

Abo Cipolla Financial Forensics, LLC

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ATTORNEY TRUST ACCOUNTING CHECKLIST

Abo and Company, LLC

Abo Cipolla Financial Forensics, LLC

Certified Public Accountants - Litigation and Forensic Consultants

Website: www.aboandcompany.com

307 Fellowship Road, Suite 202, Mount Laurel, NJ 08054 Phone: 856-222-4723 Fax: 856-222-4760

449 North Pennsylvania Avenue, Morrisville, PA 19067 Phone: 215-736-3156 Fax: 215-736-3215



Martin H. Abo, CPA/ABV/CVA/CFF is Managing Member of **Abo and Company, LLC** – Certified Public Accountants as well as a member of **Sharkey Abo Rodeffer and Associates, LLC** – Certified Public Accountants. He is co-managing member of **Abo Cipolla Financial Forensics, LLC**, an affiliate of the core accounting firm exclusively providing expert witness testimony on financial matters and other litigation support services as well as business valuations.

Marty has comprehensive experience in individual and corporate financial, business and tax planning. His previous experience includes several years with the tax department and audit staff of a Big Four CPA firm as well as regional firms before he founded the present enterprise. Marty has developed a specific expertise in performing dispute resolution and other consulting services. Clients, as well as the banking, insurance, judicial and legal community, increasingly call upon him to provide technical assistance, arbitration or expert testimony on financial accounting matters, business valuations, structuring buy-ins and buy-outs, divorce, estate controversies, insurance claims and other forensic/investigative analysis covering a wide range of topics and industries. He has operated in a supportive capacity to attorneys, judges, adjusters and clients in providing ongoing facilitation in the negotiation and/or litigation process. Marty assists attorneys to strengthen their cases by clarifying language and economic concepts, preparing useful exhibits and reports, and testifying as an expert witness.

A graduate of Syracuse University, Marty is an active member and chaired for several years the Litigation Support & Forensic Accounting Interest Group of the New Jersey Society of CPAs. Marty holds the professional designation of Certified Valuation Analyst from the National Association of Certified Valuators and Analysts and has been awarded the designation of ABV, Accredited in Business Valuation, and CFF, Certified in Financial Forensics, by the American Institute of CPAs.

Marty volunteers his time and expertise to many other business and professional organizations: he had previously served as a director of a local bank and, 14 times, had been one of 150 participants selected by the S.E.C. from CPAs, lawyers, bankers, venture capitalists and economic development experts, from across the nation for its annual conference on issues of Small Business Capital Formation. He was selected a NJ delegate to the White House Conference on Small Business under two U.S. Presidents while the Small Business Administration had named him "**Accountant Advocate of the Year**". In 2014, Philadelphia publisher, SmartCEO, selected Marty as "**Accountant of the Year**" for its prestigious Power Player Awards along with several highly respected professionals determined to be the impact players that CEOs could count on to help them grow their business. Marty serves as a Director of Deborah Hospital Foundation; serves as a Director of the Society of Financial Service Professionals-South Jersey Chapter; is an active member and served as President of the Estate and Financial Planning Council of Southern New Jersey; is an active member and served as a Director of the Chamber of Commerce of Southern New Jersey; he serves on the Matrimonial Accounting Interest Group of the NJSCPA; and had served as a special advisor to the New Jersey Small Business Development Centers. Marty is a director and treasurer of Exit Planning Exchange-Philadelphia (XPX), whose members include estate planning attorneys, CPAs, investment bankers, wealth advisors, commercial lenders, executive coaches, M&A attorneys, marketing and management consultants as well as former business owners who now advise fellow business owners on exit planning.

MARTIN H. ABO, CPA/ABV/CVA/CFF

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EDUCATION AND LICENSES

BS 1972 Syracuse University (Dual major in Accounting & Transportation)
CPA 1974 New York (earliest permitted, currently inactive) 1977 New Jersey 1977 Pennsylvania

PROFESSIONAL EMPLOYMENT HISTORY

1969 - Norman Abo, CPA, P.C.	1979 - Abo Uris & Altenburger/ now Baker Tilly
1972 - Touche Ross/now Deloitte & Touche	1997 - Martin H. Abo, CPA / now Abo and Company
1976 - Alloy Silverstein Shapiro et al	2012 - Abo and Company/Sharkey Abo Rodeffer & Assoc.
1977 - Martin H. Abo, CPA	2013 - Abo and Company/Sharkey Abo Rodeffer & Assoc/ Abo Cipolla Financial Forensics

PROFESSIONAL DESIGNATIONS & ASSOCIATIONS

Awarded CVA (Certified Valuation Analyst) by National Association of Certified Valuators & Analysts

Awarded ABV (Accredited in Business Valuation) by the American Institute of CPAs

Designated as CFF (Certified in Financial Forensics) by the American Institute of CPAs

Appointed by the Supreme Court of NJ and its Office of Attorney Ethics for its Ethics Committee

American Institute of CPAs - Forensic & Valuation Services Section (Member)

NJ Society of CPAs- Litigation Support, Valuation, Matrimonial Accounting & Forensic Accounting Interest Groups (Member/Past Leader/Chairman)

Selected as a NJ Delegate to the White House Conference on Small Business for 2 U.S. Presidents and selected as "Accountant Advocate of the Year" by the U.S. Small Business Administration.

Estate and Financial Planning Council of Southern NJ (member / Past President)

Exit Planning Exchange – Philadelphia (Member/Treasurer-Director)

Society of Financial Service Professionals - Member/Past Director of South Jersey Chapter

Uniform Securities Agent, Licensed Series 6 & 63/Health/Accident/Life Insurance in NJ, PA, & De

Chamber of Commerce of Southern NJ (Member / Past Director & Member of Executive Committee)

National Federation of Independent Business – Member / Selected as Spokesperson

Selected 14 times by U.S. SEC for its *Govt/Business Forum on Small Business Capital Formation*

Cherry Hill National Bank (now Wells Fargo Bank)-Past Director / Loan & Audit Committee (Chairman)

Deborah Heart & Lung Center / Deborah Hospital Foundation – Board member

Lecturer for Chester Cty, Camden Cty, NYC & NJ State Bar Associations on Buy-sell agreements; for NJ Inst.Continuing Legal Education on *Tax Aspects of Personal Injury Awards*, on *Accounting for Lawyers*, on *Representing a Buyer of Seller of an Ongoing Business*, on *ABC's of ADR for Family Lawyers*, on *Financial Side of a Law Practice* and on *Damages in Employment Cases*; for Risk Management Assoc. on *Financial Statement Manipulation*; for Nat'l. Business Institute on *Accounting 101 for Attorneys*, on *Business Law for Attorneys* and on *Forensic Accounting for Attorneys*; Tax Issues for NJ Family Law Judges; National Assoc. Employment Lawyers-NJ on *Collections*; Camden Cty Bar Assoc on *IRS Audit Guide for Attorneys*; Society of Financial Service Professionals on *Finding the True Income of the Divorcing Couple*; Estate & Financial Planning Council of Southern NJ on *Valuation and Succession Planning for a Business*. 12/14

A Word on Attorney Trust Accounting

The property and recordkeeping requirements of an attorney's trust account is of critical importance. Abo and Company LLC developed the enclosed checklist for use by some of the law firms we represent and believe it would be of benefit to other legal colleagues. The extra effort involved in properly monitoring this activity should be dwarfed by the potential exposure to third party scrutiny (i.e. Disciplinary Review Board, Office of Attorney Ethics or even Supreme Court), client embarrassment, bank charges, poor internal controls, etc.

We've found the checklist of most value when it was circulated around the law firm and completed anonymously by lawyers, paralegals, secretaries, bookkeepers and others involved in this vital function. The variances noted have generally been quite surprising (albeit most often inadvertent). Also, by so doing, internal controls and procedures are usually able to be strengthened.

At the end of the checklist, we've included, as Appendix A, the minimum recordkeeping requirements in New Jersey under Court Rule 1:21-6. We also believe this should be carefully read and periodically reviewed to ensure compliance.

As with any business or professional services operations, so many of our lawyer clients and colleagues utilize computers to supplement or even supplant their manual bookkeeping records. The detailed recordkeeping rule at R.1:21-6(d) specifically authorizes use of computer records "*...provided they otherwise comply with the rules and provided further that printed copies and computer files in industry-standard formats can be made on demand.*" Since any such computer programs should employ the very same attributes/controls evident in a manual system, reference in the attached checklist should be fairly interchangeable between either a manual or automated system.

Again, we believe that this very important aspect of a law practice should receive the proper attention it merits. Firms would be well advised to confer with their accountants to possibly assist in setting up a system of testing your firm's compliance with sound and required procedures.

Martin H. Abo, CPA/ABV/CVA/CFF

Firm/Lawyer _____
 Prepared by _____
 Date _____

Attorney Trust Accounting Checklist

	Always or yes	Never or no	Usually	N/A
1. Do you know the time after which the Bank considers deposits to be next day transactions?	_____	_____	_____	_____
2. Does the deposit slip show				
✓ date the slip was made up?	_____	_____	_____	_____
✓ amount of the deposit?	_____	_____	_____	_____
✓ name or file number of the client on whose account the money was actually received by the bank?	_____	_____	_____	_____
3. Do all trust checks written indicate on their face the client name or file number?	_____	_____	_____	_____
4. Is a running balance for the trust account maintained after every check, every deposit and every debit or credit memo?	_____	_____	_____	_____
5. Are all attorney trust accounts maintained only in New Jersey and only in banks which have qualified with the Supreme Court?	_____	_____	_____	_____
6. Is cash ever held in a safe, envelope, closet or any other place except the trust account?	_____	_____	_____	_____
7. Are there any signatories on the trust account who are not attorneys or who are not licensed in New Jersey?	_____	_____	_____	_____
8. Are signature stamps used on the trust account?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
9. Is every trust bank account titled "Attorney Trust Account?"	_____	_____	_____	_____
10. Are any funds deposited into the trust accounts while an attorney acts as a				
✓ Guardian?	_____	_____	_____	_____
✓ Executor?	_____	_____	_____	_____
✓ Trustee?	_____	_____	_____	_____
✓ Receiver?	_____	_____	_____	_____
✓ Other similar fiduciary capacity?	_____	_____	_____	_____
11. Are the following monies ever deposited into the trust account?				
✓ Attorney's personal funds	_____	_____	_____	_____
✓ Business and investment monies of the attorney	_____	_____	_____	_____
✓ Payroll taxes and employee wages	_____	_____	_____	_____
12. Does the trust receipts book list each and every deposit?	_____	_____	_____	_____
13. Does the trust receipts book specifically identify:				
✓ Date?	_____	_____	_____	_____
✓ Source?	_____	_____	_____	_____
✓ Client?	_____	_____	_____	_____
✓ Case Number or File Number?	_____	_____	_____	_____
✓ Amount ?	_____	_____	_____	_____
✓ Deposit ? (may be same or a combination of receipts)	_____	_____	_____	_____
14. Does trust disbursement book specifically identify:				
✓ Date?	_____	_____	_____	_____
✓ Check number?	_____	_____	_____	_____
✓ Payee?	_____	_____	_____	_____
✓ Purpose?	_____	_____	_____	_____
✓ Client?	_____	_____	_____	_____
✓ Case Number or File Number?	_____	_____	_____	_____
✓ Amount?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
15. Do all checks written on the trust account:				
✓ Indicate the date and client/file number?	_____	_____	_____	_____
✓ Indicate the payee?	_____	_____	_____	_____
16. Does the trust disbursement book reflect each and every disbursement/debit memo?	_____	_____	_____	_____
17. Is a separate client's trust ledger (i.e., subsidiary ledger) maintained, manually or on a computer?	_____	_____	_____	_____
18. Is a separate, single page maintained for each trust client (i.e., subsidiary card)?	_____	_____	_____	_____
19. Does a separate ledger sheet reflect:				
✓ Source of funds deposited?	_____	_____	_____	_____
✓ Name of all persons for whom funds are held?	_____	_____	_____	_____
✓ Amount of such funds?	_____	_____	_____	_____
✓ Description and amounts of all charges from such accounts?	_____	_____	_____	_____
✓ Description and amounts of all withdrawals from such accounts?	_____	_____	_____	_____
✓ Names of all persons to whom funds are disbursed?	_____	_____	_____	_____
✓ Name of attorney handling case?	_____	_____	_____	_____
20. Are trust account bank statements reconciled to the actual checkbook balance:				
✓ Quarterly?	_____	_____	_____	_____
✓ Monthly?	_____	_____	_____	_____
21. Are trust account bank reconciliations tied into the total from a detailed listing of all client ledger cards:				
✓ Quarterly	_____	_____	_____	_____
✓ Monthly	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
22. Are copies retained of all written records reflecting reconciliations?	_____	_____	_____	_____
23. Are trust account withdraws ever made in cash?	_____	_____	_____	_____
24. Are ATM or cash withdrawals from the trust account ever used?	_____	_____	_____	_____
25. Are all trust account withdrawals made by authorized financial institution transfers or by check payable to a named payee?	_____	_____	_____	_____
26. Are trust checks payable jointly to a client and attorney ever endorsed over to the client?	_____	_____	_____	_____
27. Does an attorney ever endorse a clients name to a check?	_____	_____	_____	_____
28. Are legal fees ever paid by drawing trust checks directly to the attorney or his/her creditors?	_____	_____	_____	_____
29. Does the attorney ever make out a trust account check payable directly to a creditor of the attorney or for a personal expense (even if properly due a legal fee)?	_____	_____	_____	_____
30. Does the retainer agreement provide an express power of attorney to routinely endorse the client's name on an insurance check?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
31. Except for personal injury matters, does the firm make sure that a Power of Attorney authorizing a lawyer to sign necessary documents including checks is only used in "extraordinary circumstances" (i.e. out of the country or disabled)?	_____	_____	_____	_____
32. Is the client given advance notice of the nature of services rendered and the amount of the legal fee proposed before an earned fee is withdrawn?	_____	_____	_____	_____
33. Are all attorney fees justly due and owing promptly withdrawn?	_____	_____	_____	_____
34. Are general retainers for legal services deposited into the trust account when there is an explicit understanding with the client that the retainer will be separately maintained?	_____	_____	_____	_____
35. Is more than \$250 of the law firm's money retained in the trust account?	_____	_____	_____	_____
36. Is a separate trust ledger card maintained for such law firms monies?	_____	_____	_____	_____
37. Have arrangements been made with the financial institution where trust accounts are maintained to debit another account so maintained at that financial institution for service charges to the trust account?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
38. Are clients' funds ever invested:				
✓ Without the clients' consent in writing?	_____	_____	_____	_____
✓ In mediums other than governmentally- Insured bank accounts?	_____	_____	_____	_____
39. If the client permits investment of the trust funds, is all interest or accretion paid/credited as property of the client?	_____	_____	_____	_____
40. Is a "stop payment" ever made on a trust check issued to the sellers in a real estate transaction where the parties have agreed, by signing the closing statement, that all obligations have been met?	_____	_____	_____	_____
41. Have monies ever been drawn on trust funds which have not been "collected" by the attorney's financial institution (other than cashier's or certified checks In real estate and commercial closings)?	_____	_____	_____	_____
42. Are all trust related records maintained for at least seven years after the event which they record?	_____	_____	_____	_____
43. Are computerized accounting data backed-up on a daily or weekly basis?	_____	_____	_____	_____
44. Are such back-ups stored off site?	_____	_____	_____	_____
45. Are non-bank money market funds used as depositories for trust funds?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
46. If non-bank money market funds are used as depositories for trust funds, have written instructions been received by the client?	_____	_____	_____	_____
47. Are different color client trust ledger sheets used for separate trust accounts to distinguish them from those ledger sheets belonging to the general attorney trust account ?	_____	_____	_____	_____
48. Are all deposits entered within 24 hours of the originating event?	_____	_____	_____	_____
49. Are all disbursements entered in the checkbook, the disbursement book and on to the ledger card within 24 hour of issuance?	_____	_____	_____	_____
50. Are all receipt and disbursement entries entered to the penny?	_____	_____	_____	_____
51. Is a trust account "receipts/ disbursements control sheet" maintained indicating month, total receipts, total disbursements, and a running balance?	_____	_____	_____	_____
52. Are original closed trust ledger cards kept separate from the closed files?	_____	_____	_____	_____
53. Are photocopies of the closed ledger sheet placed in the individual client case file?	_____	_____	_____	_____
54. Are entirely separate pages or ledger cards placed in the original client case file?	_____	_____	_____	_____
55. Is the reverse side of one client's ledger card ever used for another client's case?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
56. Does one client ledger card ever reflect multiple matters handled by the same attorney?	_____	_____	_____	_____
57. Are trust account disbursements ever made by post-dated checks?	_____	_____	_____	_____
58. Is the social security or taxpayer identification number obtained for each client where an interest bearing account is set up?	_____	_____	_____	_____
59. To avoid inadvertent trust deposits to the attorney's business account, does the trust account:				
✓ Have different color deposit slips?	_____	_____	_____	_____
✓ Have its deposit slips located in a separate drawer?	_____	_____	_____	_____
60. Does the trust account have different color checks from the business account?	_____	_____	_____	_____
61. If the bank repeatedly miscredits deposits or improperly charges checks from one trust account to another trust or business account have you considered maintaining some or all accounts at a different bank?	_____	_____	_____	_____
62. Are monthly/quarterly reconciliations distributed to the attorneys' for proper review, comment and possible follow-up?	_____	_____	_____	_____
63. If trust property, other than cash, is received, is the property always properly identified and safeguarded?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
64. For outstanding trust checks:				
✓ Have letters, phone calls and other follow-up procedures been documented in tracking down payees?	_____	_____	_____	_____
✓ If checks are over two (2) years outstanding, is payment made to the Clerk of the Superior Court?	_____	_____	_____	_____
65. Are the attorney business accounts primarily designated as "Attorney Business Account", "Attorney Professional Account" or "Attorney Office Account"?	_____	_____	_____	_____
66. Are trust checks ever issued for indeterminate amounts (ex., not good for more than \$50)?	_____	_____	_____	_____
67. Are all trust checks prenumbered and issued in sequential order?	_____	_____	_____	_____
68. Are loans made to clients or "draws" against anticipated recoveries?	_____	_____	_____	_____
69. Are receipts, disbursements, client ledgers or other business records ever taken home by employees of the firm?	_____	_____	_____	_____
70. Are loans to or from clients ever made through the trust accounts?	_____	_____	_____	_____
71. Is cash ever received in excess of \$10,000?	_____	_____	_____	_____
72. If so, is federal form 8300 filed within 15 days of the transaction?	_____	_____	_____	_____
73. Are 1099s properly filed for all referral commissions paid exceeding \$600 per year to un-incorporated individuals or businesses?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
74. How many secretaries or bookkeepers have access to trust and business account records?				
✓ One?	_____	_____	_____	_____
✓ Two?	_____	_____	_____	_____
✓ More than two?	_____	_____	_____	_____
75. Does the same secretary/bookkeeper open the mail and/or record incoming checks?	_____	_____	_____	_____
76. Does a different secretary/bookkeeper reconcile the trust account than the one maintaining the actual records?	_____	_____	_____	_____
77. Does the firm's designated CPA perform a Review of the trust activity:				
✓ Quarterly?	_____	_____	_____	_____
✓ Annually?	_____	_____	_____	_____
✓ Randomly?	_____	_____	_____	_____
78. After a case or file is completed, does an attorney, para-legal or experienced but separate secretary perform an "independent review" of all trust records and files?	_____	_____	_____	_____
79. Does an attorney:				
✓ Review the trust reconciliations performed?				
✓ Review and follow up on checks outstanding for over 60 days?	_____	_____	_____	_____
80. Does the attorney responsible for overseeing trust accounts receive directly all bank statements unopened?	_____	_____	_____	_____
81. If checks are noted as being cashed, does an attorney communicate with one or two payees to make sure they receive the money?	_____	_____	_____	_____
82. Does the attorney personally obtain and review any missing bank statements or long outstanding checks?	_____	_____	_____	_____

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Attorney Trust Accounting Checklist (continued)

	Always or yes	Always or no	Never Usually	N/A
83. Does the attorney peruse the cancelled checks noting that:				
✓ The payees are familiar?	_____	_____	_____	_____
✓ Clients named on the checks are actually his/her clients?	_____	_____	_____	_____
✓ Endorsements are being made by the payee or by an employee of the firm?	_____	_____	_____	_____
✓ Duplicate payments are possibly being made?	_____	_____	_____	_____
✓ Signatures on all checks are authentic?	_____	_____	_____	_____
✓ Checks are deposited and not cashed?	_____	_____	_____	_____
84. Does the outstanding check listing for bank reconciliations performed indicate:				
✓ Check number?	_____	_____	_____	_____
✓ Date?	_____	_____	_____	_____
✓ Amount?	_____	_____	_____	_____
85. Are all inactive trust balances carried forward month to month?	_____	_____	_____	_____
86. For any trust checks outstanding for over 60 days, does the outstanding check list indicate:				
✓ Payee?	_____	_____	_____	_____
✓ Client name?	_____	_____	_____	_____
✓ Case name/number?	_____	_____	_____	_____
87. For inactive trust balances or checks outstanding for over two years, has a "reasonable" search been performed and documented over a period of one year to ascertain the facts?	_____	_____	_____	_____
88. After that additional year where inactive trust funds remain unclaimed, unidentified or missing owners cannot or will not accept funds, does the attorney send a check for such funds to the Clerk of the Superior Court?	_____	_____	_____	_____

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APPENDIX A

1:21-6. Recordkeeping; Sharing of Fees; Examination of Records

- **(a) Required Trust and Business Accounts.** Every attorney who practices in this state shall maintain in a financial institution in New Jersey, in the attorney's own name, or in the name of a partnership of attorneys, or in the name of the professional corporation of which the attorney is a member, or in the name of the attorney or partnership of attorneys by whom employed:
 - **(1)** a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the attorney may maintain as executor, guardian, trustee, or receiver, or in any other fiduciary capacity, into which trust account or accounts funds entrusted to the attorney's care shall be deposited; and
 - **(2)** a business account into which all funds received for professional services shall be deposited.

One or more of the trust accounts shall be the IOLTA account or accounts required by Rule 1:28A.

Other than fiduciary accounts maintained by an attorney as executor, guardian, trustee, or receiver, or in any other similar fiduciary capacity, all attorney trust accounts, whether general or specific, as well as all deposit slips and checks drawn thereon, shall be prominently designated as an "Attorney Trust Account." Nothing herein shall prohibit any additional descriptive designation for a specific trust account. All business accounts, as well as all deposit slips and all checks drawn thereon, shall be prominently designated as an "Attorney Business Account," an "Attorney Professional Account," or an "Attorney Office Account." The IOLTA account or accounts shall each be designated "IOLTA Attorney Trust Account."

The names of institutions in which such primary attorney trust and business accounts are maintained and identification numbers of each account shall be recorded on the annual registration form filed with the annual payment, pursuant to Rule 1:20-1(b) and Rule 1:28-2, to the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. Such information shall be available for use in accordance with paragraph (h) of this rule. For all IOLTA accounts, the account numbers, the name the account is under, and the depository institution shall be indicated on the registration statement. The signed annual registration statement required by Rule 1:20-1(c) shall constitute authorization to depository institutions to convert an existing non-interest bearing account to an IOLTA account.

- **(b) Account Location; Financial Institution's Reporting Requirements.** An attorney trust account shall be maintained only in New Jersey financial institutions approved by the Supreme Court, which shall annually publish a list of such approved institutions. A financial institution shall be approved if it shall file with the Supreme Court an agreement, in a form provided by the Court, to report to the Office of Attorney Ethics

APPENDIX A (continued)

in the event any properly payable attorney trust account instrument is presented against insufficient funds, irrespective of whether the instrument is honored; any such agreement shall apply to all branches of the financial institution and shall not be canceled except on thirty days' notice in writing to the Office of Attorney Ethics. The agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the attorney or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any; if an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

In addition, each financial institution approved by the Supreme Court must co-operate with the IOLTA Program, and must offer an IOLTA account to any attorney who wishes to open one, and must from its income on such IOLTA accounts remit to the Fund the amount remaining after providing such institution a just and reasonable return equivalent to its return on similar non-IOLTA interest-bearing deposits. These remittances shall be monthly unless otherwise authorized by the Fund.

Nothing herein shall prevent an attorney from establishing a separate interest-bearing account for an individual client in accordance with these rules, providing that all interest earned shall be the sole property of the client and may not be retained by the attorney.

In addition to the reports specified above, approved financial institutions shall agree to cooperate fully with the Office of Attorney Ethics and to produce any attorney trust account or attorney business account records on receipt of a subpoena therefor.

Digital images of these records may be maintained by financial institutions provided that: (a) imaged copies of checks shall, when printed (including, but not limited to, when images are provided to the attorney with a monthly statement or otherwise or when subpoenaed by the Office of Attorney Ethics), be limited to no more than two checks per page (showing the front and back of each check) and (b) all digital records shall be maintained for a period of seven years. Nothing herein shall preclude a financial institution from charging an attorney or law firm for the reasonable cost of producing the reports and records required by this Rule. Every attorney or law firm in this state shall be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

APPENDIX A (continued)

▪ (c) Required Bookkeeping Records.

- (1) Attorneys, partnerships of attorneys and professional corporations who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record:
 - (A) appropriate receipts and disbursements journals containing a record of all deposits in and withdrawals from the accounts specified in paragraph (a) of this rule and of any other bank account which concerns or affects their practice of law, specifically identifying the date, source and description of each item deposited as well as the date, payee and purpose of each disbursement. All trust account receipts shall be deposited intact and the duplicate deposit slip shall be sufficiently detailed to identify each item. All trust account withdrawals shall be made only by attorney authorized financial institution transfers as stated below or by check payable to a named payee and not to cash. Each electronic transfer out of an attorney trust account must be made on signed written instructions from the attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of the transfer, the payee, and the amount. Only an attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, and only an attorney shall be permitted to authorize electronic transfers as above provided; and
 - (B) an appropriate ledger book, having at least one single page for each separate trust client, for all trust accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts of charges or withdrawals from such accounts, and the names of all persons to whom such funds were disbursed. A regular trial balance of the individual client trust ledgers shall be maintained. The total of the trial balance must agree with the control figure computed by taking the beginning balance, adding the total of moneys received in trust for the client, and deducting the total of all moneys disbursed; and
 - (C) copies of all retainer and compensation agreements with clients; and
 - (D) copies of all statements to clients showing the disbursement of funds to them or on their behalf; and
 - (E) copies of all bills rendered to clients; and
 - (F) copies of all records showing payments to attorneys, investigators or other persons, not in their regular employ, for services rendered or performed; and
 - (G) originals of all checkbooks with running balances and check stubs, bank statements, prenumbered cancelled checks and duplicate deposit slips, except that, where the financial institution provides proper digital

APPENDIX A (continued)

images or copies thereof to the attorney, then these digital images or copies shall be maintained; all checks, withdrawals and deposit slips, when related to a particular client, shall include, and attorneys shall complete, a distinct area identifying the client's last name or file number of the matter; and

- **(H)** copies of all records, showing that at least monthly a reconciliation has been made of the cash balance derived from the cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance and the client trust ledger sheet balances; and
- **(I)** copies of those portions of each client's case file reasonably necessary for a complete understanding of the financial transactions pertaining thereto.
 - **(2)** ATM or cash withdrawals from all attorney trust accounts are prohibited.
 - **(3)** No attorney trust account shall have any agreement for overdraft protection.
- **(d) Type and Availability of Bookkeeping Records.** The financial books and other records required by paragraphs (a) and (c) of this rule shall be maintained in accordance with generally accepted accounting practice. Bookkeeping records may be maintained by computer provided they otherwise comply with this rule and provided further that printed copies and computer files in industry-standard formats can be made on demand in accordance with this section or section (h). They shall be located at the principal New Jersey office of each attorney, partnership or professional corporation and shall be available for inspection, checks for compliance with this Rule and copying at that location by a duly authorized representative of the Office of Attorney Ethics. When made available pursuant to this rule, all such books and records shall remain confidential except for the purposes thereof or by direction of the Supreme Court, and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege.
- **(e) Dissolutions.** Upon the dissolution of any partnership of attorneys or of any professional corporation, the former partners or shareholders shall make appropriate arrangements for the maintenance by one of them or by a successor firm of the records specified in paragraph (c) of this rule.
- **(f) Attorneys Practicing With Foreign Attorneys or Firms.** All of the requirements of this rule shall be applicable to every attorney rendering legal services in this state regardless whether affiliated with or otherwise related in any way to an attorney, partnership, legal corporation, limited liability company, or limited liability partnership formed or registered in another state.
- **(g) Attorneys Associated With Out of State Attorneys.** An attorney who practices in this state shall maintain and preserve for seven years a record of all fees received and expenses incurred in connection with any matter in which the attorney was associated with an attorney of another state.

APPENDIX A (continued)

- **(h) Availability of Records.** Any of the records required to be kept by this rule shall be produced in response to a subpoena duces tecum issued in connection with an ethics investigation or hearing pursuant to R. 1:20-1 to 1:20-11, or shall be produced at the direction of the Disciplinary Review Board or the Supreme Court. They shall be available upon request for review and audit by the Office of Attorney Ethics. Every attorney shall be required to cooperate and to respond completely to questions by the Office of Attorney Ethics regarding all transactions concerning records required to be kept under this rule. When so produced, all such records shall remain confidential except for the purposes of the particular proceeding and their contents shall not be disclosed by anyone in such a way as to violate the attorney-client privilege. When produced or examined during the course of a disciplinary or random audit, both the attorney or law firm and the producers and licensors of computerized software shall be conclusively deemed to have consented to the use of said software by disciplinary authorities as evidence during the course of the disciplinary proceeding.
- **(i) Disciplinary Action.** An attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of R.P.C. 1.15(d) and R.P.C. 8.1(b).
- **(j) Unidentifiable and Unclaimed Trust Fund Accumulations and Trust Funds Held for Missing Owners.** When, for a period in excess of two years, an attorney's trust account contains trust funds which are either unidentifiable, unclaimed, or which are held for missing owners, such funds shall be so designated. A reasonable search shall then be made by the attorney to determine the beneficial owner of any unidentifiable or unclaimed accumulation, or the whereabouts of any missing owner. If the beneficial owner of an unidentified or unclaimed accumulation is determined, or if the missing beneficial owner is located, the funds shall be delivered to the beneficial owner when due. Trust funds which remain unidentifiable or unclaimed, and funds which are held for missing owners, after being designated as such, may, after the passage of one year during which time a diligent search and inquiry fails to identify the beneficial owner or the whereabouts of a missing owner, be paid to the Clerk of the Superior Court for deposit with the Superior Court Trust Fund. The Clerk shall hold the same in trust for the beneficial owners or for ultimate disposition as provided by order of the Supreme Court. All applications for payment to the Superior Court Clerk under this section shall be supported by a detailed affidavit setting forth specifically the facts and all reasonable efforts of search, inquiry and notice. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence diligent search and inquiry or otherwise fails to conform with this section.

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Note: Source-R.R. 1:12-5A(a)(b)(c). Caption amended and paragraph (d) adopted July 1, 1970 effective immediately; paragraph (c) amended July 7, 1971 to be effective September 13, 1971; paragraph (a) amended April 2, 1973 to be effective immediately; paragraph (c) amended July 17, 1975 to be effective September 8, 1975; caption and paragraph (a) amended July 29, 1977 to be effective September 6, 1977. Paragraphs (a) and (b) amended, new paragraph (c) adopted and former paragraphs (c), (d), (e), (f) and (g) redesignated and amended February 23, 1978 to be effective April 1, 1978; paragraphs (b), (c) and (h) amended November 22, 1978 to be effective January 1, 1979; paragraph (a) amended July 16, 1979 to be effective September 10, 1979; paragraph (b) amended July 16, 1981 to be effective September 14, 1981; paragraphs (a), (b), (c), (g) and (h) amended January 31, 1984 to be effective February 15, 1984 except that the amendments to paragraph (a)(2) regarding designations to be placed on trust and business accounts shall not be effective until July 1, 1984; effective date of amendment to paragraph (a)(2) deferred on June 15, 1984 from July 1, 1984 to September 1, 1984; paragraphs (a)(1) and (2), (e)(1) and (h) amended July 26, 1984 to be effective September 10, 1984; paragraphs (a), (e) and (f) amended November 1, 1984 to be effective March 1, 1985; paragraphs (b) and (c) amended and paragraph (i) adopted November 5, 1986 to be effective January 1, 1987; paragraph (a) amended July 14, 1992 to be effective September 1, 1992; paragraph (a)(2) amended September 15, 1992, to be effective January 1, 1993; former paragraph (e) deleted and new paragraph (e) adopted November 18, 1996, to be effective January 1, 1997; paragraph (a) amended, new paragraph (b) added, former paragraphs (b) through (i) redesignated as paragraphs (c) through (j), and redesignated paragraphs (c), (d), (e), (h), and (i) amended July 12, 2002 to be effective September 3, 2002; caption of Rule and paragraphs (a) and (b) amended February 6, 2003 to be effective March 1, 2003; paragraph (c), (e), (f), (g), and (j) amended July 28, 2004 to be effective September 1, 2004; paragraph (b) amended July 9, 2008 to be effective September 1, 2008.

Note: Adopted July 9, 2008 to be effective September 1, 2008.