

17-204. [Required records:] Trust accounting.

A. Required records; maintenance and reporting.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) *Accessibility; duty to produce; administrative suspension sanctions.* An attorney shall produce records requested by the Disciplinary Board or the New Mexico Client Protection Fund Commission within ten (10) days of the request unless the attorney has a good faith objection to producing the records. Failure to produce the records may result in immediate suspension of the attorney's license to practice law under Rule 17-207(B) NMRA.

(6) *Trust account disbursements and oversight responsibilities.* Trust account disbursements shall be made only by authorized bank transfer, including electronic transfer, or by check payable to a named payee, but not to cash. Signature authority for an attorney trust account may not be delegated to a nonattorney. At least one (1) attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account and shall be responsible for either making or overseeing monthly reconciliations of the client trust account ledger, checkbook, and bank statement and also shall be responsible for answering questions regarding the client trust account, although all attorneys in the law firm must comply with this rule, Rule 16-115 NMRA, and Rule 24-109 NMRA. [Accounting records may be maintained in either hard copy or stored on a computer. In addition to the requirements of Rule 16-115 NMRA and Rule 24-109 NMRA, an attorney shall keep a complete record and report annually on the certificate of compliance the name of each financial institution and each account number of every financial institution in which the attorney maintains funds received from or on behalf of a client. These records shall cover the entire time from receipt to the time of final disposition by the attorney of all such funds, securities, and other properties. Attorneys shall preserve all such records for a period of five (5) years after final disposition of said funds, securities, or other properties, or, as to fiduciary or trust records, five (5) years following the termination of the fiduciary or trust relationship. For purpose of this rule, an attorney is deemed to have the necessary "required records" by maintaining the following:

(1) — a record of all deposits into and withdrawals from each trust account, specifically identifying the date, source, and description of each item deposited as well as the date, payee, and purpose of each disbursement. Deposit slips shall separately identify each item deposited. Trust account disbursement shall be made only by authorized bank transfer or by check payable to a named payee and not to cash. At least one attorney admitted to practice law in this state shall be an authorized signatory on an attorney trust account, but signature authority may be delegated to a nonlawyer, provided, however, such delegation shall not be deemed to relieve the attorney from responsibility for transactions involving the trust account;

(2) — a separate ledger or account for each separate trust client, containing the information required by Subparagraph (1) of this paragraph. A continuing balance of each individual client trust ledger shall be maintained. The total of the balances of all individual client trust ledgers must equal the beginning balance of all individual client trust accounts, plus the total of all additional amounts received in trust, minus the total of all trust monies disbursed;

(3) — copies of all retainer and compensation agreements with clients;

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

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

(6) — copies of invoices and statements received from others and paid out of trust funds;

(7) — written reconciliations made at least quarterly of the checkbook balance, the bank statement balance, and the client trust ledger sheet balances;

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

(9) — proof of compliance with Rule 24-109 NMRA of the Rules Governing the New Mexico Bar and copies of reports received from the financial institution in compliance with Paragraph B of Rule 24-109 NMRA; and

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

B. Trust account overdraft notification.

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

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

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

(c) “notice of dishonor” means the notice that a financial institution is required to give under the laws of New Mexico upon presentation of an instrument that the institution dishonors.

(2) *Clearly identified trust accounts required.* Attorneys who practice law in New Mexico shall deposit all funds held in trust in New Mexico in accordance with Rule 16-115 NMRA [of the Rules of Professional Conduct] and Rule 24-109 NMRA [of the Rules Governing the New Mexico Bar] in accounts clearly identified as “Attorney Trust Account” or “IOLTA

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

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

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

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

(b) 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 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 to the Office of Disciplinary Counsel within five (5) banking days of the date of presentation for payment against insufficient funds.

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

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

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

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

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

D.~~[E.]~~ Certificate of compliance. On forms provided by the state bar and approved by the Supreme Court, every attorney [~~subject to these rules~~] shall annually submit to the state bar the attorney's Trust Account Certification/IOLTA Compliance form demonstrating either compliance with this rule, including compliance with Paragraph C of this rule, and Rule 24-109 NMRA, or claiming an exemption from this rule under Paragraph E of this rule. Such form shall include the financial institution name, the account name, and the account number of any and all accounts in which client funds are held, and the date, title, and location of the last course taken by the attorney as required by Paragraph C of this rule, and shall be submitted to the state bar with the registration statement filed [~~pursuant to~~] under Rule 17-202 NMRA. The state bar shall retain the original of each form and shall provide to the Disciplinary Board a copy of any form requested. [~~Whenever the State Bar of New Mexico shall certify~~] When the state bar certifies to the Supreme Court that any member of the state bar has failed or refused to comply with the provisions of this paragraph, the clerk of the Supreme Court shall issue a citation to such member requiring the member to show cause before the Court, within fifteen (15) days after service of such citation, why the member should not be suspended from the right to practice in the courts of this state. Service of the citation may be by personal service or by first class mail postage prepaid. The member's compliance with the provisions of this paragraph on or before the return day of such citation shall be deemed sufficient showing of cause and shall serve to discharge the citation.

E.~~[D.]~~ Applicability of rule. This rule shall not apply

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

(2) to any attorney who does not and, in the year preceding the filing of the certificate of compliance has not had possession of any funds, securities, or other properties of a client. Any attorney claiming an exemption from this rule must do so on the certificate of compliance set forth in Paragraph D of this rule. [~~Any such attorney shall, in lieu of the required certificate, certify on the same form provided by the clerk that the attorney has not had possession of any funds, securities, or other properties of a client.~~]

[As amended, effective January 1, 1990; July 1, 1991; April 1, 2002; as amended by Supreme

Court Order No. 08-8300-26, effective January 1, 2009; as amended by Supreme Court Order No. 09-8300-019, effective January 1, 2010; as amended by Supreme Court Order No. 14-8300-026, effective January 1, 2015; as amended by Supreme Court Order No. 16-8300-026, effective December 31, 2016.]