

TRUST ACCOUNTING RULES FOR WASHINGTON PRACTITIONERS

Useful Links and Contacts Concerning Washington IOLTA Accounts

- General information:
<http://www.wsba.org/Licensing-and-Lawyer-Conduct/IOLTA-AND-CLIENT-TRUST-ACCOUNTS>
- Washington Rules of Professional Conduct:
<http://www.wsba.org/Resources-and-Services/Ethics> (Select “Rules of Professional Conduct” from the right-hand navigation panel.)
- Ethics Hotline:
<http://www.wsba.org/Resources-and-Services/Ethics>
Telephone: 206-727-8284 or 800-945-WSBA, ext. 8284
- Legal Foundation of Washington:
http://www.legalfoundation.org/pages/bank_list
- *Managing Client Trust Accounts – Rules, Regulations, and Common Sense* (Revised September 1, 2012). Available at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/IOLTA-AND-CLIENT-TRUST-ACCOUNTS> (Select “Trust Account Booklet” from right-hand navigation panel.)

Oregon and Washington - A Quick Comparison

If you practice in Oregon and Washington, learn and understand the differences between Oregon and Washington trust accounting rules, which include:

Requirements	Washington	Oregon
Random Audits of Lawyer Trust Accounts?	Yes	No
Nonlawyers Prohibited from Signing Trust Account Checks?	Yes	No
Trust Account Record Retention Requirements	7 Years	5 Years
Two Merchant Accounts Required if Accepting Credit Cards?	Yes	No
Special Restrictions on Flat or “Earned on Receipt” Fees?	Yes	Yes
Use Client’s taxpayer ID number on individual trust account?	Yes	No

Merchant Accounts

Washington: If you accept credit card payments for both earned fees and advance fees/costs, you must have two merchant accounts.

Oregon: If the bank requires that you designate a *single* merchant account for *all* credit card transactions and you accept credit card payments for earned *and* unearned fees, your merchant account should be a trust account. Commingling is avoided by promptly transferring those funds into your business account (once the credit card transaction has cleared the bank). OSB Formal Ethics Opinion No. 2005-172.

Flat Fees

Washington: Review Washington RPC 1.5(f)(1) and (f)(2). Also see the discussion in *Managing Client Trust Accounts – Rules, Regulations, and Common Sense* referred to above.

Oregon: Review Oregon RPC 1.5, 1.15, and OSB Formal Opinion 205-151:

- Money paid to a lawyer BEFORE services are rendered must be put in the trust account unless the lawyer and the client have a signed, written agreement which designates the money as earned on receipt. The written agreement must explain that the funds will not be deposited into the lawyer trust account and the client may discharge the lawyer at any time and in that event may be entitled to a refund of all or part of the fee if the services for which the fee was paid are not completed. (ORPC 1.5(c)(3), amended December 2010). See OSB Legal Ethics Opinion No. 2005-151.
- A lawyer who receives a fixed fee before performing services and who has no signed, written agreement with the client that the fee is earned on receipt, may transfer the funds from trust only upon completion of the agreed services. See OSB Legal Ethics Opinion No. 2005-151.
- Even a fee designated as a fixed fee, earned on receipt, or a “nonrefundable” fee is subject to refund if the specified services for which the fee was paid are not performed. This is true whether the money has been placed in the trust or general account. See OSB Legal Ethics Opinion No. 2005-151. Whether, or to what extent, a lawyer must refund fees paid in advance when a client terminates the lawyer’s services in bad faith near the end of a matter is an open question. OSB Legal Ethics Op No. 2005-151.
- Use of the term “nonrefundable” should be avoided. Such a designation may be misleading, if not false, in violation of ORPC 8.4(a)(3), which prohibits conduct involving “dishonesty, fraud, deceit or misrepresentation that reflects adversely on the lawyer’s fitness to practice law.” OSB Legal Ethics Op No. 2005-151.

IF YOU ARE AN OREGON LAWYER WITH WASHINGTON CLIENTS, TRUST ACCOUNT FUNDS RELATED TO YOUR WASHINGTON MATTERS SHOULD BE DEPOSITED IN YOUR WASHINGTON TRUST ACCOUNT. WSBA INFORMAL OPINION NO. 959.

Questions? Looking for Help?

If you are a Washington practitioner and have questions about the Washington RPCs, contact the Washington State Bar Association (WSBA) Ethics Hot Line, <http://www.wsba.org/Resources-and-Services/Ethics>. Telephone: 206-727-8284 or 800-945-WSBA, ext. 8284.

Oregon practitioners may contact the Oregon State Bar General Counsel’s office with ethics questions: <http://www.osbar.org/ethics>. Telephone: 1-800-452-8260.

Confidential assistance with trust account questions is also available from the practice management advisors at the Professional Liability Fund, www.osbplf.org. Telephone: 1-800-452-1639 or 503-639-6911.

Practice Tips for Washington/Oregon Practices

- Review your fee agreements to verify they conform to rules and ethics opinions in the states in which you practice.
- Order or download a copy of *A Guide to Setting Up and Using Your Lawyer Trust Account*, available on the PLF Web site, www.osbplf.org.
- Download *Managing Client Trust Accounts – Rules, Regulations, and Common Sense* from the WSBA at <http://www.wsba.org/Licensing-and-Lawyer-Conduct/IOLTA-AND-CLIENT-TRUST-ACCOUNTS> (Select “Trust Account Booklet” from right-hand navigation panel.)

IMPORTANT NOTICES

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