



# ALPS

## Practice Management Pointers

## Basic Trust Account Do's and Don'ts

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Theft of client property remains a serious concern for the legal profession but trust account problems aren't just about rogue lawyers. The real problem is that far too often an attorney was less than diligent about maintaining proper and appropriate financial practices in the office and things simply got out of hand. Also, be aware that lack of intent, shoddy record-keeping practices, and restitution are not effective defenses to a misappropriation or conversion of client funds complaint. With this in mind, here are a few tips that if taken to heart can help keep you on the straight and narrow path when it comes to being responsible for other people's money.

First, and most importantly, there are no circumstances under which it would be acceptable to borrow funds from your client trust account, temporarily or otherwise, and yes unfortunately this does need to be said. Trying to make payroll, covering a quarterly tax payment, paying your bar dues, borrowing from one client to cover a check paid to another, or needing to take care of a necessary personal expense don't pass muster. Similarly, an attorney may not keep an unearned advance fee, hold onto non-disputed client funds as leverage over disputed earnings, or apply a client's current funds to that client's outstanding bill from a previous matter.

Second, make certain that you keep undeposited checks and cash in a locked drawer or cabinet even if you intend to deposit the money later in the day. I have walked into numerous firms for a risk visit and found no one in the reception area. It would take only a minute to walk behind the receptionist's desk, open the top right hand desk drawer, remove the bank deposit envelope that too many still place there, and leave the office completely unnoticed. In addition and upon receipt, restrictively endorse and create a log of all checks that have come in and keep the log in a separate place from where the checks are held. If any checks are ever stolen, lost, or destroyed this will enable you to know whose checks are gone thus giving you the opportunity to inform the affected clients or other payers. Also, since those checks were restrictively endorsed, they should be much easier to have replaced.

Third, never disburse the proceeds of any check prior to that check clearing and here's why. There is a difference between funds being available, which typically occurs within 24 hours on domestic checks, and those funds being collected funds (meaning the check has cleared), which can take several days and potentially quite a bit longer. Checks can fail to clear for a variety of reasons including a missing, insufficient, or incorrect endorsement; insufficient funds; a drafting error; a bank error; or because it was a forged check just to name a few. If you disburse the proceeds of a check and that check eventually bounces, you have commingled client funds because another client's funds have been used to cover the check that bounced. This would be true even if the firm covers the shortfall with its own money and no one appears to be harmed. Making matters worse, what if the firm doesn't have sufficient funds available to cover the bounced check? This does happen! In a zero-tolerance jurisdiction, your license to practice could be suspended for just such an occurrence. A hold time of five to seven business days will protect you in most situations. Wait longer if the check is drawn on a foreign bank account or something just doesn't feel right because a number of lawyers have been successfully scammed out of large amounts of money by authorizing deposited funds to be transferred after five to seven days only to find the initial check bounced two weeks after being deposited.

Fourth, never commingle funds in the trust account. For example, non-disputed client funds and earned attorney funds are not to be left sitting together in the trust account for an extended period of time nor should the trust account ever be used as the employee Christmas savings account. That said, and only if this would be permissible in your jurisdiction, you might consider keeping a small amount of firm funds in the trust account to cover any account fees or charges. This is one way to prevent client funds from being used to pay a firm expense. A recommended amount would be \$50 and should never exceed \$200.

Fifth, consider handling trust account withdrawals as follows. Once you earn a fee, send the client a bill reflecting the deduction from the amount remaining in trust. The bill should state that if there is a question on the bill the client should contact the firm within ten days otherwise the firm will make the indicated withdrawal at the end of that time. You are going to wait for twenty days from the day the bill was sent, ten days for the bill to be delivered and ten days to see if the bill is disputed, before actually withdrawing the earned fee. Too many attorneys withdraw earned monies at the same time that a bill is sent and this can create a cash flow problem should a client ever dispute their bill. The reason for this is that disputed funds must be placed back in trust until the dispute is resolved. If you make a significant withdrawal at the same time the bill is sent, perhaps to pay personal and professional bills, and then you are unable to come up with those funds if the bill is disputed, you've got a serious problem.

Sixth, trust account records must include a general ledger as well as separate subaccount ledger that can track all account activity by individual client. The individual client ledger must detail every receipt and disbursement, the date of the transaction, a notation on the nature of the transaction, the individual account balance in trust, and the client's name and address. Each month you must reconcile the bank statement in two ways. First reconcile the bank statement

with the general ledger and then reconcile the bank statement with the individual sub account ledger. These separate reconciliations should balance with each other to the penny. If they don't, figure out why and correct the problem then and there. Understand that it is going to be much easier to determine where a misstep occurred at the time it occurred as opposed to trying to figure out what happened years later during an audit by the Bar.

Finally, support staff never should open the trust account bank statement. This envelope should be given to the attorney responsible for monitoring trust account activity. Under the rules of professional conduct, you have a duty to monitor the activity in your client trust account. Your license is on the line with this account so stay on top of it. To do so, look at the bank statement and make certain that there is a corresponding check for every debit noted there, review the signature on every cleared check for authenticity, and make certain that every debit in the account is appropriate and understood. Once this is completed, the bank statement may go to the staff person responsible for account reconciliation. When the reconciliation is complete, have the reconciliation report returned to you so that you may do a review of the numbers and check this report against the original bank statement. Then sign and date the report and bank statement in order to document attorney oversight of client funds.

The trust account's bank statement must be reviewed each month and you should review the reconciliation report and bank statement together at least quarterly. Generally speaking, you should maintain all trust account records for at least five years after termination of the representation although the exact time frame may differ among jurisdictions.



## Risk Management Questions?

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