7 Trust Accounting Principles Worth Remembering for Lawyers

Trust accounting can be a challenging part of legal practice. You are both responsible to your clients for the safekeeping of their property and responsible for following all of your state's applicable trust accounting rules.

When operating a trust account, there's no room for mistakes because errors could result in some serious consequences. So, I scanned the internet for these seven principles that experts say all lawyers should remember when managing their trust accounts.

1. Know the Rules – As reported by Lexis Nexis, all 50 states, as well as Washington DC, maintain Interest on Lawyer Trust Accounts (IOLTA) programs. Forty-four states require lawyer participation, while four allow lawyers to opt out. Two states maintain voluntary programs. Every state is different, so it's important that you know the trust accounting rules in your jurisdiction.For example, some states allow you to keep a small number of personal funds in the account to cover bank fees. Other jurisdictions prohibit the deposit of any personal funds into the trust account. Remember that it is your responsibility to know the rules of your state. If you're unsure, make the effort to contact your Bar and find out.
2. Understand IOLTA – Ensuring that your trust account meets all state regulations requires that you first understand what IOLTA is and how it works. As explained by IOLTA.org, "A lawyer who receives funds that belong to a client must place those funds in a trust account separate from the lawyer's own money." Interest accumulated from an IOLTA account is then utilized for charitable or educational purposes.
3. Get the right account – A general savings account may not be sufficient for your trust accounting needs. Some states have specific rules regarding trust accounts and which banks may be utilized. For example, the rules of the Georgia Bar state:

> "The financial institution shall be in Georgia or in the state where the lawyer's office is located, or elsewhere with the written consent and at the written request of the client or third person." It also states that "each financial institution wishing to be approved as a depository of client trust funds must file an overdraft notification agreement with the State Disciplinary Board of the State Bar of Georgia. The State Bar of Georgia will publish a list of approved institutions at least annually."

Over 5,000 banks reportedly participate in IOLTA programs nationwide, partnering with state bars to offer trust accounts that meet their specific trust account guidelines.

4. "Borrowing" can lead to trouble – Unfortunately, some attorneys view their trust accounts as a backup plan of funds they can use when office finances get tight. Whether it's to meet payroll, pay an invoice or for some personal expense, they "borrow" money from their trust account to get through. But this can be a disastrous mistake, as explained by the article Common Lawyer Trust Account Mistakes. Even if you have every intention of paying the money back, the initial act of "borrowing" it could potentially start you down the road of malpractice and a lost license.
5. Comingling – What is commingling? Consider this example. You charge a client $2000 for representation in the matter. You also inform him that there is a $250 filing fee to initiate the case. The client writes you one check for $2250 and you deposit the entire amount into your trust account. Depending on the laws of your state, this could be considered commingling of funds because you have deposited your unearned attorney's fees in the trust account with the court filing fees.The basic principle of a trust account necessitates that it be held separate from your business operating or personal accounts. By failing to meet this criterion, you could be setting yourself up for some trouble with your client and the Bar. Other examples of commingling funds may be writing office bills out of the trust account or leaving earned funds in the account instead of transferring them to your operating account in a timely manner.
6. Track and reconcile – Every penny that goes into and out of your trust account should be tracked and recorded. Most states stipulate that a lawyer's trust account can be subject to official review at any given time.

As advised by a Lexis Nexis article, you should maintain reconciliation records in such a way that you can easily review three pieces of information at any given time:

a) What is the current balance of your trust account?

b) Does the balance on your balance sheet consistently match the current balance in your trust account for all dates and times?

c) Can you give an accounting of the balance in the trust bank on a client-by-client basis?

If at any given time, you are unable to answer any one of these questions, you may need to improve your account reconciliation skills.

7. Limit access – Consider who has access to your trust account. Is everyone with access completely trustworthy and reliable? And I don't just mean honest. The level of tracking and record-keeping that accompanies trust accounting requires attention to detail. If someone with access forgets to record a transaction, you could be the one on the hook for their mistake.

   Let's say one of your paralegals makes a withdrawal from the account without recording it or informing you. Relying on your latest records, you also make a withdrawal. However, because the first withdrawal was not properly recorded, the account becomes overdrawn, sparking a notification to the Bar. Now, you find yourself embroiled in a stressful investigation because you granted the wrong person access to your trust account.

Attorney trust accounting is a serious responsibility not to be taken lightly. If you are confused about the rules of your state or think you may be managing your account incorrectly, seek out assistance from your state bar. Some clarification now could save you a lot of pain later.

About Erika Winston:

Erika Winston is a freelance writer with a passion for law. Through her business, The Legal Writing Studio, she helps legal professionals deliver effective written

messages. Erika is a regular contributor to TimeSolv and a variety of other publications.