

17-204. Required records.

A. **Required records.** Every attorney subject to these rules shall maintain complete records of the receipt, deposit, investment and disbursement of all funds, securities and other property received from or on behalf of a client that have at any time come into the attorney's possession, and shall further maintain on a current basis all books and records that will establish the attorney's compliance with Rule 16-115 NMRA of the Rules of Professional Conduct and Rule 24-109 NMRA of the Rules Governing the New Mexico Bar. 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:

(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, 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) 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; 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. 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 compliance with this rule and Rule 24-109 of the Rules Governing the New Mexico Bar. 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 shall be submitted to the state bar with

the registration statement filed pursuant to Rule 17-202 NMRA. The state bar shall forward the original of each form to the Center for Civic Values. The Center for Civic Values shall maintain each form and shall provide to the Disciplinary Board a copy of any form requested. Whenever the Center for Civic Values shall certify 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.

C. **Applicability of rule.** This rule shall not apply 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 handling legal matters of a corporation or an agency of the federal, state or local government. 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.]