



# Key concepts to follow for trust accounting

In the post-Girardi landscape, attorneys must recognize their non-delegable duty to maintain absolute accuracy in their client trust accounts

By ERIN JOYCE

To ensure you are handling entrusted funds properly, it is imperative to follow the key concepts identified in the State Bar's Trust Accounting Handbook, available online on the State Bar's website. The Trust Accounting Handbook is updated annually to provide guidance to California lawyers on their responsibilities for holding entrusted funds enunciated in Rule of Professional 1.15.

The Trust Accounting Handbook details seven key concepts to consider when holding entrusted funds in an IOLTA (interest on lawyers' trust account) or general trust account.

## 1. Separate clients require individual ledger accounts

The first key concept is that separate clients are separate accounts. Even if funds of different clients are maintained in an

IOLTA, it is critical that an attorney maintain compliant trust account records that properly categorize the funds in the account. The client ledger identifies which funds belong to which client in the account during any particular time period. Using any commercially available accounting software (QuickBooks or TrustBooks, for example), each transaction in the account is connected with a particular client or matter, depending on how the law firm maintains its cases. A filtered report through the online software generates the required client ledger cards for each client whose funds are in the account. The attorney must maintain the following for the trust account for five years from the last disbursement:

1. Bank statements
2. Images of all checks written on the account
3. Fronts and backs of all checks which cleared the account
4. Records of all deposits (the deposit slips and the front and back of each deposited check)



5. Account journal
6. Client ledger cards

Additionally, the attorney needs to conduct monthly reconciliations from the account journal to the bank statements and maintain those monthly reconciliations for the same five-year period.

## **2. You can't spend what you don't have, no "borrowing"**

The second key concept is that you can't spend what you don't have. Even if the running balance in the general trust account is \$100,000, if Client Jones only has \$5,000 on deposit, the attorney cannot write a check on the trust account for \$6,000 to pay the required expert.

To do so would constitute misappropriation. An attorney can never "borrow" from one client's funds to pay bills for another client, i.e., write a trust account check for one client using another client's money. Any "dip" in the balance in the client trust account under the amount needed to be on deposit for any particular client is evidence of misappropriation of client funds – moral turpitude in violation of Business and Professions Code section 6106.

## **3. No overdrafts of the trust account**

The third key concept is there is no such thing as a negative balance. A negative balance in a client trust account is at best evidence of negligence and potentially a sign of theft (misappropriation of client funds). Having overdraft protection will not immunize an attorney from a finding of misconduct or misuse of the client trust account. However, it is permissible to have overdraft protection so that clients are not harmed from insufficient funds activity in the trust account.

## **4. Timing is everything, deposited funds must have cleared**

The fourth key concept is that timing is everything. You need to know your

bank's procedures and policies for when funds become available – and have cleared your client trust account. Never write a client trust account check until the funds deposited to cover the check have cleared. Beware of bank offers for "instant credit" for deposits while the bank waits for the funds from another financial institution. This may be considered "commingling."

## **5. Know the "running balance"**

The fifth key concept is that you can't play the game unless you know the score. In client trust accounting, there are two kinds of balances: the "running balance" of the money you are holding for each client, and the "running balance" of each client trust bank account. A "running balance" is the amount you have in an account after you add in all the deposits (including interest earned, etc.) and subtract all the money paid out (including bank charges for items like wire transfers, etc.)

The running balance for each client is kept on the client ledger, and the running balance for each client trust bank account is kept on the account journal. Maintaining a running balance for a client is simple. Every time you make a deposit on behalf of a client, you write the amount of the deposit in the client ledger and add it to the previous balance. Every time you make a payment on behalf of the client, you write the amount in the client ledger and subtract it from the previous balance. The result is the running balance. That's how much money the client has left to spend.

## **6. What comes in, must go out**

The sixth key concept is that the final score is always zero. The goal in client trust accounting is to make sure that every dollar you receive on behalf of a client is ultimately paid out. What comes in for each client must equal what goes out for that client; no more, no less.

Many attorneys have small, inactive balances in their client trust bank

accounts. Sometimes these balances are the result of a mathematical error, sometimes they are part of a fee you forgot to take, and sometimes a check you wrote never cleared or wasn't cashed. Attorneys should take care of small, inactive balances as soon as possible.

Where it is not possible to determine to whom to pay out funds in the trust account, consider whether the unclaimed monies should escheat to the state pursuant to Code of Civil Procedure section 1518.

To certify compliance with CTAPP (the Client Trust Accounting Protection Program) as part of renewal of licensing annually, you need to ensure you can account for every dollar in the trust account. Since the certification is under the penalty of perjury, if an attorney has failed to adhere to CTAPP requirements, such as not maintaining the necessary trust accounting records, the attorney may be prosecuted by the State Bar for moral turpitude conduct in violation of Business and Professions Code section 6106.

## **7. Maintain an audit trail**

The final key concept is to always maintain an audit trail. An "audit trail" is the series of bank-created records, like canceled checks, bank statements, etc., that make it possible to trace what happened to the money you handled. An audit trail should start whenever you receive funds on behalf of a client and should continue through the final check you issue against them.

In the post-Girardi landscape, it is imperative for attorneys to recognize their non-delegable duty to maintain absolute accuracy in their client trust accounts, to keep appropriate records, to promptly distribute funds and disburse earned fees from the CTA, and to conduct monthly trust account reconciliations. The Trust Accounting Handbook is a valuable resource the State Bar provides attorneys to ensure that they properly handle entrusted funds.



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