

EXAMPLE TRUST ACCOUNTING MAINTENANCE CHECKLIST¹

- The trust account is an interest on lawyer trust account (“IOLTA”) at a participating IOLTA financial institution
- All unearned funds, whether client or third-party funds, are promptly deposited into the IOLTA
- Individual client/third party ledgers are kept for each client/third party for whom funds are held with a running balance of funds held for the client/third party
- A general ledger is maintained which records every transaction involving the IOLTA, and which has a running balance of all funds held in the IOLTA
- Contemporaneous entries are made to the applicable client ledger and to the general ledger for every transaction involving the IOLTA.
- The IOLTA is reconciled monthly by ensuring that the general ledger running balance as of the day the reconciliation is performed is equal to the sum of the individual client ledgers that same day, and is equal to the IOLTA bank statement balance adjusted for uncleared deposits (+) and withdrawals or outstanding checks (-).
- Flat fees, if any, collected from the client before all of the work is completed are deposited into the IOLTA and earned incrementally, or by reasonable benchmarks agreed to with the client at the inception of the representation.
- The firm obtains a written agreement at the inception of representation, signed by both the client and any 16-108(F) third-party payer, for all third-party payer funds deposited to the IOLTA which specifically instructs the firm to whom any unearned funds are to be returned at the termination of representation
- Any unearned client funds held in the IOLTA at the termination of representation are refunded to the client, including any unearned flat fees
- Any unearned 16-108(F) third-party payer funds held in the IOLTA at the termination of representation, including any unearned flat fees, are refunded to either the client or the third-party payer depending upon the written agreement obtained from the client and third-party payer at the inception of representation
- Earned fees are deposited directly into the operating account if earned when paid, or transferred from IOLTA into the operating account within a reasonable time after they are earned if previously held as unearned fees in the IOLTA

- No “cushion” of lawyer funds is deposited or kept in the IOLTA, instead, the only lawyer funds deposited to the IOLTA are for the sole purpose of paying bank service charges on the account and only in the amount necessary for that purpose
- If a client disputes a transaction involving the IOLTA, the disputed funds are held in trust in the IOLTA pending resolution
- Complete trust account records are kept in accordance with Rule 17-204, NMRA for a minimum of five (5) years
- A written trust account plan is in place as required by Rule 17-204
- Lawyers in the firm have taken the mandatory trust accounting class at least once every three years
- Lawyers and non-lawyer staff have been trained, as appropriate, on proper trust accounting procedures adopted by the law firm
- At least one lawyer licensed to practice law in New Mexico is an authorized signer on the IOLTA, and is responsible for making or overseeing monthly reconciliations of the IOLTA, and responding to inquiries regarding the IOLTA from regulatory authorities
- Only licensed attorneys have signature authority on the IOLTA
- The firm has obtained written consent from each New Mexico client whose funds are held in any out-of-state trust account

ⁱ *This checklist is provided to members of the State Bar of New Mexico for informational purposes only and is not intended to nor does it constitute legal advice to a lawyer or law firm. Further, this checklist is not a substitute for independent analysis and research by a lawyer or law firm. Each lawyer and law firm are responsible for their own compliance with applicable rules and laws.*