

"TRUST ACCOUNTING 101"

By

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NARRATOR

Hi! This is (NARRATOR). Welcome to Trust Accounting 101. This video was created to provide you with an overview of basic trust accounting procedure. Through our fun and well-acted vignettes, you will learn things like how to name your account, in what instances to deposit attorney fees, and how to avoid pitfalls that can result in disciplinary investigation and potential sanction. We will discuss different types of attorney fees and how to account for them. We will also tell you about scams perpetrated on lawyers and their trust accounts and what to do if you find yourself under investigation for trust account violations. We thank you for watching this informational resource. Now, without further delay I'd like to introduce you to Lisa Lawyer who recently passed the bar exam. Lisa needs to go to the bank to open accounts for her solo law practice. BANK MANAGER assists her. Let's listen in.

START VINGETTE ONE

CUT TO: LISA AT BANK

BANK MANAGER

How can I help you today?

LISA LAWYER

I just passed the bar exam and am opening my very own solo practice where I am sure I will get lots of clients and their money which I need to support my 20 cats.

BANK MANAGER

I know lawyers may need different types of accounts, such as a business account or a trust account. What kind of accounts do you need?

LISA LAWYER

I need an account to hold my clients' funds and another to hold funds to operate my practice.

BANK MANAGER

What do you want to call the account for your clients' money?

LISA LAWYER

How about Lisa's Law Firm Account?

BANK MANAGER

Okay! Do you need to order checks for this account?

LISA LAWYER

Yes! How do I pay for those checks?

BANK MANAGER

Don't worry about it—we'll deduct it from the account the checks are for or you can make a deposit to cover the cost. The cost of the checks will be \$150.

LISA LAWYER

Then I'll deposit \$150 of my money to cover the check charge and any other bank charges that might occur.

BANK MANAGER

A hundred and fifty bucks?! That's all? A hundred and fifty dollars isn't very much. How about \$1,000 so that the account doesn't get overdraft status?

LISA LAWYER

Okay, I have a thousand dollars on me from graduation gifts! Here you go!

LISA GIVES BANK MANAGER \$1,000.00. SHE COUNTS IT OUT.

END VIGNETTE ONE

#### NARRATOR

Lisa made a few mistakes here. Rule 1.15 requires that an IOLTA be named with a clearly identifiable fiduciary title. In this instance, "Lisa's Law Firm Account" is incorrect. For example, the account should be titled "Lisa Lawyer's Law Firm IOLTA" or "Lisa Lawyer's Law Firm Trust Account."

Lisa also agreed to have her check printing fees debited from the IOLTA. This situation is responsible for many initial IOLTA overdrafts as the check printing company will most likely debit the account listed on the checks for the cost of those checks.

A lawyer may maintain personal funds in her IOLTA for the sole purpose of paying bank fees and only in an amount necessary for that purpose. So, Lisa should deposit at least the amount for the check printing fees. Thereafter, we recommend that she maintain no more than \$100 of personal funds in her IOLTA to avoid impermissible commingling. Lisa deposited \$1,000 which would amount to impermissible commingling given that her check printing charge was only \$150. However, the rule does permit a deposit of personal funds to waive monthly bank charges. So if Lisa's bank requires a deposit of \$1,000 in order to waive monthly fees, Lisa's deposit under this limited circumstance, is acceptable. She will have to notate those personal funds on her ledgers which we will discuss later in this presentation and she will need to document the corresponding bank fees.

As a practical matter we have found that while attorneys should ask their bank to debit their business accounts rather than their IOLTAs for all bank fees, the bank may not comply with their request. This is why we are advising attorneys to

maintain a small amount of personal funds in their IOLTAs to pay such fees. This is consistent with Comment 2 to Rule 1.15. You will note attorneys are allowed to commingle funds to a certain extent, but impermissible commingling—which is depositing personal funds unrelated to a specific bank charge—is not allowed. This includes depositing personal funds solely to avoid an overdraft.

Remember! Bank personnel may not be familiar with the rules of professional conduct, so be sure to review them before you open your accounts.

## START VIGNETTE TWO

BANK MANAGER

How else can I help you today?

LISA LAWYER

I will need a business account to pay my expenses.

BANK MANAGER

Done! What would you like to call this account?

LISA LAWYER

Lisa's Law Firm Business Account.

BANK MANAGER

Okay. Anything else?

LISA LAWYER

Please make sure to make my checks and checkbook colors different for my two accounts. I don't want to mix them up by mistake.

BANK MANAGER

Can do! We'll make your business account checks fuschia and your IOLTA checks

periwinkle. You'll never confuse them!  
What else?

LISA LAWYER

What if I want to accept payment by credit  
card?

BANK MANAGER

Oh, we can definitely help you with that!  
We have a merchant services affiliate  
called Dewey Cheatham!

LISA LAWYER

Okay, but I need the money to go into my  
IOLTA but the processing and monthly fees  
to be deducted from my business account.

BANK MANAGER

No problem! I'll make sure you get the  
money and the fees get paid.

END VIGNETTE TWO

NARRATOR

Beware--deposits and deductions for  
merchant services can lead to overdrafts  
if they are set up incorrectly. And you  
can have merchant services fees deducted  
from an IOLTA if the service provider  
insists on that arrangement. Just make  
sure to deposit personal funds into the  
account to pay those fees. You could also  
consider opening a separate account for  
fees received by credit card and simply  
transfer the funds into your IOLTA. You  
may review Board Advisory Opinion 2007-3  
for more information. Now, let's check  
in on Lisa's practice to see how things  
are going.

CUT TO: LISA'S OFFICE.

START VIGNETTE THREE

LISA LAWYER

Oh boy, the moment every attorney looks forward to—setting up my accounting system! Which one should I choose?

Well, I know I don't want to keep records by hand, and Excel is way over my head with those spreadsheets, and most accounting software isn't attorney-friendly.

Hmm, here's one called TrustBooks! Let's see how this works...

NARRATOR

Before we see a demonstration of TrustBooks, please note that there are many software packages available to attorneys to assist them with their billing and trust account record keeping. Although we are using TrustBooks for this video, we are not specifically endorsing this product.

INSERT OVERVIEW OF TRUSTBOOKS VIDEO.

LISA LAWYER

Say, this looks pretty good!

END VIGNETTE THREE

START VIGNETTE FOUR

PAYNE N. SUFFEREN LIMPS IN FEEBLY.

LISA LAWYER

Please, please, come in! You are my very first client!

SHE HUGS PAYNE, MUCH TO HIS CHAGRIN.

PAYNE N. SUFFEREN

Well, hello! I was driving home from work when I was rear-ended by a careless driver yakking away on his cell phone.

LISA LAWYER

I think you have a case here! But first, I need to explain how this will work. I need you to read and sign my contingent fee agreement which is required. I'll take a third of any settlement and you are responsible to pay costs.

PAYNE N. SUFFEREN

That sounds fair. Fork over that pen!

THEY BOTH SIGN THE FEE AGREEMENT.

LISA LAWYER

Here, let me make a copy for your records. I'll get right on your legal matter!

END VIGNETTE FOUR

START VIGNETTE FIVE

BACK IN LISA'S OFFICE. SHE IS CALCULATING HER FEES FOR THE CASE.

LISA LAWYER

Wow, I'm really good at this lawyering stuff! I can't believe we settled for one million dollars. Let me review Payne N. Sufferen's fee agreement. It says I get 33 1/3% of the award. I'll review Rule 1.15 and figure out how to properly account for the settlement later.

Now let me review the advanced expenses and prepare a closing statement so I can meet with Mr. Sufferen.

LISA THEN PREPARES THE CLOSING STATEMENT. PAYNE ENTERS, MIRACULOUSLY HEALED, PRACTICALLY GLOWING.

PAYNE N. SUFFEREN

Thank you, Ms. Lisa! You are a fantastic lawyer! Now my 7 children can take clog dancing lessons!



LISA LAWYER

I'm glad you're pleased! But we're not done yet. I need you to sign insurance documents and this settlement statement. You also need to endorse the settlement check.

PAYNE N. SUFFEREN

I'll sign everything but I need my money right away.

LISA LAWYER

But I have to deposit your settlement check first!

PAYNE N. SUFFEREN

I'm not signing anything unless I get my money today!

LISA LAWYER

Okay—I'll give you a check for your share today if you promise to wait until Thursday to cash it.

PAYNE N. SUFFEREN

Sure, I can wait until Thursday.

LISA HANDS GIANT NOVELTY SETTLEMENT CHECK TO PAYNE. HE SIGNS IT.

LISA GIVES PAYNE THE CHECK FOR HIS PORTION. PAYNE LEAVES OFFICE AND GOES TO BANK.

END VIGNETTE FIVE

START VIGNETTE SIX

LISA AND PAYNE ARE BOTH IN LINE AT THE BANK. SHE DOES NOT NOTICE HIM.

PAYNE N. SUFFEREN

My lawyer told me I can't have my money until Thursday so I just want to deposit this check into my account for safekeeping.

TELLER

Sure, what could possibly go wrong? Next!

LISA LAWYER

I would like to deposit this check for \$1,000,000.00 into my IOLTA, please.

TELLER

With pleasure! Here is your receipt.

END VIGNETTE SIX

NARRATOR

Lisa correctly prepared a closing statement, which is required under R. 1.5(c) for all contingent fee cases. Here you can see the gross settlement, the deduction of attorney fees, the deduction of expenses, payment to any service providers, an amount for the insurance subrogation, the total to the client, and most important, the signature of both the client and the lawyer as is required.

But what did Lisa do wrong in this instance? Lisa disbursed funds before the award check was even deposited. Now she notices from her deposit receipt that her bank is going to hold onto the deposit for 10 days. If Lisa has other client funds in her account, and those funds are used to pay Mr. Sufferen's check, then unintentional misappropriation occurred, which could result in an ethical rule violation. In addition, if there are not sufficient funds in the account to pay Sufferen's check, an overdraft might occur, triggering a disciplinary investigation. Let's see what Lisa should have done.

SCENE REWINDS TO LISA'S MEETING WITH PAYNE.

START VIGNETTE SEVEN

LISA LAWYER

Wow, I'm really good at this lawyering stuff! I can't believe we settled for one million dollars. Let me review Payne N. Sufferen's fee agreement. It says I get 33 1/3% of the award. I'll review Rule 1.15 and figure out how to properly account for the settlement. Rule 1.15(a)(2) requires me to keep a record, commonly known as an individual client ledger, anytime a client's funds go into my IOLTA and tells me the information to keep on the ledger.

And look! There's a Rule 1.15(a)(3)! What is this requirement? It says I have to maintain a record for each bank account, commonly known as a general ledger, showing all of the deposits and withdrawals for the IOLTA.

PAYNE ENTERS, MIRACULOUSLY HEALED, PRACTICALLY GLOWING.

PAYNE N. SUFFEREN

Thank you, Ms. Lisa! You are a fantastic lawyer! Now my 7 children can take clog dancing lessons!

LISA LAWYER

I'm glad you're pleased! But we're not done yet. I need you to sign insurance documents and this settlement statement. You also need to endorse the settlement check.

PAYNE N. SUFFEREN

I'll sign everything but I need my money right away.

LISA LAWYER

But I have to deposit your settlement check first!

PAYNE N. SUFFEREN

I'm not signing anything unless I get my money today!

LISA LAWYER

I'm sorry, Mr. Sufferen, the Rules of Professional Conduct do not permit me to give you a check until I deposit your settlement in my IOLTA and the funds are available. Once the check clears and is available in my account, I will disburse your funds to you and pay your service providers and other costs associated with your case.

PAYNE N. SUFFEREN

But I need my money! Won't somebody please think of the children?

LISA LAWYER

I promise I'll get you your check as soon as I can.

PAYNE N. SUFFEREN

Fine, but I don't trust my letter carrier, so send it by pigeon.

PAYNE EXITS.

LISA LAWYER

Another stellar client interaction on the books! My Avvo rating is sure to reflect this. Now to perform the accounting for Payne's matter.

END VIGNETTE SEVEN

NARRATOR

And here we have the completed client ledger for Payne N. Sufferen where we see that Lisa deposited the settlement check on the 4<sup>th</sup> and waited 10 days until the 14<sup>th</sup> to disburse the funds.

LISA COMPLETES HER INDIVIDUAL LEDGER FOR PAYNE AND ADDS HIS INFORMATION TO HER GENERAL LEDGER.

NARRATOR

But what if Payne N. Sufferen didn't agree to the distribution of his settlement funds? What if he disagreed with Dr. Bonemeister's bill? And what about his insurance company's subrogation claim? Under Rule 1.15(e), Lisa would need to hold the funds for the disputed bills and claims in her IOLTA and disburse the undisputed amount.

CUT TO: THE NEXT DAY AT LISA'S OFFICE. ROBBIE RANOFF ENTERS.

START VIGNETTE EIGHT

ROBBIE RANOFF

I'm Robbie Ranoff and I need a lawyer! I'm looking at embezzlement and tax evasion charges.

LISA LAWYER

I can represent you for a \$50,000 flat fee.

ROBBIE RANOFF

I can do \$50,000. I'll write you a check for it right now. I'll see you at the preliminary hearing.

ROBBIE HANDS LISA A CARTOON CHECK.

LISA LAWYER

Thank you for prompt payment! See you at the hearing.

ROBBIE EXITS.

LISA LAWYER

(excitedly) \$50,000! Wow! I could make a small payment on my student loans! Or a down payment on a Ferrari! I guess I can deposit it into my business account since it's a flat fee and earned upon receipt.

END VIGNETTE EIGHT

START VIGNETTE NINE

CARD: TWO WEEKS LATER AFTER THE PRELIMINARY HEARING. LISA'S OFFICE.

ROBBIE ENTERS.

ROBBIE RANOFF

You did a terrible job! You didn't challenge the search warrant and you know I'm innocent! You're fired and I want my money back now!

LISA LAWYER

I told you there was nothing wrong with the search warrant. I did the best I could with the evidence I had. And you'll have to wait to get your money! I need to prepare an invoice for the work I've done to date.

ROBBIE RANOFF

Fine! That check better be in the mail soon! Or else! ...I'll file a grievance against you!

ROBBIE EXITS.

LISA LAWYER

I completed the preliminary hearing, so I can keep \$1,000. That means I owe him \$49,000! But I already spent \$39,000...what am I going to do?

END VIGNETTE NINE

NARRATOR

What did Lisa do wrong here? Under Rule 1.15(c), Lisa had to deposit the flat fee into her IOLTA. Then she could withdraw fees as earned as she reached milestones in the case. Those milestones should be disclosed and agreed upon with the client. While she can use her hourly rate as a

guide in setting those milestones, she cannot convert her flat fee to her hourly rate. Let's see what Lisa should have done.

START VIGNETTE TEN

REWIND TO ROBBIE'S FIRST ENTRANCE.

ROBBIE RANOFF

I'm Robbie Ranoff and I need a lawyer! I'm looking at embezzlement and tax evasion charges.

LISA LAWYER

I can represent you for a \$50,000 flat fee.

ROBBIE RANOFF

I can do \$50,000. I'll write you a check for it right now. I'll see you at the preliminary hearing.

ROBBIE HANDS LISA A CARTOON CHECK.

LISA LAWYER

Thank you for prompt payment! See you at the hearing.

ROBBIE EXITS.

LISA LAWYER

(excitedly) \$50,000! Wow! I could make a small payment on my student loans! Or a down payment on a Ferrari! Wait a minute...I haven't earned this money yet. I need to deposit this into my IOLTA, which means I need to create a ledger for Robbie! At least after the preliminary hearing I can withdraw \$1,000 to buy food for my twenty cats!

LISA RECORDS THE DEPOSIT ON ROBBIE'S LEDGER.

END VIGNETTE TEN

START VIGNETTE ELEVEN

CARD: TWO WEEKS LATER AFTER THE PRELIMINARY HEARING. LISA'S OFFICE.

ROBBIE ENTERS.

ROBBIE RANOFF

You did a terrible job! You didn't challenge the search warrant and you know I'm innocent! You're fired and I want my money back now!

LISA LAWYER

I told you there was nothing wrong with the search warrant. I did the best I could with the evidence I had. I completed the preliminary hearing, so I can keep \$1,000. That means I owe you \$49,000. I'll write you a check for it right now.

ROBBIE RANOFF

This check better be good!

LISA LAWYER

Oh, it is! I sleep with Rule 1.15 under my pillow!

LISA COMPLETES HER INDIVIDUAL LEDGER FOR ROBBIE AND ADDS HIS INFORMATION TO HER GENERAL LEDGER.

END VIGNETTE ELEVEN

NARRATOR

In this instance, we have seen an example of Lisa following Rule 1.15 and taking her flat fee incrementally or as agreed upon as a milestone in the case was completed. Read Board Advisory Opinion 2016-1 that superseded Board Advisory Opinion 96-4 for more information. Under R. 1.5(d)(3) you can only deposit a fee directly into your business account if you designate it as "earned upon receipt" or "non-refundable" in your written fee agreement, signed by the client, and include language about the possibility of a refund. And if you're



curious about what happened to Robbie, he chose to represent himself pro se. After 55 continuances, he was found guilty on all charges.

CUT TO: MUGSHOT.

START VIGNETTE TWELVE

CHRIS P. BACON THEN ARRIVES AT LISA'S OFFICE.

CHRIS P. BACON

I lost my job, started with the drinking, tried to win big at the local casino and lost, and now my wife left me, took the kids, and filed for divorce.

LISA LAWYER

Well, Mr. Bacon, half of nothing split evenly is still nothing! If you can come up with \$2,500, I'll represent you in your divorce.

CHRIS P. BACON

I just sold my antique bobblehead collection so I can pay your fee! I just have to see my babies again. Here is your \$2,500!

LISA LAWYER

I'll get started and bill against this at my \$250 an hour rate.

CHRIS EXITS. PHONE RINGS. LISA ANSWERS, IT'S CHRIS. IT'S ALWAYS CHRIS.

LISA LAWYER

Hi, Mr. Bacon. Did you think of something else you needed to tell me? No, I haven't drafted the answer, you just left 10 minutes ago. I can actually see you in the parking lot still. Yes, I can see you waving. Okay, goodbye. (hangs up) Well, I'm gonna have to bill for that...

A DAY LATER. PHONE RINGS.

LISA LAWYER

Yes, Mr. Bacon, I have drafted the answer.  
I'll send a copy to you by e-mail.

END VIGNETTE TWELVE

SIX MONTHS—AND MANY PHONE CALLS--LATER...

START VIGNETTE THIRTEEN

LISA AND CHRIS MEET AT HER OFFICE.

LISA LAWYER

I got you shared parenting with no child support, the equity in your house, and you get to keep your entire pension! Here's your final bill for \$30,000!

CHRIS P. BACON

What?! I had no idea that your fees would be this high! Why didn't you send me monthly bills? I'm gonna need a payment plan!

LISA LAWYER

What are you complaining about? I was so busy getting you this great result, I didn't have time to bill you! Fine, we'll set up a payment plan.

END VIGNETTE THIRTEEN

NARRATOR

Once again, Lisa has made some critical errors. In this scene, Lisa and Chris entered into a common retainer arrangement, which is the advance payment of fees. Under this arrangement, the best practice, even though the rules don't require one, is to have a written fee agreement that outlines what you are charging for what work. Be sure to make clear when work will commence, what your expectations are for when the retainer is exhausted and what services you are charging for, especially if you are

charging for communication by email or text and whether that communication is with you or administrative staff. Lisa didn't follow these best practice guidelines. Let's see what Lisa should have done.

#### START VIGNETTE FOURTEEN

REWIND TO CHRIS' ENTRANCE.

CHRIS P. BACON

I lost my job, started with the drinking, tried to win big at the local casino and lost, and now my wife left me, took the kids, and filed for divorce.

LISA LAWYER

Well, Mr. Bacon, half of nothing split evenly is still nothing! If you can come up with \$2,500, I'll represent you in your divorce.

CHRIS P. BACON

I just sold my antique bobblehead collection so I can pay your fee! I just have to see my babies again. Here is your \$2,500!

LISA LAWYER

I'll get started and bill against this at my \$250 an hour rate. First you need to review and sign my fee agreement. Now understand I will bill you for every call, text, and e-mail from you. That can add up pretty quick. Try to group any questions you might have so we can keep your fees affordable. I'm going to send you monthly bills and you'll need to replenish your retainer whenever it's \$500 or less.

CHRIS EXITS. PHONE RINGS. LISA ANSWERS, IT'S CHRIS. IT'S ALWAYS CHRIS.

LISA LAWYER

Hi, Mr. Bacon. Did you think of something else you needed to tell me? No, I haven't drafted the answer, you just left 10 minutes ago. I can actually see you in the parking lot still. Yes, I can see you waving. Okay, goodbye. (hangs up) Well, I'm gonna have to bill for that. Now I need to deposit his retainer, set up his client ledger, and enter the deposit into my general ledger.

ADD VIEW OF LISA'S LEDGERS ON POWERPOINT HERE

A DAY LATER. PHONE RINGS.

LISA LAWYER

Yes, Mr. Bacon, I have drafted the answer. I'll email a copy to you.

END VIGNETTE FOURTEEN

SIX MONTHS—AND MANY PHONE CALLS--LATER..

START VIGNETTE FIFTEEN

LISA AND CHRIS MEET AT HER OFFICE.

LISA LAWYER

I got you shared parenting with no child support, the equity in your house, and you get to keep your entire pension! I appreciate your regular payments of your monthly bills. Here's your final bill for \$1,000!

CHRIS P. BACON

Thank you, Miss Lisa! I'm gonna recommend you to all my friends at my clog dancing class! I really appreciate that you sent me monthly bills and took my phone calls.

LISA LAWYER

You're welcome, Mr. Bacon! See you at clog dancing class!

CHRIS EXITS.

LISA COMPLETES HER INDIVIDUAL LEDGER FOR CHRIS AND ADDS HIS INFORMATION TO HER GENERAL LEDGER.

END VIGNETTE FIFTEEN

START VIGNETTE SIXTEEN

ERNIE ENTREPRENEUR ENTERS.

ERNIE ENTREPRENEUR

Hi Lisa! I want to establish an LLC.

LISA LAWYER

Well, you'll need articles of organization and a business agreement. You'll also need to apply for an employer ID number with the IRS, and if you want a trade name, I can complete that application with the Secretary of State's office.

ERNIE ENTREPRENEUR

OK! I want to call my LLC "Ernie's Bounce House Kingdom & Pizzeria." How much will you charge for all of this? I'm not made of money. Can I pay you monthly?

LISA LAWYER

Yes! I will bill you once a month for the hours I have worked on your matter.

ERNIE ENTREPRENEUR

That sounds reasonable.

ERNIE EXITS OFFICE.

END VIGNETTE SIXTEEN

START VIGNETTE SEVENTEEN

CUT TO: LISA ON THE PHONE WITH ERNIE.

LISA LAWYER

Hi Ernie! I finished the articles of organization and the business agreement. Can you come in and sign these documents?

ERNIE ENTREPRENEUR

Yes. Can you have this month's bill ready for me when I come in?

LISA LAWYER

Sure!

ERNIE ARRIVES AT OFFICE MOMENTS LATER AND SIGNS THE DOCUMENTS. LISA GIVES ERNIE AN INVOICE WITH A MONTHLY TOTAL. ERNIE HANDS OVER A CHECK FOR PAYMENT.

ERNIE ENTREPRENEUR

Everything looks good! I'll sign these papers.

LISA LAWYER

I'll file these with the Secretary of State's Office. And here's your bill.

ERNIE ENTREPRENEUR

This amount is fair. Here's your check!

ERNIE EXITS.

LISA LAWYER

This is a fee from a client, so I'm pretty sure I should put this in my IOLTA. Let me snap a picture of the check and deposit it remotely with my bank's phone app. And now I can pay my Target, Visa, and Skymall bills straight out of my IOLTA!

END VIGNETTE SEVENTEEN

NARRATOR

Oh, Lisa, maybe you should stop sleeping with the rule and try reading it! Earned fees or fees for work already performed must be deposited into a business or

personal account, never the IOLTA. Let's  
rewind and add a twist.

START VIGNETTE EIGHTEEN

ERNIE ENTREPRENEUR

Everything looks good! I'll sign these  
papers.

LISA LAWYER

I'll file these with the Secretary of  
State's Office. And here's your bill.

ERNIE ENTREPRENEUR

This amount is fair. By the way, Lisa, my  
great aunt Ethel died and left me some  
money so I'll write you a check for this  
month's fees and pay \$500 towards next  
month's bill!

LISA LAWYER

No problem, that'll work!

ERNIE EXITS.

LISA LAWYER

This is a check for both earned and  
unearned fees, so I must deposit it into  
my IOLTA and transfer the earned portion  
to my business or personal account. I'll  
just deposit this remotely and transfer  
the earned portion to my business account  
so I can pay my bills!

END VIGNETTE EIGHTEEN

NARRATOR

Lisa got it right that time! Doing legal  
work and then billing after completion  
sounds easy. If this is the only way you  
work, you don't even need an IOLTA because  
the payment received post-invoice is an  
earned fee that would go into your  
business account. However, this  
arrangement is inherently dangerous

because there is no guarantee of payment! So if you do choose to work this way, the best practice, once again, is to have a written fee agreement that outlines the work to be done, your hourly rate, and any conditions of billing and payment. Be consistent and regular with invoicing. We get many grievances about billing. It is in your best interest to use "action" words, such as "Meeting with client," "Phone call from opposing counsel," and the like, to explain the work performed in detail.

NARRATOR

Lisa and Ernie had a good working relationship and he hit it big in the bounce house business! Lisa, too, has been successful and is now Lisa's Law Firm & Associates! Now Ernie wants to retain Lisa's firm for all his business needs.

START VIGNETTE NINETEEN

CUT BACK TO LISA'S OFFICE.

ERNIE ENTREPRENEUR

Lisa, I'm so happy and I owe so much to you and your excellent lawyering skills! I am now the biggest name in bounce houses in the Midwest! I want you and your fleet of lawyers to be available whenever I need your help. How would that work?

LISA LAWYER

Well, that is known as a classic or true retainer. You'll pay the firm a monthly retainer to ensure the firm's availability. If we perform any work for you, that will be billed separately at our hourly rates and you will receive invoices for that work.

ERNIE ENTREPRENEUR

You always know exactly what I need! What will the monthly retainer be?



LISA LAWYER

How does \$5,000 a month sound?

ERNIE ENTREPRENEUR

And you'll take my calls anytime and answer all my emails and text messages?

LISA LAWYER

Of course, Ernie! I already do that for you, but remember, those communications will be billed under a separate invoice!

ERNIE ENTREPRENEUR

Here's a check for the first month! I'll talk to you soon.

ERNIE LEAVES.

LISA LAWYER

Wow! This is an uncommon arrangement. I never thought I'd be so lucky! Since this check is just paying for my availability, I can deposit it straight into my business account.

END VIGNETTE NINETEEN

NARRATOR

Yes, Lisa got it right again! A classic or true retainer, rare as it is, is earned upon receipt and goes straight into the business account. However, remember that if you become unavailable, you may have to refund the retainer.

SHE EXAMINES HER GENERAL LEDGER, BANK STATEMENTS, DEPOSIT SLIPS, AND CANCELLED CHECKS (WRITES A CHECK TO HERSELF FOR THE EARNED PORTION OF ERNIE'S CHECK?). SHE RECONCILES THEM ACCORDINGLY. (THIS IS LIKELY A POWERPOINT PRESENTATION.) A BRIEF DISCUSSION ON THE ADVANTAGES OF ATTORNEYS WRITING CHECKS INSTEAD OF ELECTRONIC TRANSFERS.

NARRATOR

We have now seen several different clients with different fee arrangements. A significant part of Prof. Cond. R. 1.15 is section (a)(5) which requires that an attorney reconcile all the records he or she is required to keep under the rule on a monthly basis.

HERE WE SHOW IN POWERPOINT LISA'S ACCOUNT RECORDS FOR RECONCILIATION. WE SEE HER CLIENT LEDGERS FOR PAYNE N. SUFFEREN, ROBBIE RANOFF, CHRIS P. BACON, AND ERNIE ENTREPRENEUR.

NARRATOR

Here we see a sample reconciliation where Lisa has matched her general ledger balance, to the balance indicated by totaling up her individual client ledgers, and compared both with the balance indicated by her bank statements.

Since you are required to keep your reconciliation records for 7 years, you will want to keep them in a paper or electronic format. You can find yourself under investigation for an IOLTA overdraft that was caused by bank error, and you will still need to produce the records for review by disciplinary authorities, so it makes sense to keep paper or electronic versions.

Besides just knowing how to deposit and disburse client funds, you should be aware that there are a variety of different scams that target attorneys and their IOLTAs. We're going to show you a few examples of the most common ones.

\*\*\*OVERALL ACCOUNT RECONCILIATION TAKES PLACE HERE.\*\*\*

START VIGNETTE TWENTY

CUT TO: LISA ON ONE SIDE OF "SPLITSCREEN," FAKE CLIENT "THOMAS SMITH" ON THE OTHER.

THOMAS SMITH

Mwahahaha! Whose money can I steal today? Lisa Lawyer?! Why, she's the biggest name in Midwest bounce house law! Perfect, she's gotta have money! All I need to do is hook her with a suspiciously easy job! What should I put in this email? "Dear Ms. Lawyer..."

LISA LAWYER

"...I am in need of your legal assistance regarding a collection case." Okay, this looks pretty simple. Blah, blah, blah...I have to collect \$320,000 and I get a \$50,000 fee. No problem! I've never even heard of this person, but I can't pass this up! Let me look this guy up online.

FURIOUSLY TYPING.

LISA LAWYER

Well, everything I'm finding matches what he said in his email. I'll send him a fee agreement and ask him to sign it.

THOMAS SMITH

Jackpot! Sure, I'll sign your fee agreement...hook, line, and sinker! Mwahahaha!

LISA LAWYER

I'll send a demand letter and see what the debtor has to say for themselves.

END VIGNETTE TWENTY

START VIGNETTE TWENTY-ONE

TIME PASSES, LISA OPENS HER MAIL.

LISA LAWYER

Well, look what we have here! Wait until I tell Thomas—I got his \$320,000 for him! I'll deposit it into my IOLTA for safekeeping.

LISA, TYPING FURIOUSLY AGAIN.

THOMAS SMITH

"Good news, I collected the money." Aha, she got my fake check! Now I'll send her my wire instructions and demand that she send the money immediately! "Dear Ms. Lawyer..."

LISA LAWYER

Aw, his dog got hit by a car driven by his sick kid trying to get to the hospital! Now he's gotta pay the hospital AND the vet! He says he needs his money right away! I know I'm not supposed to do that until I make sure the money is available, but it's such a sad story! Let me check my account online. (typing) There's the deposit—and look, it's included in the balance! It must be available. I'll wire the money to Thomas right now!

END VIGNETTE TWENTY-ONE

START VIGNETTE TWENTY-TWO

TIME PASSES, LISA OPENS MAIL.

LISA LAWYER

What?! The debtor's check was returned for fraud? Oh no, all the money Ernie Entrepreneur just paid the firm to defend him in his latest bounce house personal injury matter is gone! I've got to contact the police! I've got to contact the bank! I have to tell Thomas! I'm gonna have to sell my Ferrari!

FURIOUSLY TYPING. THOMAS IS NOWHERE TO BE FOUND. A TUMBLEWEED BLOWS BY.

END VIGNETTE TWENTY-TWO

NARRATOR

Just when we thought Lisa could manage her IOLTA, she let herself get tricked. If it sounds too good to be true, it probably

is. The hallmarks of this particular scam are fake parties that appear to be real, often from foreign countries, the lawyer deposits a check into her IOLTA and believes it clears, the lawyer disburses to fake client and self, often by wire transfer, and deposited check is returned as fraudulent with the amount debited from the IOLTA. If the bank cannot reverse the wire, then the balance in the IOLTA and the lawyer's personal funds are in jeopardy. If client funds are used to pay the wire transfer, then misappropriation took place.

Let's watch Lisa face another challenge.  
Let's see if she can figure this one out!

#### START VIGNETTE TWENTY-THREE

LISA'S OFFICE, AFTER HOURS. JAN ITOR, THE NIGHT PORTER, IS BUSY SWEEPING UP. HE RIFLES THROUGH HER DESK AND FINDS LISA'S TRUST ACCOUNT CHECKBOOK.

JAN ITOR

Hey! What do we have here? Blank checks, eh? Don't mind if I do! The holidays are right around the corner! It'll be easy to copy the account number and make my own checks! I bet she won't even notice. I heard she's the biggest name in Midwest bounce house law!

JAN ABSCONDS WITH THE ACCOUNT INFORMATION.

#### END VIGNETTE TWENTY-THREE

#### START VIGNETTE TWENTY-FOUR

LATER. LISA CHECKING HER ACCOUNT BALANCE.

LISA LAWYER

Ever since that last scam, I've been checking my account regularly. And what's this? A subscription to "Day Porter Confessional...After Dark?" Who would buy this much bratwurst? Wait a second...did I leave my checkbook out?

SHE FLIPS THROUGH HER CHECKBOOK.

LISA LAWYER

I don't understand, all the checks are here! What a day—first Jan quits, and now this! I'm gonna have to call Sgt. Sleuth—again!

END VIGNETTE TWENTY-FOUR

NARRATOR

This is a frustrating scam because you can't do much to safeguard yourself. It isn't limited to just someone stealing a blank check. A client who receives a settlement check, or anyone who just gets hands on an IOLTA check, could misuse the account number or manufacture a fake check. Do your best to safeguard your account materials and reconcile and monitor your account records regularly. Even if the bank makes you whole, always report the theft of client funds to law enforcement.

START VIGNETTE TWENTY-FIVE

CUT TO: SPLITSCREEN WITH LISA AND NOTORIOUS BAD GUY THOMAS SMITH. AGAIN.

THOMAS SMITH

Mwahahaha! I've hacked into Fictional Title Company's email account. Honestly, who makes their password "password?" What's this? A pending real estate transaction for Ernie Entrepreneur, the Midwest's bounce house king?! This should be a big transaction. Looks like Ernie's setting up a location in Truth or Consequences, New Mexico! And he's being represented by Lisa Lawyer? How poetic! I'll send an email to Lisa from an email address similar to the title company's ACTUAL email address and pose as the closing agent. Then I'll provide my OWN wiring instructions and really kill Ernie's buzz!

THOMAS FURIOUSLY TYPES. LISA'S COMPUTER DINGS.

LISA LAWYER

Ernie is going to be thrilled to strike out west and bring his bounce house kingdom to millions! I just got the wiring instructions from the title company. I'll go ahead and wire Ernie's money for the closing and we can wrap this up with no issues whatsoever.

LISA TYPES, SENDS EMAIL. PHONE RINGS. SHE ANSWERS.

LISA LAWYER

Hello? Fictional Title Company? What do you mean, "Where are the closing funds?" I followed the wiring instructions in the email you sent me. Hang on, I've got your email right here. Wait a minute...this was sent from "jsmith@fictionaltitlee.com?" There's an extra "E" at the end of the address! Does this mean I wired Ernie's funds to the wrong account?! Five million dollars! Five million dollars, lost! I don't have malpractice insurance for that much! I've gotta call my bank and try to unwind the transaction, and call Ernie, too!

END VIGNETTE TWENTY-FIVE

NARRATOR

Poor Lisa. She fell for yet another scam. By failing to verify the wiring instructions sent to her, she ended up losing Ernie's funds, causing him all kinds of problems. In this instance, Lisa failed to notice the altered email address that the hacker used since it was so similar to the closing agent's actual email address. This scam is difficult to identify and prevent, but attorneys should ensure that they only use the exact information for the parties to a transaction as found in their own client file.

As a result of Lisa's errors—her many, many, errors—she overdrew her IOLTA and received a letter of inquiry from the Office of Disciplinary Counsel.

START VIGNETTE TWENTY-SIX

DRAMATIC MUSIC. NARRATOR HAND DELIVERS LETTER (VIA BRICK) TO LISA LAWYER. LISA IS DISTRAUGHT.

LISA LAWYER

What's this? How did they find out so quickly? What do I do?

END VIGNETTE TWENTY-SIX

NARRATOR

Well, Lisa, the first thing you should do is take a deep breath. Then review the letter of inquiry and comply with the requests for information and documents. Take responsibility for any mistakes you may have made (including recordkeeping shortfalls), and have a plan for rectifying errors. The letter requires that you send most of the records you are required to keep under Rule 1.15. Do NOT create records purely in response to an investigation. Finally, if you still have concerns about your response, consider whether you want to consult ethics counsel.

START VIGNETTE TWENTY-SEVEN

CUT TO: LISA AND ERNIE HANGING OUT AT HIS BOUNCE HOUSE OFFICE.

LISA LAWYER

Thank goodness I was able to have the bank unwind that fraudulent wire transfer and the Office of Disciplinary Counsel was so understanding, helpful, and professional during the investigation. I got my dismissal letter and now here we are in New Mexico, enjoying your westward



expansion into the bounce house market out here.

ERNIE ENTREPRENEUR

I'm glad it all worked out! I don't know what I'd do without you, Lisa Lawyer!

HUGE HIGH FIVE, FREEZE FRAME.

END VIGNETTE TWENTY-SEVEN

NARRATOR

Thank you for watching this informational resource! If you have any questions about anything you've seen today or any ethics issues, please contact our office at one of the numbers listed on the screen.