

SAMPLE

CHECKLIST OF COMMON TRUST ACCOUNT ERRORS

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1. **Failure to Reconcile Accounts**

The vast majority of attorneys are balancing their bank statements for trust accounts, but many are confusing the balance with reconciliation of the account. To reconcile an account, attorneys must total what balances remain for each client and that total should coincide with the current bank balance total.

2. **Accounts Containing Non-Trust Funds**

Trust account audits show some attorneys place “stray funds” (i.e. miscellaneous refreshment funds, rental money, employee tax money) into the trust account. Bar rules stipulate that only client funds for whom the attorney is providing a services or attorney funds to service the account (i.e. pay for check printing, deposit slip printing, NSF charges, etc.) may be deposited into the trust account.

3. **Checks Consisting Of Trust And Non-Trust Funds Are Not Always Deposited Into Trust Accounts**

When Attorneys receive checks containing funds for two purposes, State Bar rules require them to deposit the entire check into the trust account.

For example, suppose a client comes in and the attorney tells him the fee is \$150 and the recording fee is \$30. If the client hands him a check for \$180, the entire amount must go into the trust account. The attorney may then write out a check for \$150 to himself and when it comes time to pay the recording fee, the \$30 is still in the trust account.

4. **Failure To Indicate Client From Which Check Is Drawn**

When checks are drawn against the trust account, records should clearly indicate from which client the funds are being disbursed.

5. **Clients' Current Balance Not Indicated**

Current balances are needed to reconcile the trust account. The current balance is reflected on the ledger card at the time of postings. If each balance for each client has been totaled, it should coincide with the current bank balance.

6. **Checks Made Payable To Cash**

Bar regulations prohibit trust account checks being made out to cash or bearer. Cash withdrawals from deposits made into the trust accounts are also not allowed. If clients ask for cash, the check should be made out to the client and walked over to the bank or endorsed over to the attorney or, checks can be made out in the attorney's or bank's name, but in such cases, they should clearly indicate the purpose for which the check is written.

7. **Bank Charges paid With Trust Funds**

Some attorneys reimburse the trust account for check and deposit slip printing, wire transferred fees and NSF charges, after the charges appear on the bank statement. This is not permitted because client funds pay these charges until the account is reimbursed by the attorney.

Another method of avoiding having client funds pay for bank charges is to direct the bank to charge the office account if maintained at the same bank.

8. **Failure To Maintain Record Of Attorney Funds To Service Trust Account**

A ledger must be maintained for attorney funds deposited into the trust account to service the account. All disbursements made from these funds must be recorded.

9. **Advancing Funds From The Trust Account**

Attorney funds deposited in the trust account to service the account cannot be used to advance funds on behalf of a client. Nor can attorney funds be deposited into the trust account to supplement client funds (i.e. Client A has a \$25 balance and a filing fee of \$30 has to be paid). The attorney cannot deposit \$5 into the trust account to increase Client A's balance of \$30, because that would be commingling. Neither can the attorney transfer \$5 from funds deposited to service the account, which is advancing via the trust account and not permitted. Writing a \$30 check out of the trust account, resulting in other client funds making up the five dollar difference is not permitted and would result in a defect balance of <\$5> for Client A.

10. **Commingling Of Attorney And Client Funds**

This occurs when earned fees or cost reimbursements are not promptly removed from the trust account.