TRUST ACCOUNT MAINTENANCE & AUDIT REQUIREMENTS

I. TRUST ACCOUNT MAINTENANCE

A - Trust Account

1. Each lawyer or business entity comprised of lawyers ('Lawyer'), practicing law in the State of Montana who holds client funds, shall maintain a trust account or accounts ('Account') in Montana-based financial institutions for the segregation and separation of client funds held by Lawyer. Such Account shall be separate from the Lawyer's business and personal accounts. The name of the Account and any checks, drafts or deposit slips shall include the words 'Trust Account.'

2. All funds entrusted to the care of the Lawyer will be immediately deposited into the Trust Account. A separate ledger or account record ('Ledger') shall be maintained for each client and transaction as hereinafter provided.

3. All transactions within the Account are to be accomplished by check, draft, electronic funds transfer, deposit slip or other negotiable order.

B - Trust Account Records

1. Each Trust Account maintained by a Lawyer shall have its own supporting documentation. Such documentation shall include:
   a. Financial institution account register (e.g., 'Check Register'). This register is to reflect every deposit and disbursement affecting the Trust Account, and the current balance in the Trust Account.
   b. Cash receipts journal. This journal shall itemize all funds deposited into the Trust Account. These funds are to be entered in the register as a separate line item for each source, amount, description of source and date.
   c. Cash disbursements journal. This journal shall reflect each disbursement by date, payee, and description of use.
   d. The cash receipts and disbursement journals may be combined with the financial institutions account register, provided all necessary information is reflected.
   e. Client ledger. This ledger will contain a separate record of all receipts and disbursements related to each client or transaction. Each record is to be kept from the date of initial deposit to the date of final disbursement. Each entry is to contain the date of the transaction, a notation as to the nature of the transaction, and the client or transaction's balance of funds remaining in the Trust subsequent to the transaction. Each ledger shall contain the name and address of the client. Financial institution receipts, duplicates of the deposit slips, and all canceled checks or drafts must be retained in the Trust Account permanent records.
2. Trust Account records are to be held for a period of not less than five (5) years.

Records Reconciliation

1.All Trust Account Ledgers and Accounts will be reconciled to one another at least quarterly. Such reconciliations to include:
   a. A reconciliation of total disbursements for the period (months, quarter, etc.) as recorded in the cash disbursements journal and Check Register; a discrepancies to be noted, explained and made a part of the reconciliation.
   b. A reconciliation of total deposits for the period as recorded in the cash receipts journal and Check Register; all discrepancies to be noted, explained and made a part of the reconciliation.
   c. Reconciliation of the check register balance to the total of the separate records in the source ledger; all discrepancies to be noted, explained and made a part of the reconciliation.
2. On a monthly basis, the check register balance shall be reconciled to the account statement forwarded to the Lawyer from the financial institution; all discrepancies to be noted, explained and made a part of the reconciliation.

II. AUDIT PROCEDURES

A - Review by Lawyers' Fund for Client Protection Board

1. Upon receipt of an oral or written complaint, regarding the potential Trust Account discrepancies of a particular Lawyer, the Chairman of the Lawyers' Fund For Client Protection Board ('Chairman') shall conduct a preliminary review of the allegations and relevant facts and determine if there exists sufficient basis to conduct an audit.
2. If in the judgment of the Chairman an audit is warranted, he shall consult with the Chairman of the Commission on Practice and report to the Executive Committee of the Board of Trustees of the State Bar of Montana ('Executive Committee'). In making his report, the Chairman shall be bound by the confidentiality rules of the Commission on Practice and shall not disclose to the Executive Committee, or others, the name of the Lawyer, the city or town in which the Lawyer practices, or any other facts which will tend to disclose the identity of the Lawyer. Provided, however, that the confidentiality requirements will not preclude the inclusion of facts, names of places which have been made public by any form of media dissemination.
3. Upon direction of the Executive Committee the Chairman shall engage an auditor to examine the Trust Account in question. An auditor selected by the Chairman is to be an independent Certified Public Accountant or Certified Public Accounting firm, licensed in the State of Montana.
4. The Chairman will notify the Lawyer of the decision to conduct an audit and the name of the auditor in charge. Additionally, the Chairman shall provide the auditor with a Letter of Authority indicating the extent of the examination. The auditor shall present the Lawyer with a copy of this Letter of Authority.
5. As a part of the engagement, the Chairman will advise the auditor of the time period in question, and the Commission on Practice rules of confidentiality. Such audit is to be performed at the office of the Lawyer in question or such other place as the auditor and the Lawyer agree, so as to minimize the disruption of the Lawyer's practice. If any records, or copies thereof, are removed from the Lawyer's office, the auditor shall keep them under lock and key in the work area of his choice. Only personnel directly related to the audit may have access to these records.

B - Cooperation

1. The Lawyer in question shall cooperate fully with and provide all documents and records requested by the au-

ditor. Failure to cooperate with the auditor will result in immediate notification to the Commission on Practice.

C - Auditor's Duties

1. The auditor in charge shall be a Certified Public Accountant. The auditor shall:

   a. Prepare reconciliation of all ledgers, journals, check registers and bank statements for the period in question.
   b. Examine and compare a sample of individual entries in ledgers, journals and check registers for consistencies related to a single transaction.
   c. Examine and compare amounts, dates and payers/payees on canceled deposit slips and checks to entries in the journals, ledgers and check registers.
   d. Review ledgers, journals and check registers for business, personal and/or inconsistent use of Trust Account funds.
   e. Provide to the Chairman a written report of the audit, with separate schedules for each Ledger where any discrepancies and inconsistent use of funds appear.

D - Audit

1. On receipt of the auditor's final written report and the Lawyer's records, the Chairman will review the report and determine if it reveals any material discrepancy in the Accounts.
2. If a material discrepancy in the Account exists, the Chairman shall release to the Commission on Practice copies of the Lawyer's records, audit report and other pertinent information. At the same time, the Chairman shall notify the members of the Lawyers' Fund For Client Protection Board of the result of the audit and convene a meeting of the Board to discuss what actions by the Board, if any, are appropriate.
3. If the audit discloses no material discrepancies, the Commission on Practice shall be advised and the records will be released to the Lawyer, as well as a copy of the auditor's report. The auditor's reports supplied to the Chairman by the auditor will be placed in confidential files and the files and matter closed.

E - Cost of Examination

The cost of each audit shall be borne by the Lawyers' Fund For Client Protection of the State Bar of Montana until the results are known. In the event the audit leads to action by the Commission on Practice, or the Supreme Court of the State of Montana, the costs may be assessed against the offending Lawyer.

Approved by the Board of Trustees in April of 1990.

*(For the **Lawyers' Fund for Client Protection Board** members, see p. 105)*