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Your Attorney Trust Account: What You Need to Know

The bookkeeping rules for lawyers are neither numerous nor complicated. It is your job to know them.

By **Marc Garfinkle** | May 22, 2020



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An attorney trust account is unlike any other bank account. Unique rules apply, and most lawyers don't know them, so solos and small firms tremble at the thought of an ethics audit. Attorneys in large firms are usually less troubled, either because they have no contact with that account or because a dedicated team or individual is assigned the task of maintaining it. Accordingly, for some of our readers the information here is important, while for others it may seem to have no relevance. But it has.

That's because attorneys in larger firms often leave their Big Law nests and come to roost in much smaller ones where their duties may include setting up and maintaining an ATA, writing trust checks or making deposits into trust. A degree in accounting won't help. Only knowledge of the rules will. Because of that, transplanted big-firm lawyers who have not read the rules create frequent problems for the auditors and often find themselves on the receiving end of discipline.

Every aspect of the account and the accounting is subject to scrutiny. Scrutiny often arrives as a Notice of Random Audit. At the audit, the attorney and the account will be minutely examined for compliance with the Rules. Earlier columns have discussed the importance of consulting with counsel before sitting down for the audit. That advice stands.

Ignorance of the rules is no defense to a violation. The Rules are found at R. 1:21-6 et. seq. You should read them. Since one question invariably will be, "Are you familiar with the rules pertaining to your trust account?" you should be able to say, "Yes." But just in case, dear reader, we present for you some highlights from the rules.

To begin, every attorney in private practice must maintain separate trust and business accounts and register them annually with the Disciplinary Oversight Committee and the New Jersey Lawyers' Fund for Client Protection. This requirement applies to all attorneys with New Jersey practices, even if their New Jersey practices are minimal or will probably never use a trust account. The annual registration form allows for specific exceptions to the mandate. All accounts must be in New Jersey financial institutions, and IOLTA accounts may be maintained only in approved banks.

There is no limit to how many trust accounts a firm may maintain, but at least one must be a non-interest bearing IOLTA (Interest on Lawyers' Trust Accounts) account. IOLTA accounts are depositories for funds that are nominal or held for such a short term that they would ordinarily generate less interest than would cover the bank's cost to earn that interest. Under the IOLTA rules, these funds are grouped, and the resulting interest is used to fund law-related public interest programs.

All accounts must be in the name of an attorney or a firm. Trade names are not allowed. The ATA *must* be designated "Attorney Trust Account." Such designation must appear *prominently* on the checks and deposit slips. That seems to mean that the typeface (font) of the designation must be the largest on the document, and preferably bold-faced. (Note also that business accounts must be prominently designated one of three ways: Attorney Business Account, Attorney Professional Account, or Attorney Office Account.)

Any funds held for the benefit of a client or third person must be held in trust. Any check made payable to the client and the attorney must be deposited into trust. Each sum deposited into the ATA must have its own deposit slip. While burdensome for firms, such as collection firms, which make many deposits, this practice facilitates the audit. Withdrawals from trust must be by check. Although funds may be wired *into* trust, electronic transfers *from* an ATA are not permitted,

While a non-lawyer may be a signatory to a business account, only a lawyer may sign a trust check. Trust checks may not be written against uncollected funds, although it may be permissible in limited circumstances involving the use of certified, cashiers or bank (and now, savings and loan) checks in certain real estate and commercial transactions.

Attorneys may retain in their ATA an amount "reasonably sufficient to pay bank charges"—currently \$250. The lawyer must keep a separate ledger page for this. If there is more than \$250 of the firm's money or personal money in the ATA, it is considered comingling, and discipline may follow. Many firms who deposit their retainers into their IOLTA accounts and bill against it are taking a risk—if the attorney does not remove each earned fee immediately, there will be comingling. A better vehicle would be a non-IOLTA trust account for the same purpose. Attorneys also get in trouble when they keep funds in trust that are unidentified or when the rightful owner can't be found. Many lawyers are in this situation. If you are among them, follow the procedure to pay that money into the Superior Court. You will feel better, although some measure of discipline may lie for your negligence or lack of timeliness.

Finally—the infamous three-way reconciliation. This is simple. First, you should have a ledger page for each person or matter for which money is being held, including your "\$250 or less." You must keep running totals on them, retiring those pages that "zero out." Then, monthly, you must compare the balance on your bank

statement with the mandatory running balance in your check ledger (or stubs) as of the date of the statement, usually the last of the month. Write both numbers down. If the numbers are not identical, you must discover and explain any discrepancy, most commonly bank charges and checks that have not cleared. That is a normal reconciliation.

Now, total the balances on your active ledger pages. That number should equal the other two. If it does not, discover the problem immediately. Better now than 10 years from now. That is three-way reconciliation.

The bookkeeping rules for lawyers are neither numerous nor complicated. It is your job to know them. Now you do.

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