

## [Client Trust Accounts, Part 1 - The basics](#)

**Attorneys have a duty to perform legal services with competence, which includes a nondelegable duty to oversee and properly account for, manage, and protect clients' funds.**

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During the first year of the California State Bar's Client Trust Account Protection Program (CTAPP), the State Bar received many questions from attorneys about client trust accounts (CTAs). Depending on your practice, opening and maintaining a CTA to hold your clients' money may be a necessity. Both IOLTAs and non-IOLTAs ensure your clients' funds are held safely and separately from your own. In this three-part series, we will provide an overview of best practices and highlight common concerns and threats to both you and your clients. The goal of this series is to help you consider your firm's current practices and offer practical tools you may implement to enhance your trust account procedures to protect you and your clients.

This first article of the series addresses the basics, the second examines internal and external threats, and the third looks at money laundering and other illegal activity.

Attorneys have a duty to perform legal services with competence, which includes a nondelegable duty to oversee and properly account for, manage, and protect clients' funds. Attorneys also have specific duties, enumerated in [rule 1.15 of the Rules of Professional Conduct](#), relating to holding, managing, preserving, and accounting for client funds. While you may not personally perform every task related to maintaining your trust account, you have a responsibility to supervise staff to ensure the proper handling of all client funds.

*What is a client trust account?*

A CTA is a bank account maintained at a financial institution for the purposes of receiving or holding funds belonging to a client or third party. Attorneys have statutory and ethical obligations to safeguard these funds. Attorneys must keep client or third-party funds separate

from their business and personal accounts and maintain accurate records to account for such funds.

There are two types of CTAs: IOLTA CTAs, and non-IOLTA CTAs.

### *IOLTA*

An attorney or firm that holds funds for a client or third party for a nominal amount, or for a short period of time, is required to place those funds in an IOLTA account. (Bus. & Prof. Code, § 6211(a)). The IOLTA account must be established and maintained with an eligible institution offering or making available an IOLTA account that meets certain requirements. A list of eligible institutions can be found on the [State Bar's website](#).

Funds are deemed nominal in amount or held for a short period of time if the funds are not large enough, or not held long enough, to earn more in interest for the client or third party than it costs to open and maintain a non-IOLTA CTA.

### *Features of an IOLTA:*

- A single account may be used to hold the funds of multiple clients.
- Multiple client ledgers must be kept to account for all funds because the attorney or firm is required to maintain an individual ledger for each client or third party whose funds are held in the IOLTA.
- All interest earned is automatically transferred to the State Bar to fund legal services for the indigent.
- Monthly bank maintenance fees may be deducted from the interest earned and transferred to the State Bar, but the attorney or firm is responsible to pay for business-related bank fees such as check printing, insufficient fund charges, and wire transfer fees.

### *Non-IOLTA*

Funds held by an attorney or firm on behalf of a client or third party that do not meet the IOLTA requirements must be held in a non-IOLTA account. (Bus. & Prof. Code, § 6211(b)). Typically, funds are held in a non-IOLTA account when an attorney or firm holds funds for a single client that are large enough to generate more than nominal interest, or when an attorney holds funds for a single client for an extended period of time, for example as the administrator of a family trust. The attorney may use a non-IOLTA account so that these entrusted funds will earn interest in excess of the costs to maintain the account and so that the interest earned goes to the client.

### *Features of a non-IOLTA:*

- Only one client's funds are held in the account (either a person or closely related group, such as a family or association).
- Only one client ledger is necessary, because only one client's funds are in the account.
- All interest earned is for the benefit of the client.
- Client pays all monthly account maintenance and business-related bank fees.

*What are the attorney's reporting responsibilities?*

An attorney or firm in possession of client funds and property is a fiduciary and, as such, they must safeguard and segregate those funds. As public protection measures, attorneys are required to report CTA activity to both their clients and the State Bar.

*Reporting to clients*

Attorneys must timely and completely report the status and accounting of their clients' funds to their clients.

Under rule 1.15(d)(1), an attorney shall, absent good cause, notify a client or other person no later than 14 days of the receipt of funds, securities, or other property in which the attorney knows or reasonably should know the client or other person has an interest.

Also, under rule 1.4, an attorney must keep their client reasonably informed about significant developments related to a client's representation, including that an attorney's receipt of funds on behalf of a client ordinarily is a significant development requiring such communication with the client.

*Reporting to the Bar*

Each year, by the same due date for paying annual fees, attorneys must submit annual reporting and registration of all CTAs to the State Bar. If an attorney was responsible for client or third-party funds at any time during the reportable time frame, the attorney must register each and every CTA in which such funds were held, by identifying account names, account numbers, and financial institutions. Attorneys who were actively licensed at any time during the reportable time frame must also complete an annual self-assessment and report the completion of the self-assessment to the State Bar.

Attorneys fulfill their reporting requirements through their My State Bar Profile page. A law firm or agency administrator may register CTA account information through the Agency Billing platform and link to the accounts the names of the firm's attorneys overseeing those accounts. Regardless of whether a firm registers accounts on behalf of the lawyer, individual lawyers must still log into their My State Bar Profile page and complete their portion of the annual reporting.

In addition to registering CTAs and complying with CTAPP, attorneys must comply with rule 1.15, which includes Standards that require an attorney to keep certain records for each CTA, along with the specific information that each document must record.

*How is a CTA different from a business account?*

Every attorney or firm must maintain a separate business or operating account to deposit funds that belong to the attorney and to pay for operating expenses, such as payroll, taxes, and office expenses. It is mandatory that an attorney hold client funds in a CTA (IOLTA or non-IOLTA), and it is mandatory that the attorney hold their own funds (or their practice's funds) in a separate account. The type of account an attorney may hold their own funds in can be determined by the attorney. However, an attorney or firm does not need to maintain a CTA unless they are holding funds on behalf of clients or third parties. Funds to pay business operating expenses must always be separate from any CTA.

Some features of a CTA (both IOLTA and non-IOLTA) that distinguish it from a business account:

- Only a licensed attorney can open a CTA.
- A CTA is protected from garnishment and other imposed withdrawals.
- Banks report all occurrences of overdraft in a CTA to the State Bar, even if overdraft protection is in place, which will lead to investigation of the overdraft.
- Rules imposed specifically for CTAs that are monitored and enforced by the State Bar do not apply to business accounts.

*What can go wrong?*

Now that you understand the CTA basics, and your reporting obligations, let's consider what could go wrong and the procedures you may put in place to help prevent trust accounting errors.

*Time management*

Trust accounting and bookkeeping take time. Some tasks may occur daily, others weekly, monthly, or annually. Whether you are a newly licensed attorney starting your own practice, or a more experienced attorney who is unable to hire a bookkeeper, you need to perform all recordkeeping - including monthly reconciliations of your trust account. It may be tempting to think, "I can put this off until later" and delay essential recordkeeping tasks to prioritize client-related matters. But when later comes, you likely still will not have time for your bookkeeping.

Poor time management can result in bookkeeping errors, delays in communication with clients concerning their funds held in trust, delays or errors in invoicing, and overdrafts of your trust account. These problems can potentially lead to a loss of clients, complaints filed by your clients

with the State Bar, overdraft notices filed by your bank with the State Bar, and even State Bar discipline for ethical violations that occur because of poor recordkeeping.

To avoid these pitfalls, you should schedule time on your calendar every month dedicated exclusively to CTA bookkeeping, just as if you were scheduling a court appearance or a meeting with a client. Given the 14-day notice requirement of rule 1.15(d)(1), it would be even better to do so every two weeks. Even if you rely on a bookkeeper to perform daily entries and accounting tasks, this pre-scheduled time should be spent reviewing their work for accuracy and asking them questions about any bookkeeping entry (or missing entry) that you do not recognize or understand. It is important to remember that you have a nondelegable duty (rule 5.3) to ensure all funds are properly held, regardless of who performs the bookkeeping. This means no matter how busy your practice becomes, you are personally responsible to commit ongoing, consistent time to overseeing your clients' funds.

### *Expertise*

Trust accounting and bookkeeping are not rocket science; however, it takes time to learn how to properly account for CTAs. While it may seem like a good idea to have a family member or trusted employee be responsible for maintaining your books and records, you should still consider their bookkeeping experience. Whether your clients have entrusted you with \$500 or \$5 million, this money always belongs to and is highly valuable to them. The person you assign day-to-day responsibility of your clients' funds should be thoughtfully considered. What experience do they have related to trust accounting? How much time are they committed to spending on maintaining the trust records? Are they trustworthy, thorough, and diligent?

If time or expertise is lacking, consider implementing new procedures to set your practice and your clients up for success.

### *Best Practices*

1. Learn how to properly account for all transactions in your CTA because it is your nondelegable duty to ensure that all funds are properly held, and all records are completely and accurately maintained. [See training resources.](#)
2. If you perform the bookkeeping yourself, schedule time in your calendar on a consistent basis to keep your records up to date (see Bookkeeping Best Practices [here](#) for a suggested schedule).
3. If someone else performs the bookkeeping, schedule time on a periodic basis to review their work for accuracy, including monthly reviews of the CTA reconciliations. Suggested steps for reviewing monthly reconciliations are provided [here](#).
4. At least once a quarter, take time to analyze your current trust accounting and bookkeeping practices. Has your practice grown? Is your bookkeeping falling behind? Is it time to outsource the bookkeeping function of your practice?

5. Consider outsourcing the bookkeeping function of your practice to an accounting professional who is knowledgeable about the specific needs of a law practice as soon as it is feasible. You will still be required to maintain oversight of the recordkeeping and review the bookkeeper's work to fulfill your duties under rule 5.3 duties. However, tasking a professional to help you set up your bookkeeping and perform the day-to-day tasks will allow you to focus on what you do best: legal work.

*Up next*

In the next article of this three-part series, we will focus on fraud risks - both internal and external risks to your practice. The next article will appear Monday, Oct. 23.