

APPENDIX 1

MAINTENANCE OF BOOKS AND RECORDS

Pursuant to Rule 1.15(i), Minnesota Rules of Professional Conduct (MRPC), the Lawyers Professional Responsibility Board adopted the following as the books and records required by Rule 1.15(h), MRPC:

Every attorney engaged in the private practice of law must maintain the books and records described in this Appendix to comply with the applicable provisions of the 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 contemporaneously maintained for funds and property received and disbursed by an attorney in a fiduciary capacity. These books and records must be separately maintained for each individual trust account.

1. An identification of all trust accounts maintained, including the name of the bank or other financial institution, account number, account name, date account opened, and an agreement with the bank establishing each account and its interest bearing nature. A record should also be maintained showing clearly whether each such account is pooled, with net interest paid to the IOLTA program, pooled with allocation of interest, or individual, including the client name. *See* Rules 1.15(e) and (f)(2), MRPC.

2. A check register for each trust account that chronologically shows all deposits and checks and the balance of funds remaining in the account.

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 check number, the payee, the amount, the identity of the client for whom the check was issued, and the purpose of the check. An attorney may not make ATM or other cash withdrawals from a trust account and may not issue trust account checks in payment of the attorney's own personal or business expenses.

3. A subsidiary ledger for each client matter in which the attorney deposits funds into a trust account.

a. For every trust account transaction, attorneys must record on the appropriate client subsidiary ledger the date of deposit or disbursement, the amount of the transaction, 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 in any subsidiary ledger.

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. The amount of an attorney's own funds in a trust account shall not exceed \$200. 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 IOLTA program 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 trial balance of the subsidiary ledgers, performed on a monthly basis, which shows each client matter for which the attorney is holding funds in a trust account, the balance of funds held on behalf of each client matter as of the date of the monthly bank statement, and a total of all such client balances. No client subsidiary ledger balance should be negative at any time. If at the time a trial balance is performed, however, a negative client subsidiary ledger balance has not yet been rectified, that balance should be viewed as zero for purposes of computing the trial balance total. A negative client subsidiary ledger balance may not serve to reduce the trial balance total.

5. A reconciliation of the check register balance, the subsidiary ledger trial balance total, and the bank statement balance performed on a monthly basis. The adjusted bank statement balance is determined by adding the outstanding deposits and subtracting the outstanding checks from the monthly bank statement balance.

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

6. Bank statements, canceled checks, if they are provided with the bank statements, bank wire, electronic or telephone transfer confirmations, and duplicate deposit slips. Checks, fund transfer confirmations and deposit slips must be annotated with the identity of the affected client. Cash payments must be documented by a receipt countersigned by the payor, which identifies the client on whose behalf the cash payment was received. Attorneys making deposits using substitute checks pursuant to the Check Clearing for the 21st Century Act must request and retain image statements from the bank for each such deposit. For withdrawal by bank wire, electronic or telephone transfer, an attorney or law firm must create a written memorandum authorizing the transaction, signed by the attorney responsible for the transaction. The bank wire, electronic or telephone transfer must be entered in the check register and appropriate client subsidiary ledger and include all the identifying information listed in paragraphs I(2)(b) and I(3)(a) of this Appendix.

7. Electronic Record Retention. An attorney who maintains trust account records by computer must print and retain, on a monthly basis, the check register, the trial balance of the subsidiary ledgers, and the reconciliation report. In the alternative, the check register, trial balance of the subsidiary ledgers and reconciliation report may be retained in a PDF form on an electronic device separate from the one on which these materials were created. Electronic records, both those maintained contemporaneously and those retained in a PDF form, 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 for clients or others, except 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.

9. Each trust account shall be maintained in a financial institution that is authorized by federal or state law to do business in Minnesota, is located, or has a branch office located, in Minnesota, and has executed a "Trust Account Overdraft Notification and IOLTA Comparability Agreement."

10. An attorney may accept payment of trust funds by credit card. If the credit card company is unable to credit the funds to the trust account, while debiting all transactional and other fees from the attorney's business or other non-trust account, however, all credit card payments must be deposited into the attorney's business or other non-trust account. The attorney must then immediately transfer the unearned portion of the funds to a trust account.

11. Except in the context of real estate sales transactions, an attorney shall not disburse funds from a trust account unless the bank in which the attorney maintains the trust account has made the funds available for disbursement and the instrument that is the source of the deposit has cleared the bank account on which it was issued.

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 shall 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 billings to clients.

2. Copies of receipts, countersigned by the payor, for all cash payments.

3. Check registers, bank statements, canceled checks, if they are provided with the bank statements, 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.

(Added effective September 30, 2005; amended effective June 26, 2008; amended effective July 1, 2010; amended effective June 26, 2015.)