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IOLTA Account at Same Bank as Operating Account

Do you have your IOLTA accounts at the same banks as your operating accounts, or do you believe they should be separate? Justin W. Andrus, Brunswick, Maine

I got mine at two different banks, but I am moving my IOLTA to be at my regular bank. Having them separate is really eating up too much time. It is not like I move money from one to the other with reckless abandon -- I do my books at the end of the month and move money from IOLTA to my regular account then. However, when I go do this, I have to go to my IOLTA bank, get the money out (remember no ATM so I have to actually WALK IN, hehe) and then I drive away and go to my "regular" bank and again, I have to go out and go in. I sound whiney, but really, this can take about 30 minutes and that is time I could be doing something else!

Some days I am doing deposits and that is possibly more annoying -- driving to both banks to just put money in.

Also, because I do flat-fee work, some clients give me a check for say \$1000 and \$300 is earned upon receipt and the rest is earned at definite time intervals. I cannot get that \$300 without a lot of effort since the check gets deposited into IOLTA first, then the rest is moved only after it has cleared and I have to drive back to both banks.

Some banks (not the one I am moving my IOLTA to, but some) are "relationship banks" and the more accounts/loans you have with them, the better they treat you (more free stuff, and the banking expenses ADD UP!)

My bank will do pick-ups at my office, so that will make it easier as well. I am going to get different colored checks and when they start doing pick-ups, I am going to get colored envelopes with one for IOLTA and one for regular. My bank branch is very personable and they already kind of seem to know me (or are good fakers) so I do not worry too much about mix-ups.

Anyways, that is my relatively scattered analysis of why I wish I had opened my accounts at one bank and why I am moving my IOLTA account very soon!

Amy Kleinpeter, Pasadena, California

My bank is international, actually, but I do not know how many locations they have here in the U.S. outside of California.

It is United Commercial Bank -- <https://www.ibankunited.com/home.html>. They have a great deal for opening a business account right now -- you get



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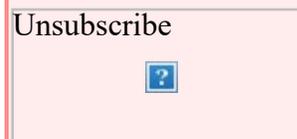
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free checks and \$500 in credits to use for other banking expenses, and it is a free account without a high minimum balance. I see they have branches in Allston/Brookline, Boston, and Quincy.

I know at my old office, the bank my boss used also did a daily pick-up and it was a local bank in Glendale, California.

Good luck finding one -- good service is such a precious commodity! I think that sentence was not economically correct, but you know what I mean!

Amy Kleinpeter, Pasadena, California

I think Laurie's point is far more critical than which bank question, although I used separate banks for years. But I like the 3 per page check for both trust and office accounts. I want plenty of room to write descriptive memos. One lawyer told me he used colored markers to mark his deposit slips so they matched the checks. If he had green colored trust account checks he put green dots on the corresponding deposit slips, while matching yellow dots on deposit slips to yellow checks on the operating account.

You may think that is going overboard, but if you are ever trying to explain an error that someone in your office did it will be really nice to outline the safeguards you had in place.

Although it is not required, I think having different color schemes and artwork on the checks for the two different accounts is so easy that any busy lawyer managing his own accounts should do it.

Jim Calloway, Oklahoma

Some states have bank notification of trust account overdrafts. Some don't. You can find out the rules for your jurisdiction. I can't imagine there is any notification of overdrafts or bounced checks on other types of accounts, except by accident. Why would anyone care?

Jim Calloway, Oklahoma

This really caught my attention. (I work for a bar association, but the opinions here are mine, not my employer's.)

I decided to wander down the hall and ask Someone Who Would Know about how such decisions are made.

Hypothetically, I asked SWWK if a disciplinary authority investigator was reviewing trust account records for a complaint that proved to unwarranted, but in the course of the review found an improper deposit. (e.g. retainer to non-trust account or legal fees to the trust) that had been remedied within a few days, would that be the basis of a disciplinary complaint? Answer: We (hypothetically speaking) would look at the circumstances. Was there a pattern of such "mistakes?" Did the trust funds

"accidentally" placed in the office expense account keep the account from overdrawing the account and was it "discovered" after more money came into the account? But it is was a one-time already remedied mistake, we wouldn't even open a file on it" The phrase "bigger fish to fry" did come to mind.

I think it is important for all prosecutors to exercise discretion and common sense.

As I look at the above and wonder how many Oklahoma lawyers are on this list, I note that I *might* have just made the above conversation up.
<grin>

Jim Calloway, Oklahoma

I've been watching this thread with some interest. In VA at least my understanding is that *any* commingling is treated by the Bar as a major violation. This is true even if it is rectified immediately upon discovery and even if there is no harm to any client.

The solution to avoid any possible commingling is the following: I use different banks and my checks are differently colored. I use Blue and Sand. My deposit slips are also colored differently.

Before I printed out my checks I used differently shaped check books too.

David Zachary Kaufman, Virginia

Why would you think they need to be in separate institutions? Most banks do IOLTAs as a courtesy because you keep your operating account there.

Tom Simchak, Houston, Texas

I agree with Tom. My bank is accustomed to pairing IOLTA's with the business account and knows to take all fees from the business account; they opened the IOLTA as a zero balance account for free.

Duke Drouillard, Nebraska

I have the two accounts at the same bank, but I use VERY different looking checks for the two accounts, ie, diff't size, diff't color, diff't source and one is a pad of checks, while the other is pages of 3 checks each. Also, the ATM card is for the operating account only, and cannot be used to deposit, transfer, withdraw, or in any way access the IOLTA account.

and frankly, my understanding is that none of what I am doing is required -- ie, I would be allowed to have identical-looking checks if I wished...but I prefer to sleep at night <vbg>

Laurie Axinn Gienapp, Bradford, Massachusetts

Great point! I am in the process of updating " The ABA Guide To Lawyer Trust Accounts" and may incorporate your idea or at least your concerns into the next edition of the book. There does not seem to be a good reason not to keep the IOLTA account in some bank other than your commercial operating account bank. (aside from geographic location etc) At one time, banks wanted lawyer trust accounts and would give the lawyer "special considerations" in making loans etc. The new IOLTA system is basically (at least in those states which I am familiar, including California) that the IOLTA has bought your trust account. They pay the bank a negotiated price, for the account and receive in return negotiated rate(s) of interest on the amounts on deposited. Since the amount of interest paid by the bank to IOLTA on your account may yield a favorable profit to the bank, the bank might still be interested in having your trust account with them and give you 'special considerations" in order to keep the account with them. Discuss it with your banker and see what he or she tells you. I've seen records of disciplinary proceedings where the lawyer had to prove the bank made a mistake when there was more than one account. Accordingly, unless there is some good reason to keep the same bank for both types of accounts, it seems it may be a good idea to keep your IOLTA account in a bank other than where you do your banking Great idea! I'll ponder it.

Jay Foonberg, California

While I understand your reasoning here, I really don't think you'll wind up crucified if you accidentally deposit a retainer check into your operating account and remedy the error when you discover it. Similarly, should the latter scenario occur, it's the bank's fault, not yours.

Perhaps I'm just way too lax here, but I have never, ever, ever knowingly commingled funds and have strictly accounted for client funds for over twenty years. A time or two I accidentally deposited funds which should have gone in my operating account into my IOLTA account. As soon as I discovered the error (i.e., while doing a bank reconciliation), I fixed it with an immediate transfer.

Maybe it's my tax and accounting background, but I think in terms of substance over form, and in having an ironclad audit trail. If one's accounting practices and history are in accord with the letter and spirit of the law, I wouldn't get the vapors over the occasional accounting glitch, provided it is remedied immediately.

Mike Koenecke, Richardson, Texas

I would have thought so too, but when I was sitting on a panel that heard complaints against lawyers by our board of bar overseers, one of the cases we heard involved a lawyer who had inadvertently deposited a client trust check into his office account.

His secretary was on vacation the day he deposited the check, and he just grabbed the wrong deposit slip. The BBO took the position that the mingling of funds was a de facto violation of the rules. The three members on the panel (myself and two others) voted that there should be no sanction, much to the disgust of the BBO attorney.

We all felt, "There but for the grace of God go I."

Jo Fray, Massachusetts

Of course I would not want to get in trouble with the State Bar, and I take a great deal of care to make sure that retainer checks and other client funds are deposited into my IOLTA account. I think it's going overboard to insist on separate banks, though.

Mike Koenecke, Richardson, Texas

I can understand, but what I'd like to know is: (1) what prompted the investigation in the first place? (2) did the lawyer remedy the problem as soon as it came to his attention? (3) were there any other factors involved which generated a disgruntled client?

Perhaps Texas is different, but in my experience the Grievance Committees have considerably bigger fish to fry than auditing IOLTA bank reconciliations in the absence of any client complaints.

Mike Koenecke, Richardson, Texas

The case arose out of a real estate closing in which a certain amount was being held in escrow for the buyer by the attorney until a lien could be paid off. The buyers never received notice that the lien had been paid off, claimed the cash. The attorney wanted to ascertain that the lien had not been paid off before he relinquished the escrowed amount.

It took him longer than his clients liked. They filed a complaint.

At that point, the Board of Bar Overseers conducted an investigation. They are not limited in any way as to what they can look at or what violations they can charge - even if they find something totally unrelated to the initial issue.

Jo Fray, Massachusetts

I think you are all missing a few basic points about this.

1. The more money I have there, the more ability I have to negotiate better prices for the services they provide. By splitting my money, I have less power at two banks.
2. Proper risk management procedures make the potential frequency of a loss almost nil, despite the anecdotal stories.
3. The more accounts I have at a bank, the better my ability to get to know my bankers and in return receive referrals from the banker. Your practice area is almost irrelevant. Bankers get people who need estate planning, small business help, have been in accidents, etc.... Why would I want to lose a potential referral source?
4. The bank doesn't screw up that often. There is value to your time and, at least for most of the solos I know, we are too dang busy to run back and forth between banks. I am not making

money when I am banking. Therefore, the less time I am banking, the more time I have to bank.

This discussion reminds me of the attorney who asked me during one of my Opening A Law Office presentations if she needed a trust account at all. She figured since there are so many potential problems, just get paid after. Sometimes people make things harder than they need to be.

Jonathan G. Stein. Elk Grove, California

I use the same bank in Indiana for all accounts. 2 trust and 1 operating. The way I worked it...I did order different check colors for both. But as far as deposit slips...I did NOT order deposit slips for my trust accounts so that it forces me to write out and check the account numbers each time I make a deposit. A little extra work...but necessary when I saw how close all 3 account numbers are to one another. I also make sure to ask the teller to double check that the account is a trust account and have named both to know the difference. Leona Frank, Indianapolis, Indiana

I have mine at the same account. I'm not sure why that should be a problem, they're still separate accounts.

Lesley Hoenig, Illinois

I don't know about Texas- but here in California I would not want to have to explain to the powers that be at the State Bar that I inadvertently deposited a retainer check in my operating account rather than my IOLTA account.

If it's the bank error- I could still be in trouble unless I caught it immediately and corrected it- and even then I could be in the position of having to defend myself before the State Bar of California..

Even if I would ultimately prevail before the State Bar of California- it is not worth the hassle in having to deal with them.

Lew Wiener, California

None of us expect to be reported to the Bar in the first place. But as some posts here have indicated- stuff happens. One can get reported by a disgruntled client even if there is no valid basis for the complaint.

At least in some states, as soon as the Bar gets a complaint they look at anything they can find and will go after seemingly minor technical violations- so why even risk the possibility of something goin gwrong with the trust account.

I should also note that in California the State Bar says they randomly audit trust accounts. I don't know how often this occurs- but they say they do..

Lew Wiener, California

Even in our little, rural community in Vermont, banks don't always get it right. Several years ago, after my bank mistakenly deposited a hefty trust account deposit to my general office account [we checked; the deposit was on the correct slip], and we had numerous overdrafts on the IOLTA account, all of which were dutifully reported to Bar Counsel, I immediately separated the accounts to different banks. The bank backed us up when I had to explain to Bar Counsel, but I decided I never wanted that experience again. After 34 years in practice, I'm looking for less, not more, stress. Ray L. Raymond Massucco, Bellows Falls, Vermont

I have mine at the same bank. I don't think a bank would take on the headaches of an IOLTA account without the benefits of a general account.

As for a teller covering an overdraft, well, nothing's impossible, but most banks educate their employees about not touching attorney/client trust accounts, or any other kind of fiduciary account, for the obligations of the principal.

Raymond L. Stuehrmann, Thousand Oaks, California

Seperate. Two reasons.

First, it's a safety check for you; certain types of deposits go into your operating account, and certain types go into your trust account, and they should never meet. Having both accounts at the same bank, it is at least theoretically possible for you to grab the wrong deposit slip and deposit the money in the wrong account. If they're at seperate banks, even the dumbest, most drug addled, inattentive teller is going to notice that the deposit ticket isn't drawn on their bank. If they're at the same bank, they're making the deposit. Likewise, tellers make mistakes; you send in two deposits on two seperate accounts, and the teller screws up, depositing the wrong check into the wrong account, you're screwed. Differrent banks, it CANT happen.

Second, god forbid you have an overdraft on your operating account. It shouldn't happen, but it almost happened to me once, when a client bounced a check that I had deposited and written checks on; I called my landlord and told him not to cash my rent check till I told him he could; he was cool about it, but it could have happened. Point is, you got an overdraft in your operating account, some teller decides they going to try to cover it, and oh, gee, Justin Andrus has a second account at our bank, called Justin Andrus Attorney Trust Account, lets' just take some money out of that and cover the operating account. I'm sure he'll appreciate it. Not

Ronald Jones, Florida

See, that's my point. It's unlikely, but it could happen; and while you might eventually prevail in a bar investigation, who needs the headache?

While it's a lot more convenient to have one stop banking, if you choose your banks carefully you can get them right down the street from each

other; stop at one, stop at second.

Ronald Jones, Florida

Your bank does pickups at your office? Wow, I've never heard of such a thing. If you use a national bank, let me know, I'd love such a benefit.

Rose Rondon, Auburn, Massachusetts

I read - somewhere - SC rules? commentary? - that the banks agreed to let the IOLTA commission know of any bounced checks in ANY account of the attorneys at the bank where the IOLTA was set up. Like someone said earlier, it shouldn't happen but it does, on occasion, to us all. That alone makes me leery. As I said, I can't recall if it's fact or someone's "wish list" or a proposal or what, exactly. Your mileage may well vary - check your state rules.

Sheryl Schelin, South Carolina

The Minnesota Bar Association provides written guidelines on how to use Quicken and Quickbooks for attorney trust accounts so that the attorney can comply with professional responsibility requirements.

<http://www2.mnbar.org/qbguide/qbguide1.htm>

I'm curious how many other bar associations seek to help their members with complying as well as what type of assistance is provided.

It has long seemed to me that this would be a wonderful member benefit for a bar association to provide.

Deborah Matthews

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