

How do you know that your bookkeeper is keeping accurate trust account records?

by

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Whether practicing in a large or small firm or as a solo practitioner, lawyers rely on non-lawyer assistants for many practice-related duties. Some of these duties, especially trust account maintenance, necessitate a high level of attention to detail and professionalism. What steps can lawyers take to ensure their non-lawyer staff acts in compliance with their professional obligations when it comes to handling and accounting for client funds?

Be informed

Maintenance of proper trust account records is one of the fundamental responsibilities of practicing lawyers because it is the only method for maintaining the identity of client funds and ensuring their proper safekeeping. Holding money in trust is a non-delegable fiduciary duty that cannot be excused or mitigated by non-lawyer assistant's ignorance, inattention, incompetence or dishonesty. *See In re Montpetit*, 528 N.W.2d 243, 245-46 (Minn. 1995) (lawyer's claim of ignorance that his trust account books and records were improperly maintained did not mitigate the misconduct; "[r]espondent may not have acted out of evil intent or malevolence, he knew or should have known, based on the information available to him, the trust account was being mishandled.").

Lawyers must first and foremost understand their professional obligations in order to be successful managers. While it is appropriate to delegate accounting tasks to staff, a lawyer handling client funds must still understand what books and records he or she is required to maintain under Rule 1.15, Minnesota Rules of Professional Conduct (MRPC), as defined by Appendix 1. It is also perfectly fine to enlist the help of an outside professional when it comes to books and records maintenance, but just as with internal staff, the lawyer is not absolved of responsibility. In the end, if a lawyer does not understand his or her professional record keeping obligations, the requirements for adequate supervision cannot be met.

Be a manager

Lawyers need to take their managerial roles seriously and not get complacent. Supervision of staff is paramount for an ethically compliant law office. In particular

when it comes to trust accounts, lawyers tend to rely on staff and frequently take it for granted that required books and records are being maintained. The risks of letting a bookkeeper or secretary handle the trust account without the lawyer independently reviewing required books and records can get lawyers into a lot of trouble.

Lawyers should be an active part of the monthly trust account reconciliation process. At the end of each banking month, lawyers should review staff prepared accountings, including client subsidiary ledgers, trial balances and reconciliations, and bank statements and compare the balances. This monthly review is integral to catching mistakes or oversights that might lead to shortages or commingling. Lawyers should also review month-end balances from the lawyer's books, which frequently will not match the month-end balance on the bank statement due to checks that have been issued but not yet cleared or deposits that missed the bank statement's cutoff date. If after accounting for these items, the book balances do not match the bank statement balance, the lawyer should be alerted that staff either mistakenly entered information in the books or the trust account has a surplus or a shortage.

Accounting software such as Quicken or QuickBooks is often used to maintain trust account books and records. Lawyers should possess a basic proficiency in any accounting software utilized by their staff. If a lawyer cannot distinguish between a reconciliation report and a subsidiary ledger trial balance report created by these software programs, the lawyer cannot review work product for accuracy.

Train regularly

Rule 5.3, MRPC, sets forth a lawyer's obligations for supervising non-lawyer staff and having in place measures to ensure that their conduct is in accordance with the lawyer's professional obligations. All lawyers should have an employee handbook setting forth the lawyer's expectations for staff conduct. If a lawyer is hiring staff whose responsibilities would include managing trust accounts but have no clue what Rule 1.15, MRPC, or Appendix 1 requires, the lawyer clearly has a training responsibility. Once hired, regardless of previous legal or accounting experience, training should be ongoing and include updates on changes in the lawyer's professional obligations.

At the end of the day, it's the lawyer's license on the line. Taking an active role in supervising and educating staff is the best way to ensure their conduct is in compliance with the lawyer's professional obligations.