

## Help! Secretary improperly withdraws out of IOLTA

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Please post anonymously

Two checks were supposed to be taken out of operating. They were incorrectly deposited to the IOLTA. How can I quickly resolve this? Should I transfer the money immediately back in there? What would you do?

Thanks.

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Yes, just transfer the money immediately back in there, and note that the withdrawal was in error. Mistakes do happen: the trick is making sure they are corrected immediately when they are discovered.

Michael A. Koenecke, Texas

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I agree with Mike.

The first time I accidentally took money from the wrong account (I think it was like \$50), I called the Bar ethics hotline. They told me to immediately put the money into the correct place and note what had occurred.

If you're ever audited, you just want to be able to show the Bar auditor what happened, that you detected the problem, and you fixed it.

Finally, call your ethics hotline to make sure this advice applies the same in your state.

Andrew Flusche, Virginia

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Mike is absolutely correct. BUT - make sure the error and the correction are properly and prominently noted in your accounting system.

Don't try and pretend that the error did not occur.

Good luck.

Russ Carmichael

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Stupid or on purpose? Routine payments or unusual payments?

Put it back and have a memo signed by the person who did it, be sure it is SQAB, hope nothing bounced in the interim.

Send a copy of the memo and confirmation it was fixed to The Board in your jurisdiction.

Seriously lecture person on the difference between the accounts. Be REALLY clear it continued employment is based on it never happening again.

Have you made sure that your office manual (if you have one - if you don't, you should) is really specific.

Be sure that the checks in your operating account look ABSOLUTELY NOTHING LIKE the ones in your trust account, and that they account information is really clear.

Different banks, size of checks, colors of checkbook covers, etc. all can't hurt.

Put a BIG label on the inside of the checkbook covers as to what can and cannot happen with each one.

Don't hire relatives.

Jim Moriarty, Iowa

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This is why I don't let staff make banking transactions. But I wouldn't volunteer this to "the Board" unless your rules require it.

Shell Bleiweiss, Illinois

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As an aside, you may wish to do a Trust Accounting letter to your client, showing the deposit, the withdrawal and the reason for it (accounting error), and the resulting balance of the client trust account (even if zero).

Your client has a right to know where their funds went. Showing a deposit and withdrawal between iolta and general accounts on the invoice without explanation is likely to cause some confusion, so in addition to properly showing what occurred, you should give them an explanation of why that occurred and the resulting impact upon their balances.

Incidentally we use a trust accounting letter anytime an invoice shows we took money out of the trust account. Trust accounting is confusing so it is helpful for them to understand when the funds were deposited, what invoice amounts are due and owing, when funds withdrawn, and what the resulting trust balance is (or additional amount due if trust money is exhausted).

Michelle Rozovics, Illinois

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I have orange "warning" duct tape wrapped around my IOLTA check book covers.

Jeena R. Belil, New York

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I'm in agreement with the others. Simply immediately transfer it back and note the error in the books. Mistakes happen and as long as they are quickly remedied and noted with explanation in the books, there should be no problem, particularly if no resulting negative balance occurred in the IOLTA account.

Vicki Levy Eskin, Florida

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With one exception I agree with Shell's answer. I do let staff make deposits. But I do not volunteer staff errors to the bar association and correct them immediately. I have had staff make deposits to my office account that should have gone to my escrow account. When the error is discovered I immediately take the money from my office account and deposit it correctly. I also leave a good paper trail with appropriate explanation as to why the error occurred. It has probably been 15 years since this occurred, so the issue has been corrected with my published office policies. Staff, however, does not have authority to sign any checks on any of my accounts. I also watch my accounts on a regular basis to ensure that nothing occurs that I don't know about. Staff is fully aware of my periodic checks but because they are not scheduled they don't know when it will occur. I try to do this monthly.

Frederick G. Irtz, II, m Kentucky

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I use QuickBooks for my trust accounting. I set up a separate customer file for each client. All transactions are then posted to that account. At the conclusion of the representation all I have to do is a couple of clicks to print a report showing all deposits to the account and all withdrawals from the account. The net balance in the trust accounting report should be identical with your bank balance. There are other trust accounting software packages I have been told. I have tried a couple but do not like the reports to the client. I think mine is the cleanest and easiest one for the client to understand.

Frederick G. Irtz, II

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I actually don't have an IOLTA check book. I pay all expenses from my general account and then enter as expenses on client's bill. When we run a bill at the end of the month it advises the amount to be transferred from the client's iolta including fees and expenses.

On the rare occasion we need to pay a check from the iolta (eg settlement funds paid to client, return of unused portion of trust money), I physically go to the bank and get them to write a bank check from the iolta. My bank does not charge me for this.

I have no risk of anyone writing unauthorized checks from my iolta.

Michelle Rozovics

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Every time I see a response, a different duck comes down (those of you old enough to remember Groucho Marx will understand that comment!)

I don't know about other states, but one of the conditions the Kentucky Bar requires for an IOLTA account is for the bank to notify the Bar in the event of a NSF check.

Frederick G. Irtz, II

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I was about to offer Shell Bleiweiss's (Chicago; Barrington, IL) remark about not delegating signing of checks to staffers. Amen. Have not been burned, fortunately.

I add to that a question. What if the firm has two or more lawyers? Is it best practice to require two signatures on firm and IOLTA checks?

Speaking of signing checks I mention a couple of 'money' practices with me that have come in handy.

1. I always carry a couple of unsigned firm and IOLTA checks in my wallet. More than once that practice has been helpful.

2. I usually have a few hundred dollars in cash in my wallet for emergencies. Happened just yesterday in a case where a rogue relative has gone around 'freezing' my client's accounts. My client's son needed cash while we and another lawyer on our side get the problem 'fixed' with opposing counsel early next week. I gave the son some cash. We were talking Taco Bell attack in progress and two vehicles running on fumes. I am sure I will get it back from my client. My client is super pleased I initiated that effort. Client would have never thought to ask me.

3. And just having checks and cash is not enough. What about delivery? I carry blank envelopes, postage and FedEx and UPS materials (with preprinted bills of lading which they will provide to account holders) in my shoulder bag. More than once when in the field those have come in handy.

Rob V. Robertson, Texas

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I'm with Shell. Staff does not make the decision about where to deposit money or what account to write checks on. And no, staff do not sign any checks!

David Masters, Colorado

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I'm with Shell and David. My staff doesn't open mail, decide where to deposit checks, write checks, sign checks, or reconcile my accounts. They do walk to the bank, deposit checks, and tape the deposit receipt to the photocopy of the checks that they hand to me.

As my CPA told me, the only people who steal from you are the ones you trust.

Deborah G. Matthews, Virginia

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Wow Deb. That is almost exactly what we do. Except we don't tape the bank receipt. I keep all bank receipts with my bank statements not in the client file with the copy of the check.

Michelle Rozovics

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Same as Deb here, except I staple the receipt to copies of the checks and then that goes into a binder (seperate for IOLTA and Business) for the year's banking transactions.

Jeena R. Belil

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The post does not say there was any NSF check. There might not have been. If, for example, client had \$500 in trust, secretary paid two bills from IOLTA account , by mistake, totaling less than \$500, nothing is NSF. And even if that client's trust account didn't have anything in it, but the firm's trust account did, still no NSF check. Just put money back in the IOLTA account from the operating account. If something was NSF then get another bank that will cover errors like this and call you if you are ever in the negative in any account or there is a problem with a check.

Roger Rosen

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"but the firm's trust account did"

In Colorado, the firm cannot have money in the trust account other than a small amount sufficient to cover possible bank fees (e.g., \$25 or less). Leaving "firm" money in the trust account is considered improper comingling of firm and client funds.

David Masters

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I may be covering ground that has already been covered, but here is how we try to prevent that from happening at our firm.

Staff don't sign checks. Ever. Only attorney-owners sign checks from any of the accounts. That puts a second set of eyes on these transfers. We do have one designated bookkeeper who can make out the checks and print them out from our accounting software but not sign them.

Our account checks are color-coded. The primary trust account checks don't look like the operating account checks, and also don't look like the real estate trust account checks.

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That said, we do have a weakness at our credit card machine, as we have to specify which of our accounts it goes in at the terminal, and this is usually done by staff. However, if in doubt they always deposit to trust, which can more easily be corrected than depositing to operating that which should go to trust.

Cynthia V. Hall, Florida

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These are all the right things to do. However, in Florida, we are now required to file all pleadings electronically. That means that some clerks require payment via credit card and some will accept payment directly from a checking account. So if the client has funds in his or her IOTA account, it's great to be able to pay the court directly from that account, but it is easy for mistakes to happen. For instance, recently, we had exactly \$400 in client's IOTA account. The filing fee for the matter was \$400, but the clerk's office charged an additional \$3 for filing. If my assistant hadn't been watching carefully, it might have been easy to overdraw the IOTA account by \$3. Fortunately, she realized the problem and used the operating account to pay the fee and contacted the client to come up with another \$3 to cover the cost of filing. Electronic filing is both a curse and a blessing as it requires intense concentration to fill out the appropriate information with the clerk and you can't always flip back and forth between your accounting program when making decisions. In fact, in some cases, you have to start from the beginning if you leave the page, which can be very frustrating. So I can see how mistakes easily happen. Again, making a notation and replacing the funds immediately is the best resolution if a mistake happens. And the reality is that mistakes do happen even to the best of us.

Vicki Levy Eskin

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Roger Rosen's comment prompts this remark.

If transferring funds to IOLTA account to correct errors, if more than one transaction was involved, your transfers from operating to IOLTA should be separate. Easier to track/trace in and out transfers that way.

Also, not sure if the subject of banks has come up. Ideally, the IOLTA account should be in a different bank. Using different color checks has already been mentioned. Do as I say, not as I do.

Banks. Not all IOLTA banks are created equal. I have used Chase for years and am happy with them. There have not been any service charges. It may be because I have other accounts there in violation of the above advice.

Not sure if each state handles IOLTAs the same. In Texas, interest earned on IOLTA funds is paid to a statewide legal-aid project fund. So we do not get 1099ed on the interest income. How the program

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staffers decide to divvy up those funds I do not know. Years ago when bank accounts earned respectable interest that project had a lot more money to pass around. The interest earned now is paltry.

Some years ago a staffer at the State Bar who was involved with IOLTA management whispered under her breath about which banks were easy to deal with and which not. Since then banks have merged, changed names, etc. I just mention this in case anyone is fishing around for a good IOLTA bank. It may be that if you check around you can learn the best banks.

Rob V. Robertson

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Inquiry is confusing. Two checks "taken out" of operating but "deposited" to IOLTA, but it appears money is short in IOLTA?

Generally the remedy is to document and correct error immediately. If all that happened is you were sending operating account checks payable to a third party that were somehow miraculously deposited to your IOLTA account, no client funds are involved. If something else, remedy is still to correct immediately. You still need to address any effects of errors, such as notice to affected clients, if any.

Carefully establish procedures and follow them regarding your IOLTA account. Correct any mistakes immediately. Cross-check things carefully. It is your license, so don't rely on staff other than to cross-check. If you don't know enough about it, then work with an accountant who does.

In an effort to monitor items carefully here, I do the bookkeeping work, sign all the checks, make all the deposits, and reconcile the accounts. Any mistake is mine without excuse. Other attorneys delegate portions, but you need a system of checks and balances to make sure things work correctly.

Darrell G. Stewart, Texas

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We also don't let the Clerk of Court do an ACH withdrawal from our IOTA account. We all got together before eFiling was officially launched and decided that the ACH withdrawals had too much opportunity for error or fraud. We pay ALL court eFiling fees by credit card. Yes, we have to add 3% vs. \$3 if doing an ACH withdrawal. So for a formal probate we pay \$412 rather than \$403 in filing fees. We may revisit that decision in the future, but for now we don't feel we're comfortable with it. We still cut checks for certified copies and other costs directly from IOTA, but we don't feel comfortable with ACH withdrawals from it.

I was astounded at a bar lunch last month sitting with some colleagues listening to them complain about how hard it is to reconcile their trust accounts with all the ACH withdrawals from eFiling. I piped up, "We just pay all the filing fees by credit card, then bill the filing fees that day

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and pull from trust." Another attorney, whose billing rate I'm sure is higher than mine and targets a wealthier client base said, "How do you justify the higher fees?" "What do you mean how do I justify it? I put the full amount charged on the bill. It is all of \$9 more for a probate case to file with a credit card vs. an ACH withdrawal. No one questions it." They then went on to ask how I reconciled my credit card statement, and I pointed out that there is a memo field that is perfect for my case number to fit in.

Cynthia V. Hall

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Well, this is why this list serve is great. I'm thrilled that there is always someone out there that better ideas than mine, LOL!

Thanks for sharing, Cynthia.

Vicki Levy Eskin

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