COMMON TO BOTH ACCOUNTS**

1. The financial books and records for ATAs and ABAs

- (a) must be maintained in "accordance with Generally Accepted Account Practice" (see below)
  - (b) must be maintained for seven years
  - (c) must be located at the principal New Jersey office of the attorney
  - (d) must be available for inspection and checks for compliance by authorized representative of the Office of Attorney Ethics
  - (e) may be computerized if in accordance with record keeping requirements, printed out monthly or quarterly, and printed copies can be obtained on demand.
2. Image Processed Checks (Trust and Business)
- (a) Must include front and back of check.
  - (b) No more than two checks (four images) per page allowed.
3. Reporting Requirements: The names of the banking institutions in which such accounts are maintained shall be recorded on the annual registration form filled with the attorney's annual payment to the Ethics Financial Committee and the New Jersey Lawyers' Fund for Client Protection.
4. Dissolution: Records must be maintained by former partners or shareholders, or maintained by successor firm for seven years.
5. Out of State Firms: Fees cannot be shared if prohibited by RPC 1.5e; separate records for the New Jersey practice must be maintained for seven years.
6. Attorneys associated with out-of-state attorneys: A record of all fees received and expenses incurred in connection with a matter in which the attorney was associated with an out-of-state attorney must be maintained for seven years.
7. Availability of Records:
- (a) Records must be produced in response to subpoena duces tecum re: ethics matters
  - (b) Records must be produced at the direction of the Disciplinary Review Board or Supreme Court
  - (c) Records must be produced for review and audit by the Office of Attorney Ethics.
8. Disciplinary Action: Failure to comply with requirements of R.1:21-6 violates RPC 1.15(d)

9. Unidentified and Unclaimed Trust Funds Accumulations and Trust Funds Held for Missing Owners: These balances may be paid to the Clerk of the Superior Court, when supported by a detailed affidavit which avers that reasonable search, inquiry, and notice have been made without success, after the funds have been held in the trust account for two years. (See Deposit Instructions at Appendix N)

### III. MECHANICS OF TRUST ACCOUNTING

#### A. GENERALLY ACCEPTED ACCOUNTING PRACTICE

1. R.1:21-6 provides that the accounting records required under this rule shall be maintained in accordance with "Generally Accepted Accounting Practice": (GAAP)
2. Enter receipts and disbursements into your bookkeeping records in the following manner to comply with GAAP

##### (a) Receipts

- i. Prepare and date deposit slip, and identify client matter(s) by file number or client name on same
- ii. Record receipt of funds on checkstubs and enter running checkbook balance
- iii. Record receipt of funds in Trust Receipts Journal
- iv. Record receipt of funds on individual client trust ledgers and show current balance on each individual ledger

##### (b) Disbursements

- i. Prepare check and identify client matter by file number or client name, and indicate purpose of disbursement on same
- ii. Subtract amount of each check drawn and enter running balance on checkstubs
- iii. Record check disbursements in the Trust Disbursements Journal
- iv. Record check disbursements on individual client trust ledgers and show current balance on each individual ledger.

**B. THREE-WAY RECONCILIATION (Monthly is required)**

1. First, obtain your **“Book Balance”**
  - (a) Total the Trust Receipts Journal for the month ended (see sample at Appendix C) (Note: use the date of the bank statement as the ending date)
  - (b) Total Disbursements Journal for the same period (see sample at Appendix D)
  - (c) Record these totals on Control Sheet (see sample at Appendix I); factor in previous month’s ending balance to arrive at current **“Book Balance”**
  - (d) Enter these figures on Reconciliation Sheet (see sample at Appendix J)
  
2. Second, obtain your reconciled **“Bank Balance”**
  - (a) Enter ending balance from your monthly bank statement on the Reconciliation Sheet (Appendix J)
  - (b) Add deposits in transit (those not credited to your account on the monthly bank statement)
  - (c) Subtract outstanding checks (those not debited on your monthly bank statement)
  - (d) The total will be your reconciled **“Bank Balance”**, and should agree with your **“Book Balance”**
  
3. Finally, obtain your **“Client Trust Ledger Balance”**
  - (a) Prepare a schedule of all open balances by client name from the Client Trust Ledger (Use Appendix J form)
  - (b) Total must agree with your reconciled **“Bank Balance”** and your **“Book Balance”**

(Note: Appendix J may be adapted to the Reconciliation of the ABA by the elimination of the third step; i.e., the reconciliation need only be between the Business Book Balance and the reconciled Business Bank Balance)

## IV. KEY CONCEPTS IN ATTORNEY TRUST ACCOUNTING

### A. PRELIMINARY RULES

1. Record Contemporaneously-within 24 hours of the event
2. Record all figures exactly-no "rounding off" permitted

### B. KEY CONCEPTS

1. Separate Clients are Separate Accounts
  - (a) each client's funds must be looked at as separate from those of all other client's
  - (b) you can never use one client's funds to satisfy the obligations of another client
  - (c) there is no exception to this rule which has to do with certified uncollected funds in real estate matter; this is explained in Opinion 454 (see Appendix M)
2. You Can't Spend What You Don't Have
  - (a) you cannot disburse more for a client than you have on deposit to that client's credit.
  - (b) the total amount of other clients' funds available is irrelevant
3. Timing is Everything
  - (a) you cannot disburse on deposits made on behalf of clients until the checks or settlement drafts which comprise the deposits "clear" (are "collected" in bank parlance) and are credited to your trust account
  - (b) know your bank's closing times for crediting of deposits
4. Always Maintain an Audit Trail
  - (a) an audit trail is the combination of (1) bank created records, such as bank statements, deposit slips, canceled checks, etc., (2) journal entries recorded in the receipts and disbursements journals, and (3) ledger entries recorded in the client ledger, that together make it possible to trace what happened to client monies handled by an attorney.
  - (b) on every deposit slip the client name or file number should appear next to the amount being deposited on that client's behalf.

- (c) similarly, the client name or file number should appear on every disbursement check.
  - (d) client ledger cards should be maintained in a central filing bin, segregated between open and closed account; photocopies, but not the originals, of the ledgers may be placed in closed client files.
5. Trust Accounting is Zero based accounting
- (a) proper trust fund management requires periodic review (monthly is recommended) with a view, toward properly removing all balances and zeroing-out clients' accounts since the presence of small inactive balances on individual client accounts is a hindrance to the balancing process.
  - (b) fees should be promptly removed
  - (c) circumstances surrounding outstanding checks should be investigated and resolved.
  - (d) mathematical errors resulting in small residues of funds should be corrected and the amounts removed. (see R.1:21-6(j))
6. There is No Such Thing as a "Negative Balance"
- (a) in trust accounting all balances must either be positive (while monies are being held for clients) or zero (when the matter is closed and no monies remain for the client in the trust account)
  - (b) a negative balance for a client means that other clients' funds have been invaded.
7. You Can't Play the Game Unless You Know the Score
- (a) an individual running balance for each individual client, on that client's ledger must be maintained at all times.
  - (b) similarly, a general running balance for the entire trust account must be maintained at all times; this is usually done on the checkbook stubs but if a one-write or computerized system is used, it may be done by keeping a running balance of the trust receipts and disbursement journals.

## **RULE OF PROFESSIONAL CONDUCT 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. Funds shall be kept in a separate account maintained in a financial institution in New Jersey. Funds of the lawyer that are reasonably sufficient to pay bank charges may, however, be deposited therein. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after the event that they record.

(b) 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.

(c) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved.

(d) A lawyer shall comply with the provisions of R. 1:21-6 ("Recordkeeping") of the Court Rules.

**1:21-6. Recordkeeping; Examination of Records**

**(a) Required Trust and Business Accounts.** Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:

**(1)** a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and

**(2)** a business account into which all funds received for professional services shall be deposited.

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account for nominal or short-term funds to an IOLTA account.

**(b) Account Location; Financial Institution's Reporting Requirements.** An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics in the event any properly payable attorney trust account instrument is presented against insufficient funds,

irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one. Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor. Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by The Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(c) Required Bookkeeping Records.

(1) Attorneys, partnerships of attorneys and professional corporations who practice in this State shall maintain in a current status and retain for a period of 7 years after the event that they record:

(A) appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as

stated below or by check payable to a named payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and

(B) an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and

(C) copies of all retainer and compensation agreements with clients; and

(D) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and

(E) copies of all bills rendered to clients; and

(F) copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and

(G) originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and

(H) copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and

(I) copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.

(2) ATM or cash withdrawals from all attorney trust accounts are prohibited.

(3) No attorney trust account shall have any agreement for overdraft protection.

(d) Type and Availability of Bookkeeping Records. The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.

(e) Dissolutions. Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.

(f) Attorneys Practicing With Foreign Attorneys or Firms. All of the requirements of this rule shall be applicable to every attorney rendering legal services in this State regardless whether affiliated with or otherwise related in any way to an attorney, partnership, legal corporation, limited liability company, or limited liability partnership formed or registered in another state.

(g) Attorneys Associated With Out of State Attorneys. An attorney who practices in this State shall maintain and preserve for 7 years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.

(h) Availability of Records. Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.

(i) Disciplinary Action. An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who

fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).

(j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners. When, for a period in excess of 2 years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of 1 year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.

# TRUST RECEIPTS BOOK

MONTH OF: March

20 xx

Appendix C

DATE	SOURCE	CLIENT	CASE # OR FILE #	AMOUNT	DEPOSIT
3/1	Aetna Casualty Ins.	John Smith	15-101	30,000.00	30,000.00
3/2	James & Mary Jones	Brown to Jones	14-200	5,000.00	
3/3	Handy Tool Co.	ABC Tool Corp.	15-210	1,500.00	6,500.00
3/19	PNC Bank	Gray fr. White	15-320	60,000.00	
3/19	Jersey Mortgage Co.	Gray fr. White	15-320	40,000.00	
3/19	Joseph Gray	Gray fr. White	15-320	10,000.00	110,000.00
3/30	Sally Green	Green vs. Green	14-110	4,300.00	4,300.00
		Totals		150,800.00	150,800.00

# TRUST DISBURSEMENTS BOOK

MONTH OF: March

20 xx

Appendix D

DATE	CHECK NO.	PAYEE	PURPOSE	CLIENT	CASE # OR FILE #	AMOUNT
3/12	710	John Smith	Settlement	John Smith	15-120	20,000
3/12	711	Joe Lawyer	Fee	John Smith	15-120	10,000
3/13	712	VOID				---
3/14	713	ABC Tool Corp.	Proceeds	ABC Tool	14-215	1,050.00
3/14	714	Joe Lawyer	Fee	ABC Tool	14-215	450.00
3/15	--	Void ck. #507 dated 1/12/xx		Williams Co.	15-125	(400.00)
3/15	715	Apex Co.	Replace 507	Williams Co.	15-125	400.00
3/20	716	William Penn Savings	Payoff	Gray/White	15-320	50,000.00
3/20	717	Sam White	Proceeds	Gray/White	15-320	35,000.00
3/20	718	Re/Max Realty	Commission	Gray/White	15-320	5,000.00
3/20	719	Joe Lawyer	Fee	Gray/White	15-320	600.00
3/30	S/C	Bank Charge		Atty. Funds		50
				Totals		122,150.00

**WIRE TRANSFER REQUEST FORM**

**Section A: Customer Information**

**Account Number**

**Name(as it appears on your account)**

**Address**

**City**

**State**

**Zip Code**

**Wire Amount**

**Date and Time of Wire Request**

**Daytime Phone**

**Alternate Phone**

**Section B: Receiver Information**

**Bank Name & Address**

**Bank Routing Number (ABA)**

**Beneficiary's Name**

**Beneficiary's Address**

**Beneficiary's Account Number**

**Further Credit or Special Instructions**

**Section C: International Wires**

**Int'l Bank Name and address**

**International Bank Account number (IBAN)**

**SWIFT code**

**Bank Code**

**City**

**Country**

**Currency**

**US Corresponding Bank Name (if applicable)**

**US Corresponding Routing Number (ABA-if applicable)**

I have read and understand the contents of the attached agreement. By signing below, I agree to all terms and conditions set forth and certify that the information accurately reflects the transaction I desired.

\_\_\_\_\_  
**Customer Signature**

\_\_\_\_\_  
**Date**

# CLIENTS' TRUST LEDGER

BROWN to JONES

14-200

**NAME OF CLIENT**

**FILE OR CASE NUMBER**

REAL ESTATE SALE

**LEGAL MATTER OR ADVERSE PARTY**

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
3/2/20xx	James & Mary Jones Deposit			5,000.00	5,000.00

Appendix E-1

# CLIENTS' TRUST LEDGER

ABC TOOL CORP.

14-215

NAME OF CLIENT

FILE OR CASE NUMBER

COLLECTIONS

LEGAL MATTER OR ADVERSE PARTY

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
3/3/20xx	Handy Tool Co.			1,500.00	1,500.00
3/14/20xx	ABC Tool-Proceeds	713	1,050.00		450.00
3/14/20xx	Joe Lawyer - Fee	714	450.00		-0-

Appendix E-2

# CLIENTS' TRUST LEDGER

GRAY from WHITE

15-320

**NAME OF CLIENT**

**FILE OR CASE NUMBER**

REAL ESTATE PURCHASE

**LEGAL MATTER OR ADVERSE PARTY**

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
3/19/20xx	PNC Bank			60,000.00	60,000.00
3/19/20xx	Jersey Mortgage Co.			40,000.00	100,000.00
3/19/20xx	Joseph Gray			10,000.00	110,000.00
3/20/20xx	William Penn Savings - payoff	716	50,000.00		60,000.00
3/20/20xx	Sam White - Proceeds	717	35,000.00		25,000.00
3/20/20xx	Re/Max Realty - Comission	718	5,000.00		20,000.00
3/20/20xx	Joe Lawyer - Fee	719	600.00		19,400.00

Appendix E-3

# CLIENTS' TRUST LEDGER

JOHN SMITH

15-120

**NAME OF CLIENT**

**FILE OR CASE NUMBER**

PERSONAL INJURY

**LEGAL MATTER OR ADVERSE PARTY**

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
3/1/20xx	Aetna Casualty Ins.			30,000.00	30,000.00
3/12/20xx	John Smith - Proceeds	710	20,000.00		10,00.00
3/12/20xx	Joe Lawyer - Fee	711	10,000.00		-0-

Appendix E-4

# CLIENTS' TRUST LEDGER

WILLIAMS CO.

15-125

NAME OF CLIENT

FILE OR CASE NUMBER

RETAINER

LEGAL MATTER OR ADVERSE PARTY

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
1/5/20xx	Williams Co.			400.00	400.00
1/12/20xx	Apex Co.	507	400.00		-0-
3/15/20xx	To Void Check #507	507	(400.00)		400.00
3/15/20xx	Apex Co. - Replace Ck. #507	715	400.00		-0-

Appendix E-5

# CLIENTS' TRUST LEDGER

GREEN vs. GREEN

14-110

**NAME OF CLIENT**

**FILE OR CASE NUMBER**

MATRIMONY

**LEGAL MATTER OR ADVERSE PARTY**

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
2/25/20xx	Sally Green - Proceeds sale of prop.			45,000.00	45,000.00
3/30/20xx	Sally Green			4,300.00	49,300.00

Appendix E-6

# CLIENTS' TRUST LEDGER

JOE LAWYER

NAME OF CLIENT

FILE OR CASE NUMBER

ATTY. FUNDS FOR BANK CHARGES

LEGAL MATTER OR ADVERSE PARTY

DATE	DESCRIPTION OF TRANSACTION	CHECK NO.	FUNDS PAID	FUNDS RECEIVED	BALANCE
1/24/20xx	Business Acct. Ck. #535			200.00	200.00
3/31/20xx	Bank Service Charge		50.00		150.00

Appendix E-7

Appendix F

8402		BAL. BRO'T FORD	12,500	00
DATE <u>May 13, 20XX</u>		DEPOSITS		
TO <u>Collector, City of Trenton</u>			5,000	00
FOR <u>Sands (T-980)</u>		TOTAL	17,500	00
<u>Taxes</u>		THIS CHECK	3,200	00
		OTHER		
TAX DEDUCTIBLE		BALANCE	14,300	00

8403				
DATE <u>May 20, 20XX</u>		DEPOSITS		
TO <u>John A. Lawyer</u>				
FOR <u>Smith (L1011)</u>		TOTAL	14,300	00
<u>Legal Fee</u>		THIS CHECK	1,300	00
		OTHER		
TAX DEDUCTIBLE		BALANCE	13,000	00

8404				
DATE <u>May 20, 20XX</u>		DEPOSITS		
TO <u>John Smith</u>				
FOR <u>Smith (L1011)</u>		TOTAL	13,000	00
<u>Bal. of Settlement</u>		THIS CHECK	3,700	00
		OTHER		
TAX DEDUCTIBLE		BALANCE	9,300	00

8402		
JOHN A. LAWYER, ESQ. ATTORNEY TRUST ACCOUNT		85-2/212
DATE <u>May 13, 20XX</u>		
PAY TO THE ORDER OF	<u>Collector, City of Trenton</u>	\$ <u>3,200.00</u>
<u>Thirty-Two Hundred and 00/100</u>		DOLLARS
 WACHOVIA Wachovia Bank, N.A. wachovia.com		
FOR <u>Sands (T-980) Taxes</u>		
⑈00008402⑈ ⑆02⑆200025⑆2000930345516⑈		

8403		
JOHN A. LAWYER, ESQ. ATTORNEY TRUST ACCOUNT		85-2/212
DATE <u>May 20, 20XX</u>		
PAY TO THE ORDER OF	<u>John A. Lawyer</u>	\$ <u>1,300.00</u>
<u>Thirteen Hundred and 00/100</u>		DOLLARS
 WACHOVIA Wachovia Bank, N.A. wachovia.com		
FOR <u>Smith (L1011) Legal Fee</u>		
⑈00008403⑈ ⑆02⑆200025⑆2000930345516⑈		

8404		
JOHN A. LAWYER, ESQ. ATTORNEY TRUST ACCOUNT		85-2/212
DATE <u>May 20, 20XX</u>		
PAY TO THE ORDER OF	<u>John Smith</u>	\$ <u>3,700.00</u>
<u>Thirty-Seven Hundred and 00/100</u>		DOLLARS
 WACHOVIA Wachovia Bank, N.A. wachovia.com		
FOR <u>Smith (L1011) Bal. of Settlement</u>		
⑈00008404⑈ ⑆02⑆200025⑆2000930345516⑈		

# Trust Account Check

Trust Account  
Designation



Payee



Bank  
Identification  
Code



JOHN A. LAWYER, ESQ. ATTORNEY TRUST ACCOUNT		Number 8402	15-D218
DATE <u>May 13, 20XX</u>			
PAY TO THE ORDER OF	Collector, City of Trenton	\$ 3,200.00	
Thirty-Two Hundred and 00/100		DOLLARS	
WACHOVIA Wachovia Bank, N.A. wachovia.com			
FOR	Sands (T-980) Taxes		
⑆02120002562000930345516⑆			

Client Matter & Purpose



Account Number



Prepared By: \_\_\_\_\_

Deposited By: \_\_\_\_\_

BAG #: \_\_\_\_\_

DATE ----- DATE May 2, 20XX

DEPOSIT TICKET

	DOLLARS	CENTS
CURRENCY		
COINS		
CHECKS <small>LIST EACH SEPARATELY</small>		
1 SMITH	\$ 5,000	00
2 55-113/212		
3		
4 JONES	\$10,000	00
5 51-98/212		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		
TOTAL		

CLIENT MATTER -----  
BANK ID CODE -----

----- INDIVIDUAL  
DEPOSIT AMOUNT

⑆540080102⑆



ATTORNEY TRUST  
ACCOUNT

TOTAL \$15,000.00

PLEASE BE SURE THAT ALL ITEMS ARE PROPERLY ENDORSED. LIST EACH CHECK SEPARATELY.

ATTORNEY TRUST  
DESIGNATION -----

DEPOSIT TOTAL -----

CHECKS AND OTHER ITEMS ARE  
ACCEPTED FOR DEPOSIT ONLY  
FOR THE ACCOUNTS OF THE  
UNIFORM COMMERCIAL  
CODE ON ANY PROSPECTIVE  
MAY NOT BE AVAILABLE FOR  
IMMEDIATE WITHDRAWAL.

TOTAL  
ITEMS

[Empty box for total items]

# TRUST ACCOUNT RECEIPTS / DISBURSEMENTS CONTROL SHEET

FOR: 20 xx

MONTH	<u>TRUST</u>	<u>FUNDS</u>	BALANCE
	RECEIVED	DISBURSED	
JANUARY			
FEBRUARY			\$42,500.00
MARCH	\$150,800.00	\$122,150.00	\$73,850.00
APRIL			
MAY			
JUNE			
JULY			
AUGUST			
SEPTEMBER			
OCTOBER			
NOVEMBER			
DECEMBER			
TOTALS			

THREE-WAY RECONCILIATION

Attorney Trust Account

Month of March 20 xx

I.	<u>Book Balance</u>	
	A. Balance from Previous Month	\$45,200.00
	B. Receipts	150,800.00
	C. Disbursements	(122,150.00)
	D. Balance at End of Month	<u>\$73,850.00</u>
II.	<u>Bank Balance</u>	
	A. Balance per Bank Statement	\$74,550.00
	B. Add: Deposits-in-Transit	
	date: 3/31/xx	4,300.00
	C. Subtract: Outstanding Checks	
	check #: 718	<u>(5,000.00)</u>
	D. Reconciled Bank Balance	<u>\$73,850.00</u>
III.	<u>Client Trust Ledger Balances</u>	
	A. Client name:	
	Brown to James	\$5,000.00
	Gray from White	19,400.00
	Green v. Green	49,300.00
	Attorney funds for bank charges	<u>150.00</u>
	B. Total of Client Trust Ledgers	<u>\$73,850.00</u>





## OPINION 454

### Attorney's Trust Account - Immediate Drawing Upon Depositing Client's Check

We are asked whether it is ethical for an attorney to deposit funds belonging to a client in the attorney's trust account and to make immediate disbursement from this fund on behalf of the client. This practice usually arises in the context of a title closing, but there are, of course, many other circumstances in which this procedure is followed.

R. 1:21-6(a)(1) and DR 9-102 require that an attorney maintain a separate account for funds of his clients entrusted to his care. He must maintain an appropriate book in which the funds belonging to each client are separately identified. It goes without saying that the funds deposited for a particular client must be used for the benefit of that client and for no other purpose. Many attorneys have substantial sums in their trust account at all times, sums which belong to several clients. Some part of these monies are "collected funds," i.e. funds which represent checks deposited in the account which have had ample time to clear and have thus been properly credited to the attorney's trust account. Depending usually on the distance the drawee bank is from the attorney's bank, it may take from five to ten business days for a check to clear, or from one to two calendar weeks. It is obvious, therefore, that a check drawn on the attorney's trust account for client A the same day client A's check is deposited in this account is drawn on funds which belong to other clients of the attorney.

We are aware of the fact that the foregoing practice is one of long standing in probably universal use not only in New Jersey but elsewhere. We also believe that most attorneys who follow this practice do so only where the checks involved are bank, cashier's or certified checks. Because this procedure is so widespread in title closings, to condemn it as unethical may lead to severe disruption in the handling of title closings and other matters. We suggest first, however, that there are other ways to handle these closings, none of which is entirely satisfactory. Three possibilities come to mind: (1) escrow closings in which no funds are disbursed and no closing completed until all funds have cleared; (2) pre-arrangement by the attorneys involved so that the necessary closing figures are known far enough in advance for the parties to provide funds in such a manner as to obviate the necessity of using the trust account (undoubtedly this would require cooperation of the bank mortgagee which may be asked to provide mortgage funds in several checks); (3) establishment of an account by the attorney of his own funds which can be used to accommodate a client when there is no other solution. Recognizing the problems which would arise were the present practice disapproved in its entirety, it is our opinion that where one of the foregoing solutions is not feasible, the use of bank certified or cashier's checks should be permitted to avoid disruptions in title closings and in the interest of accommodating all clients. Such checks are the obligations of the bank and not simply of a private party. Drawing immediately upon their deposit entails a minimal risk.

The practice which is sanctioned by this opinion has the effort of drawing on unsegregated trust funds of all clients for the benefit of a particular client whose matter is

closing. The reduction thus resulting in available trust funds is eliminated shortly thereafter when the bank, certified or cashier's check clears. The justification for what would otherwise be an unauthorized invasion of trust funds consists of the almost nonexistent risk that such bank, certified or cashier's checks will not clear along with the overriding commercial need of all clients that such a practice be continued. Because the practice is so well known and widespread it is fair to assume that clients have implicitly consented to the negligible risk involved in drawing against such checks which have not yet cleared. Of course, any client who explicitly requests that trust funds deposited for his benefit not be subjected to the practice is entitled to have his funds segregated. A consequence of such segregation would be that client, if involved in a transaction where closing depends upon the issuance of trust checks that have not yet cleared, would have to take special arrangements similar to one of those suggested earlier in this opinion. In other words, a client who does not want to take the negligible risks involved in the unsegregated fund will not receive the substantial benefit of the practice discussed in this opinion. Approval of the practice referred to herein is limited strictly to real estate or commercial closing transactions representing the consummation of an agreement resulting in transfers of property or interests in property whether they be real estate, personal property or a combination of both, including sales of businesses where it is either essentially or commercially desirable that trustee checks be issued against certified, bank or cashier's checks that have not cleared. Drawing on trust funds for other purposes, such as the disbursement of the settlement proceeds of a negligence case, regardless of whether certified, cashier's or bank checks have been deposited but have not yet cleared, is not proper.

We wish to make it clear that the practice we are approving relates only to the use of bank, cashier's or certified checks. We consider the practice of drawing against personal checks to cover miscellaneous items at closing or for any other purpose, regardless of the amount, to be unethical. While these amounts may be small in relation to the size of some trust accounts, the same amount may be large in relation to other trust accounts. Drawing against such personal checks creates a substantial risk of loss of trust funds deposited in the account for other clients, a risk not in any way justified by necessities of the situation. Accordingly, such practice is disapproved.

#### **OPINION 454 (Amendment)**

The Advisory Committee on Professional Ethics has received numerous inquiries concerning its holding in the above matter because the use of checks of savings and loan associations, state or federally-chartered, in connection with real estate or commercial closing transactions was not sanctioned. After careful review of the problems which have arisen because of this exclusion, the Committee has decided that the use of such checks should be approved. Therefore, the first sentence of the last paragraph of Opinion 454 is expanded to read as follows:

"We wish to make it clear that the practice we are approving relates only to the use of bank, savings and loan (state or federal), cashiers' or certified checks."

## **DEPOSITS OF UNCLAIMED FUNDS IN ATTORNEY TRUST ACCOUNTS<sup>1</sup>**

Rule 1:21-6(j) authorizes an attorney to deposit certain funds which are in his or her trust account that may not otherwise be disbursed to a client or on behalf of a client. The rule establishes a three-step process that must be completed prior to submitting the funds for deposit:

1. **Step One:** The attorney must identify those funds which have been unclaimed or in which ownership is unidentified or which are held for a missing owner. The funds must have been in the attorney trust account for more than two years, after which they may be designated by the attorney as suitable for deposit with the Court.
2. **Step Two:** The attorney must maintain the designated funds for a period of one (1) year during which time he/she must conduct a reasonable search for the beneficial owner(s) of the funds. If the ownership of the funds is in question, a diligent effort must be made to determine ownership. If the owner(s) of the funds is known, a diligent search of their whereabouts must be conducted.
3. **Step Three:** If the funds remain unidentifiable, are unclaimed, or the owner(s) cannot be located, they may be deposited into the Superior Court Trust Fund. The attorney must complete a detailed affidavit setting forth the amount and nature of the funds, the name(s) of the owner(s) and the attorney's efforts to identify or to disburse the funds to them. The transaction which gave rise to the trust account deposit that may be helpful to identify ownership of the funds in the event that a claimant subsequently makes application for them.

**Required Documents:** In order to deposit unclaimed funds into Court, the following documents must be submitted to the Trust Fund Unit's mailing address:

Trust Fund Unit  
Superior Court Clerk's Office  
25 Market St  
P.O. Box 971  
Trenton, NJ 08625-0971

1. An original and one copy of the affidavit required by R. 1:21-6(j).
2. A check made payable to the order of "Superior Court of New Jersey" in the exact amount specified in the order (the check does not have to be certified).
3. A self-addressed stamped envelope for mailing the receipt.

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<sup>1</sup> [https://www.judiciary.state.nj.us/civil/superior\\_court\\_trust\\_fund.pdf](https://www.judiciary.state.nj.us/civil/superior_court_trust_fund.pdf)

# Professional Liability Insurance

- 1) **Professional Corporations for the Practice of Law**  
**R 1:21-1A**
- 2) **Limited Liability Companies for the Practice of Law**  
**R 1:21-1B**
- 3) **Limited Liability Partnerships for the Practice of Law**  
**R 1:21-1C**

- **The (professional corporation), (limited liability company), (limited liability partnership) shall obtain and maintain one or more policies of lawyers' professional liability insurance.**

**R 1:21-1A (a) (3)**

**R 1:21-1B (a) (3)**

**R 1:21-1C (a) (3)**

- **Within 30 days after filing its certificate of incorporation... each (professional corporation), (limited liability company), (limited liability partnership)... shall file with the Clerk of the Supreme Court a certificate of insurance.**
- **Amendments to and renewals of the certificate of insurance shall be filed with the Clerk of the Supreme Court within 30 days after the date on which such amendments or renewals become effective.**

**R 1:21-1A (b)**

**R 1:21-1B (b)**

**R 1:21-1C (b)**



