

1 **17-204. Trust accounting.**

2 A. **Required records; maintenance and reporting.**

3 (1) *Types of records.* Every attorney subject to these rules shall maintain
4 complete records, in either hard copy or stored electronically on a computer, of the receipt, deposit,
5 investment, and disbursement of all funds, securities, and other property received by the attorney
6 from or on behalf of a client and shall further maintain on a current basis all books and records
7 that will establish the attorney's compliance with this rule, Rule 16-115 NMRA of the Rules of
8 Professional Conduct, and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. For
9 purpose of this rule, an attorney is deemed to have the necessary "required records" by maintaining
10 the following:

11 (a) a record of all deposits into and withdrawals from each trust account,
12 specifically identifying the date, source, and description of each item deposited as well as the date,
13 payee, and purpose of each disbursement, and all deposit slips shall separately identify each item
14 deposited;

15 (b) a separate ledger or account for each separate trust client,
16 containing the information required by Subparagraph (1)(a) of this paragraph, which shall include
17 a continuing balance of each individual client trust account ledger maintained with the total of the
18 balances of all individual client trust account ledgers equaling the beginning balance of all
19 individual client trust accounts, plus the total of all additional amounts received in trust, minus the
20 total of all trust monies disbursed;

21 (c) copies of all retainer and compensation agreements with clients;

22 (d) copies of all statements to clients, which statements shall reflect all
23 transactions on the trust account for the period to which the statements relate;

1 (e) all checkbooks, check stubs, bank statements, copies of cancelled
2 checks, and duplicate deposit slips on each trust checking account;

3 (f) copies of invoices and statements received from others and paid
4 out of trust funds;

5 (g) written reconciliations made at least monthly of the checkbook
6 balance, the bank statement balance, and the client trust ledger sheet balances;

7 (h) copies of those portions of each client's case file reasonably
8 necessary for a complete understanding of the financial transactions pertaining to the client's case
9 file;

10 (i) proof of compliance with Rule 24-109 NMRA and copies of reports
11 received from the financial institution in compliance with Rule 24-109(B) NMRA; and

12 (j) for properties other than cash, a separate ledger for each client
13 identifying the date received, the name of the person from whom received, the description of the
14 property (including make, model, serial number, and other identifying marks), its location in the
15 attorney's office or other location, the date released by the attorney and to whom released.

16 (2) *Written trust account plan required.* In addition to the records required
17 under Subparagraph (1) of this rule, a written trust account plan shall be maintained for all client
18 trust accounts that includes, at a minimum, the following:

19 (a) the name of every attorney who has authority to sign client trust
20 account checks;

21 (b) the name of every attorney who is responsible for monthly
22 reconciliation of the law firm's trust accounts;

1 (c) the name of every attorney who is responsible for answering
2 questions, including those from the Disciplinary Board, regarding the client trust accounts; and

3 (d) the name of every attorney who will be responsible for maintaining
4 the records of and continuing the maintenance of the client trust accounts in the event the law firm
5 dissolves, is sold, or otherwise ceases to exist or provide legal services. The existence of the written
6 trust account plan, including the designation of an attorney responsible for monthly reconciliations
7 of the law firm's trust accounts, the maintenance of records of the trust accounts, and the
8 responsibility for answering questions pertaining to the trust accounts, does not relieve any
9 attorney from compliance with the terms of this rule, Rule 16-115 NMRA, Rule 24-109 NMRA,
10 or any other Rules of Professional Conduct or Rules Governing the New Mexico Bar.

11 (3) *Trust account reporting requirements.* In addition to the requirements of
12 Rule 16-115 NMRA and Rule 24-109 NMRA, an attorney shall keep a complete record and report
13 annually on the certificate of compliance required under Paragraph D of this rule the name of each
14 financial institution and each account number of every financial institution in which the attorney
15 maintains funds received from or on behalf of a client.

16 (4) *Duration and preservation of records.* The records required by this rule
17 shall cover the entire time from receipt to the time of final disposition by the attorney of all such
18 funds, securities, and other properties. Attorneys shall preserve all such records for a period of five
19 (5) years after final disposition of said funds, securities, or other properties, or, as to fiduciary or
20 trust records, five (5) years following the termination of the fiduciary or trust relationship.

21 (5) *Accessibility; duty to produce; administrative suspension sanctions.* An
22 attorney shall produce records requested by the Disciplinary Board or the New Mexico Client
23 Protection Fund Commission within ten (10) days of the request unless the attorney has a good

1 faith objection to producing the records. Failure to produce the records may result in immediate
2 suspension of the attorney's license to practice law under Rule 17-207(B) NMRA.

3 (6) *Trust account disbursements and oversight responsibilities.* Trust account
4 disbursements shall be made only by authorized bank transfer, including electronic transfer, or by
5 check payable to a named payee, but not to cash. Signature authority for an attorney trust account
6 may not be delegated to a nonattorney. At least one (1) attorney admitted to practice law in this
7 state shall be an authorized signatory on an attorney trust account and shall be responsible for
8 either making or overseeing monthly reconciliations of the client trust account ledger, checkbook,
9 and bank statement and ~~also~~ shall be responsible for answering questions regarding the client
10 trust account, although all attorneys in the law firm must comply with this rule, Rule 16-
11 115 NMRA, and Rule 24-109 NMRA.

12 **B. Trust account overdraft notification.**

13 (1) *Definitions.* As used in this paragraph the following definitions apply:

14 (a) "financial institution" means any financial institution authorized by
15 federal or state law to do business in New Mexico, the deposits of which are insured by an agency
16 or instrumentality of the federal government.

17 (b) "properly payable" means that an instrument presented in the
18 normal course of business is in a form requiring payment under the laws of New Mexico.

19 (c) "notice of dishonor" means the notice that a financial institution is
20 required to give under the laws of New Mexico ~~upon~~on presentation of an instrument that the
21 institution dishonors.

22 (2) *Clearly identified trust accounts required.* Attorneys who practice law in
23 New Mexico shall deposit all funds held in trust in New Mexico in accordance with Rule 16-

1 115 NMRA and Rule 24-109 NMRA in accounts clearly identified as “Attorney Trust Account”
2 or “IOLTA Account” referred to in this rule as “trust accounts” and shall take all steps necessary
3 to inform the financial institution of the purpose and identity of such accounts. Funds held in trust
4 include funds held in any fiduciary capacity in connection with a representation whether as trustee,
5 agent, guardian, executor, or otherwise. Trust accounts shall be maintained only in financial
6 institutions approved by the Disciplinary Board. Any trust accounts that are IOLTA accounts shall
7 also be maintained in financial institutions approved by the State Bar of New Mexico under
8 Rule 24-109(B)(3) NMRA. The Disciplinary Board and State Bar of New Mexico shall coordinate
9 their respective oversight functions to ensure that all trust accounts comply with the applicable
10 requirements in this rule and Rule 24-109 NMRA.

11 (3) *Overdraft notification agreement required.* A financial institution shall be
12 approved as a depository for trust accounts if it has filed with the Disciplinary Board an agreement
13 in a form provided by the Disciplinary Board to report to the Office of Disciplinary Counsel
14 whenever any properly payable instrument is presented against a trust account containing
15 insufficient funds, whether or not the instrument is honored. The Supreme Court shall establish
16 rules governing approval and termination of approval status for financial institutions, and, in
17 consultation with the Disciplinary Board, the State Bar of New Mexico shall annually publish a
18 list of approved financial institutions for purposes of this rule and Rule 24-109 NMRA. No trust
19 account shall be maintained in any financial institution that does not agree to make such reports.
20 Any such agreement shall apply to all branches of the financial institution and shall not be
21 cancelled except upon thirty (30) days notice in writing to the Supreme Court or the Disciplinary
22 Board.

1 (4) *Overdraft reports.* The overdraft notification agreement required by
2 Subparagraph (3) of this paragraph shall provide that all reports to the Office of Disciplinary
3 Counsel made by the financial institution shall be in the following format:

4 (a) In the case of a dishonored instrument, the report shall be identical
5 to the overdraft notice customarily forwarded to the depositor and should include a copy of the
6 dishonored instrument if such a copy is normally provided to depositors.

7 (b) In the case of instruments that are presented against insufficient
8 funds but which instruments are honored, the report shall identify the financial institution, the
9 attorney or law firm, the account number, the date of presentation for payment and the date paid
10 as well as the amount of overdraft created thereby. Such reports shall be made simultaneously with
11 and within the time provided by law for notice of dishonor, if any. If an instrument presented
12 against insufficient funds is honored then the report shall be made to the Office of Disciplinary
13 Counsel within five (5) banking days of the date of presentation for payment against insufficient
14 funds.

15 (5) *Consent by attorneys.* Every attorney practicing or admitted to practice in
16 New Mexico is deemed to consent, as a condition thereof, to the reporting and production
17 requirements mandated by this rule.

18 (6) *Designation of financial institution as approved depository.* The
19 designation of a financial institution as an approved depository [~~pursuant to~~] under this rule shall
20 not constitute a warranty representation or guaranty by the Supreme Court, the Disciplinary Board
21 or the Office of Disciplinary Counsel as to the financial soundness, business practices, or other
22 attributes of the financial institution. Approval of a financial institution under this rule means only
23 that the financial institution has agreed to meet the reporting requirements in this paragraph.

1 (7) *Costs.* Nothing in this rule precludes a financial institution from charging
2 an attorney or a law firm for the reasonable cost of producing all reports and records required by
3 this rule.

4 (8) *Proof of compliance.* Upon receipt of an overdraft notification concerning
5 an attorney trust account, disciplinary counsel may, in addition to requiring a response to all other
6 inquiries concerning the overdraft, require proof of compliance with all of the requirements set
7 forth in Paragraph A of this rule.

8 C. **Continuing education requirement.** Every attorney subject to these rules shall,
9 no less than once every three (3) years, attend a continuing legal education course offered or
10 approved by the Disciplinary Board and approved for one (1) hour or more of continuing legal
11 education credit by the New Mexico Minimum Continuing Legal Education Board on the topic of
12 client trust account procedures and maintenance. An attorney who is exempted from the terms of
13 this rule under Paragraph E of this rule shall take such a course within one (1) year of any change
14 in circumstance that results in this rule becoming applicable to that attorney.

15 D. **Certificate of compliance.** On forms provided by the state bar and approved by
16 the Supreme Court, every attorney shall annually submit to the state bar the attorney's Trust
17 Account Certification/IOLTA Compliance form demonstrating either compliance with this rule,
18 including compliance with Paragraph C of this rule, and Rule 24-109 NMRA, or claiming an
19 exemption from this rule under Paragraph E of this rule. Such form shall include the financial
20 institution name, the account name, and the account number of any and all accounts in which client
21 funds are held, and the date, title, and location of the last course taken by the attorney as required
22 by Paragraph C of this rule, and shall be submitted to the state bar with the registration statement
23 filed under Rule [~~17-202~~] 24-102.1 NMRA. The state bar shall retain the original of each form and

1 shall provide to the Disciplinary Board a copy of any form requested. When the state bar certifies
2 to the Supreme Court that any member of the state bar has failed or refused to comply with the
3 provisions of this paragraph, the clerk of the Supreme Court shall issue a citation to such member
4 requiring the member to show cause before the Court, within fifteen (15) days after service of such
5 citation, why the member should not be suspended from the right to practice in the courts of this
6 state. Service of the citation may be by personal service or by first class mail postage prepaid. The
7 member's compliance with the provisions of this paragraph on or before the return day of such
8 citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.

9 E. **Applicability of rule.** This rule shall not apply

10 (1) to any attorney whose entire compensation derived from the practice of law
11 during the year preceding the filing of any registration statement was received in the attorney's
12 capacity as an employee of a corporation handling legal matters for that corporation or as an
13 employee of an agency of the federal, state, or local government; or

14 (2) to any attorney who does not and, in the year preceding the filing of the
15 certificate of compliance has not had possession of any funds, securities, or other properties of a
16 client. Any attorney claiming an exemption from this rule must do so on the certificate of
17 compliance set forth in Paragraph D of this rule.

18 [As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme
19 Court Order No. 08-8300-026, effective January 1, 2009; as amended by Supreme Court Order
20 No. 09-8300-019, effective January 1, 2010; as amended by Supreme Court Order No. 14-8300-
21 026, effective January 1, 2015; as amended by Supreme Court Order No. 16-8300-026, effective
22 December 31, 2016U; as amended by Supreme Court Order No. _____, effective _____.]

1 **Committee commentary.** – The overdraft notification provisions in Paragraph B of this
2 rule require that all overdrafts on trust accounts be reported by financial institutions to the Office
3 of Disciplinary Counsel simultaneously with notice to the attorney of the overdraft. Only financial
4 institutions that agree to do so will be approved as depositories for trust accounts.

5 The overdraft notification provisions in this rule are intended to help prevent
6 misappropriation by providing a method for early warning of improprieties in the handling of
7 attorney trust accounts; the two most obvious indications of possible misappropriation are a trust
8 account overdraft or a dishonored trust account check. Upon receipt of an overdraft notification,
9 the Office of Disciplinary Counsel will contact the attorney or law firm and request an explanation
10 for the overdraft; a letter may also be sent requesting a documented explanation. If the overdraft
11 is the result of an accounting error, the attorney or law firm shall submit a written explanation,
12 including any documents to substantiate the explanation. If the explanation is satisfactory, the
13 overdraft notice will not be recorded as a complaint against the attorney, and the matter will be at
14 an end. If the attorney or law firm cannot supply an adequate or complete explanation for the
15 overdraft, the overdraft notice will be recorded as a complaint, and further investigation will ensue.

16 [Adopted by Supreme Court Order No. 09-8300-019, effective January 1, 2010; as amended by
17 Supreme Court Order No. 21-8300-030, effective December 31, 2021.]

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