

## **Professional Responsibility Board Revises Rule on Bookkeeping**

**by**  
**Eric T. Cooperstein, Senior Assistant Director**  
**Minnesota Office of Lawyers Professional Responsibility**

Reprinted from *Minnesota Lawyer* (November 13, 1998)

For over 20 years, the Lawyers Professional Responsibility Board (LPRB) has set forth in Opinion No. 9 the books and records that attorneys should maintain for their trust accounts. Since the last revisions in 1989, the Director's Office has reviewed hundreds of attorneys' trust accounts through its Overdraft Notification Program and developed substantial experience regarding attorneys' common misperceptions and misunderstandings of the types of records they are supposed to keep. At the director's initiative, the board has completely rewritten Opinion 9. Although there are only a few substantive changes, the director believes the new opinion clarifies attorneys' obligations and, hopefully, makes trust account record keeping simpler and less time consuming for sole practitioners and small firms.

### **Check Register**

The new opinion reinforces the importance of check registers and client subsidiary ledgers. The opinion directs lawyers to record all relevant information about deposits and withdrawals in their checkbook registers. Few lawyers fail to use a register of some type; the opinion simply itemizes all of the information that must be recorded. This also comports with money management software, which often uses a mock check register as the focal point for entering data.

Don't spend too much time looking for cash receipts and disbursements journals in the new opinion because you won't find them. Although these journals help lawyers track transactions and detect errors, the director has found that in practice the additional journals have not prevented overdrafts or other trust account problems. Therefore, the requirement has been dropped. The director expects that the more detailed check register requirements will more than compensate for the absence of journals.

### **Subsidiary Ledgers**

The majority of trust account ethical violations are caused or evidenced by a lack of client subsidiary ledgers. The revised opinion attempts to describe more clearly what a client subsidiary ledger is and what information it should include, which is virtually all of the information included in the checkbook register. Any duplication of effort is entirely intended as a means of detecting errors and avoiding inadvertent misappropriations of client funds.

The revised opinion adds explicit instructions to attorneys to maintain a separate subsidiary ledger for any nominal law firm funds held in the account to accommodate reasonably expected bank fees and charges. Even though these nominal funds rarely should exceed \$100 for most accounts, the funds must be tracked like any others.

The opinion also points out that there should never be a negative balance in a client's subsidiary ledger.

### **Cash Fee Payments**

The revised opinion adds a new requirement that all cash fee payments, whether deposited to the trust account or to a business account pursuant to a nonrefundable retainer agreement, must be documented by copies of receipts countersigned by the payor. In most cases, this means both the attorney and his or her client must sign the same receipt for payments made in cash. This protects both the lawyer and the client from disputes that may arise in the future.

### **High Tech Trust Accounts**

The Director's Office has been encouraging lawyers over the last three or four years to maintain their trust account records by computer. Computer software can assist lawyers in identifying trust account errors and, in the long run, save them time by avoiding duplicate entries. To prevent unscrupulous attorneys from hiding behind "timely" systems failures that wipe out years' worth of records, the revised opinion requires attorneys to print and retain monthly copies of the checkbook register, the subsidiary ledger trial balance and the reconciliation report. This minimum standard should not be construed as relieving lawyers with a high volume of trust account activity from printing information more frequently or using appropriate procedures to create backup copies of trust account information.

Wire transfers have also become popular in the computer age. Although checks remain the primary and most appropriate means of withdrawing funds from a trust account, the revised opinion permits wire transfers when a check would be "economically imprudent" or when required by "exigent circumstances." The wire transfer must be supported by written documentation, signed by the responsible attorney, that records all of the information that would otherwise be required for a disbursement by check.

The director expects to issue a revised version of its trust account brochure, containing examples of all the required books and records, within the next few months. As always, attorneys with difficult or unusual trust account questions are encouraged to call the office for advisory opinions.