



## BAR COUNSEL INSIDER

*Bar Counsel Insider provides practical and important information to State Bar members about ethics and the disciplinary process.*

### Do You Need a Trust Account?

A common misperception is that every lawyer in private practice must have a client trust account.

The purpose of a trust account—whether it’s a pooled-interest account or an account for a single client—is to hold funds of clients or third persons. The fundamental idea is that those funds do not belong to the lawyer and must be held separately from the lawyer’s own property.

As a result, if the only money you receive as a lawyer belongs to you (and only you) the minute you receive it, you don’t need a trust account. If any money you receive does not immediately belong to you (and only you), then you need a trust account.

This is why you must properly characterize any funds you receive. Consider these two examples:

- Example 1: The client pays you an *advance fee* against which you will bill hourly when you perform the work next week.
- Example 2: You charge the client a *flat fee earned upon receipt*—and the client pays you this amount—for work you will perform next week.

You haven’t done the work in either case, and you’ve received funds from the client. So shouldn’t both payments go into a trust account? No.

In Example 1, the arrangement with the client is that the funds belong to the client until you perform the work and bill the client for your work. This *advance fee* needs to go into your client trust account until you do the work. In Example 2, the arrangement with the client is that the money belongs to you when you receive it—even though you haven’t done the work yet—and therefore should not be deposited into the client trust account.

What other money needs to go into a client trust account? Any funds you receive in advance for costs that you have not incurred but will be owed by the client. Any funds that belong partly to you and partly to the client, such as a personal-injury settlement. Any funds in which a third person, such as a medical provider, has an interest.

As a practical matter, think carefully about whether you need a trust account. Maintaining a trust account—even one used rarely—takes time and attention. It also has a built-in risk: If you have a non-sufficient-funds charge, the bank automatically reports that to the State Bar, which will look into the matter. On the other hand, if you have the sort of practice in which you may need a trust account, you’ll want to have one set up before the day you need it.

If you don’t already have a trust account, you can find information about creating one on the State Bar’s Web site: [www.myazbar.org/Members/LOMAP/trustaccount.cfm](http://www.myazbar.org/Members/LOMAP/trustaccount.cfm). And you can call the State Bar’s trust account hotline (602-340-7305) for specific help on maintaining your trust account, such as performing the required three-way reconciliation. *Contact the State Bar’s Ethics Hotline at (602) 340-7284.*

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## ETHICS OPINIONS

### Opinion No. 08-01 (September 2008)

A lawyer may accept credit-card payments only for earned fees, earned-upon-receipt retainers, or reimbursement for advanced costs. Such credit-card payments may not be deposited into the lawyer’s trust account. A lawyer may not accept payment in advance by credit card for unearned fees or costs not yet advanced. A lawyer may receive a single, non-cash payment from a client consisting of funds belonging partly to the client and partly to the lawyer. Such a payment must occur by check, money order, or electronic-fund transfer, and must be deposited into the lawyer’s trust account. After the transaction has cleared the issuing bank, the lawyer’s portion must be removed promptly from the trust account.

**Need an Opinion?** Check out the State Bar Web site at [www.myazbar.org/Ethics](http://www.myazbar.org/Ethics) for a listing of the ethics opinions issued between 1985 and 2008, as well as Arizona’s Rules of Professional Conduct.

If you are an Arizona attorney and have an ethics question, call our ethics counsel, Patricia A. Sallen, at the ethics hotline: (602) 340-7284.

## IOLTA TRUST ACCOUNT ANSWERS AVAILABLE

The answers to the Who, What, When, Where and Why questions concerning your Interest on Lawyers Trust Account (IOLTA) are just a phone call away.

**When can I disburse right away on a deposit? My client really needs his money.**

**Where does this check go? Into my trust account or my operating account?**

**Why can’t I get cash back from a deposit to the trust account?**

**What is a monthly “three-way” reconciliation?**

**Why can’t I have overdraft protection on my trust account?**

**I just opened my trust account. Why can’t I use the starter checks I have?**

**Who can be a signer on my trust account?**

**What records do I really need to keep for my trust account?**

**What amount of personal funds can I keep in the trust account?**

**What ways can I disburse from my trust account?**

**When can I stop keeping my trust account records?**

If you call the Trust Account Hotline at (602) 340-7305, Monday through Friday, 8:00 a.m. to 4:30 p.m., a State Bar of Arizona Trust Account Examiner will provide you with this information at no cost. The Examiner will not give legal advice but will answer your questions so that you are in compliance with Rule 42, ER 1.15(a), Rule 43, and Rule 44 ARIZ.R.S.Ct.