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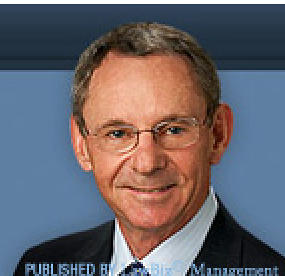

Week of **November 18, 2008**

It's 10pm - Do You Know Where Your Trust Funds Are?

Lawyers who represent clients on a retainer basis are generally confronted with the issue of handling client trust accounts. As a general rule most engagement agreements stipulate that the client's payment for work that has been performed is to be deposited into a lawyer's general account and payment for work that will be performed is generally to be deposited into a client's trust account. Each lawyer must answer a fundamental question: When funds are received, into which account are they to be deposited?

The rules of conduct seem quite clear. If the funds are provided on retainer, against which time will be billed, then they are for a task that is not completed and the hours are not yet earned. That means the money goes into the client trust account. If the funds have been earned when received, then they should go into the general account.

Managing and accounting for client funds held in trust is a personal responsibility of the lawyer. Although there are a number of good computer software programs to assist with trust accounting, including QuickBooks by Intuit, the lawyer who receives clients' trust funds bears all the responsibility of accounting for every penny. In an accounting sense, these funds are a liability of the law practice to the client, must be kept in an entirely separate account and cannot be commingled with any other law firm funds.

Every State imposes a fiduciary duty to properly account for clients' funds to prevent misappropriation or negligence in order to provide for adequate safekeeping; failure to provide accurate accounting records on a State Bar inquiry means very bad news for the lawyer. To do less than use an effective software accounting program or an outside accountant to reconcile trust and bank account records each month is to invite error, inquiry, and trouble.

Recent challenges to the country's banking system raise the specter of bank failures, with implications for the safety of IOLTA trust accounts. The problem arises when any single account, in one person's name exceeds the Federal Deposit Insurance Corporation guaranteed limit of $100,000. (Note: While the new Federal bailout law has changed this cap after 28 years in effect to $250,000, the principle is the same, just the amount is different.) In an active family law, real estate, personal injury, or debt collection practice, it's easy to grow beyond this cap. For example, if a lawyer holds $10,000 for each of now 25 people, the cap it exceeded. Since most practices have more than 25 clients, the problem is obvious.

Is it the responsibility of the lawyer to be in the banking business? No, but the lawyer is responsible for acts of an agent, which in the case of client trust accounts is the bank. If the bank fails, the lawyer, in light of the rules of professional conduct, is responsible. One way to ensure client safeguards is to maintain a separate trust account for each client whose funds exceed $5,000 to $10,000 and are likely to be held for an extended period of time. The interest on such a separate account belongs to the client. Does this increase the expense of a lawyer's trust fund accounting? Yes. But the alternative is a potential ethical violation and all that comes with it.

Best wishes,

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What Readers Are Saying...

"I look at Ed as my business partner now—my once-a-week essential business meeting to take the pulse of my practice. During our one-hour phone conversations, we hash out the larger and smaller business challenges of my law firm. I always come away from those conversations enlarged, challenged, and sometimes even quite shaken, but with the tools necessary to move forward down the path he and I are constantly redefining for me and my firm."
-AL, Northern California