



BEST PRACTICES: TRUST ACCOUNTING

BY KENNETH E. WINSLOW

It is the duty of all New Jersey attorneys to safeguard client funds and property under their control in the practice of law. Client assets must be kept separate from the attorney's personal and business assets, and cannot be used for any purpose whatsoever, other than as directed by the client.

The attorney is specifically obligated to notify a client promptly when client funds and property is received; to provide the client with appropriate accountings; and to disburse promptly to the client all funds and property to which the client is entitled. Non-cash property, such as bonds and securities, should be clearly identified as client property and secured in the attorney's safe or safe deposit box.

The best practices and comments list below are meant to address some of the more common recordkeeping deficiencies and to help you maintain trust account documentation, in accordance with the requirements of the Supreme Court of New Jersey.

Bank Accounts

Attorneys are prohibited from comingling operating funds with client trust funds. All attorneys who engage in private practice of law in New Jersey are required to maintain at least two attorney bank accounts with proper designations on the statements, check, and deposit slips, as follows:

1. Client trust fund account containing the designation "Attorney Trust Account"
2. Business operating account containing the designation "Attorney Business Account"

Trust Accounts

The attorney trust account must be maintained at a financial institution or branch, located in the State of New Jersey.

1. The financial institutions must be approved by the Supreme Court of New Jersey. An approved financial institution list is published annually;
2. The account must have a prominent designation "Attorney Trust Account" on all statements, checks, and deposit slips;
3. Only attorneys admitted to practice in the State of New

Jersey, are permitted to sign trust account disbursement checks and wire transfer authorizations;

4. The attorney trust account should not be used for funds which an attorney receives while acting in any fiduciary capacity, such as executor, guardian, receiver, or trustee. These funds are to be placed in separate fiduciary accounts.

Recordkeeping

The following are specific recordkeeping practices to help you avoid common pitfalls. Work with your CPA professional to set up a system to comply with New Jersey guidelines:

1. There must be supporting documents to show that, at least monthly, a reconciliation has been made of the cash balance derived from cash receipts and cash disbursement journal totals, the checkbook balance, the bank statement balance, and the client trust ledger;
2. All trust transaction journals must contain sufficient descriptions including the client's last name and identifying file or matter number;
3. The accounting system must produce a separate client trust ledger, providing sufficient information regarding the case and matter, indicating the source of all deposits, names of all persons for whom the funds are held and the description, and name and amounts for all funds disbursed from the trust account;
4. All trust account withdrawals must be made only by attorney authorized financial institution transfers or by checks payable to the named payee (and not to cash);
5. All electronic transfers out of an attorney trust account shall be made on signed written instructions from an authorized attorney to the financial institution. The financial institution must confirm each authorized transfer by returning a document to the attorney showing the date of transfer, the payee, and the amount;
6. Copies of cancelled check digital images that are provided with the monthly bank statement must be no more than two (2) images per page.

Unidentified and Unclaimed Trust Accumulations

Attorneys must refund unearned legal fees or unspent advanced costs. Attorneys have an ethical responsibility to

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Best Practices

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do so whenever the attorney completes or withdraws from representation or the attorney is discharged by the client.

1. Account balances that are either unidentified or unclaimed for a period exceeding two years or which are held for missing owners shall be designated as “Unidentified and Unclaimed Trust Fund Accumulations”;
2. The attorney must make a reasonable search to locate the beneficial owner of the funds, as designated above, for a subsequent one year period;
3. After the one year period the unclaimed funds should be paid to the Clerk of the Superior Court with an application that includes a detailed affidavit providing the facts and all reasonable efforts of search, inquiry, and notice;
4. The Clerk of the Superior Court may decline to accept funds where the petition does not evidence a diligent search.

Records Retention

All New Jersey Attorneys are mandated to retain the following records for at least seven years:

1. Client retainer and fee arrangements;
2. Statements provided to clients showing disbursements of funds;
3. Billings rendered to clients, and;
4. Records showing payments to other attorneys or non-employees for services rendered.

In addition to the best practices outlined above please refer to the record keeping requirements published by the Supreme Court of New Jersey under RPC 1.15 and R.1:21-6.

You may also access information online at <http://www.judiciary.state.nj.us/oe>.

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