

funds with trust funds. Earned legal fees must be withdrawn promptly from the trust account when due. Aggregating large sums of earned legal fees for extended periods of time constitutes passive commingling. Both active and passive commingling are unethical practices. Trust accounts can be interest bearing, but the attorney can never be the recipient of interest earned. All interest earned on an attorney trust account belongs to the clients or persons whose money generated the interest, or to the Interest on Lawyer Trust Accounts (IOLTA) fund.

IOLTA is a fund managed by trustees appointed by the Supreme Court of New Jersey. Pursuant to R. 1:28A, all attorneys who practice in New Jersey must register with the IOLTA fund. If the circumstances outlined in the rule apply, the law firm must establish an IOLTA attorney trust account. The IOLTA fund collects the interest on these accounts, and the revenue is used to fund civil legal services for the poor and legal programs to improve the administration of justice.

For more information about the IOLTA fund, contact:
IOLTA Fund of the Bar of New Jersey
New Jersey Law Center
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For what is an attorney business account used?

All legal fees received by an attorney for professional services must be placed into an attorney business account. The business account is also traditionally used to pay the operating expenses of a law office.

The checks and deposit slips on these accounts must include the designation of either “Attorney Business Account”, or “Attorney Professional Account”, or “Attorney Office Account.” A non-attorney can be a signatory for a business account.

Where are fee retainers and advanced costs deposited?

If an explicit understanding has been reached with a client that a fee retainer for legal services, or advanced costs for court fees and litigation expenses, are to be placed into an attorney trust account until such time as the fee is earned or the cost is incurred, then that is where these funds must be deposited. Otherwise, these funds can be maintained in a trust account or a business account.

An attorney has an ethical obligation to refund unearned legal fees or unspent advanced costs to a client whenever the attorney completes or withdraws from representation, or if the attorney is discharged by the client.

What accounting records are required by R. 1:21-6??

A trust accounting system consists of a trust checkbook, a trust receipts journal, a trust disbursements journal, and a trust ledger book containing the individual ledgers for recording each client's funds. Each individual client ledger should be maintained as a separate sheet and should reflect the date, source, and a description of each item of deposit, as well as the date, check number, payee, and purpose of each withdrawal. Each ledger must maintain a running balance for that client.

A business accounting system consists of a business checkbook, a business receipts journal, and a business disbursements journal. R. 1:21-6 requires that all financial records be kept in accordance with generally accepted accounting practices. Accounting systems can be handwritten or generated by computer software packages. Whether it is a trust account or a business account, each should be maintained daily and accurately.

A running balance must be always maintained for all ledgers and checkbooks. The balances on the trust ledgers must be reconciled monthly with the balances in the trust receipts and disbursement journals, the trust account

checkbook, and the bank statements. Records of these monthly reconciliations must be maintained for seven years. All source documents, such as duplicate deposit slips, bank statements, canceled checks, image-processed checks, and check stubs, must be preserved for seven years.

What other records must be maintained?

An attorney must preserve copies of records from client files that are necessary for a full understanding of the lawyer's financial transactions with a client. If a law firm is dissolved, appropriate arrangements must be made for the maintenance of the firm's records, whether by a former partner or the successor law firm.

What are the consequences of non-compliance?

They are very serious. The knowing misuse of trust funds by an attorney will almost invariably result in disbarment.

Major recordkeeping deficiencies, or negligent misuse of trust funds resulting from the failure of an attorney to properly maintain trust account books and records, will result in the imposition of discipline ranging from an admonition to a reprimand or a period of suspension.



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The Random Audit Program

Attorney Trust Accounts and Recordkeeping



For more information about the Office of Attorney Ethics, go to www.njcourts.gov and search for attorney ethics.

This pamphlet is published by the Supreme Court's Office of Attorney Ethics as a public service to the Bar of the State of New Jersey. It highlights the general operation of the random audit program and the requirements under New Jersey Court [Rule 1:21-6](#) and [Rule of Professional Conduct 1.15](#). Every attorney is obligated to read these rules and comply with them in accordance with case law and advisory opinions interpreting them.

What is the random audit program?

Since 1981, the Supreme Court of New Jersey has operated a program for random audits of attorney trust and business account records to determine compliance with the mandatory recordkeeping rule, [R. 1:21-6](#), and ethics rule [RPC 1.15](#) ("Safekeeping Property"). The central purpose of the random audit program is to educate attorneys on the proper method of compliance with their recordkeeping and ethical responsibilities. A secondary purpose is to deter the misuse trust funds. There also is the purpose of detection of misappropriation. A few audits uncover theft. In those few instances, the deterrent effect is heightened by the strong discipline imposed by the Supreme Court as set forth in *In Re Wilson*, 81 N.J. 451 (1979).

How are attorneys selected to be audited?

A random selection of candidates is made from the statewide list of licensed attorneys using the law firm as the entity subject to audit, rather than individual attorneys. Every attorney in private practice is regarded as a member of a law firm. The law firm identifier is the 10-digit main office telephone number that is captured for all private practice attorneys as part of the attorney registration program.

A computer program selects candidates using a method documented in its ability to produce truly random results. Every law firm, regardless of size, has an equal chance of being selected for audit.

How are random audits conducted?

The law firm is provided with written notice in advance of the scheduled date. It is preferable for the attorney to be present at the audit. If the attorney cannot be present, a person knowledgeable about the books and records must be available.

Exactly what does the auditor do at the audit?

The auditor conducts an initial interview with the attorney or responsible person left in charge. Detailed information about the firm's recordkeeping procedures is recorded on a *Random Audit Questionnaire*.

The auditor conducts a review of the firm's trust and business account books and records to determine compliance with [R. 1:21-6](#). Recordkeeping deficiencies are noted by the auditor on a *Recordkeeping Deficiencies Checklist*, which contains the most commonly found violations. The auditor provides a copy of the checklist to the attorney and discusses the corrective actions that should be taken to remedy any deficiencies. All law firms randomly audited are provided with a booklet, *Outline of Recordkeeping Requirements*, under [RPC 1.15](#) and [R. 1:21-6](#). This outline includes a summary of the substantive requirements and contains samples of all required receipts and disbursement journals, client trust ledgers and reconciliation formats.

What happens after the audit?

Shortly after the audit, the attorney is formally advised in writing of the results. If the audit revealed no problems, a closing letter is forwarded that acts as the final disposition of the matter. If minor deficiencies were discovered, a deficiency letter is sent to the attorney describing the shortcomings that require corrective action.

Within 45 days after the date of the deficiency letter, the attorney is required to submit a response addressing the corrective action taken for the cited deficiencies. On receipt of

an acceptable response from the attorney, the matter is closed. If the attorney does not respond, the matter could be referred to the director for disciplinary action. If major deficiencies are discovered, such as misappropriation of client's trust funds, the matter is referred immediately to the director for disciplinary action. Historically, such referrals are made in less than 1.5 percent of the audits conducted.

What are an attorney's ethical obligations regarding client trust funds?

[RPC 1.15](#) ("Safekeeping Property") imposes upon all New Jersey attorneys the duty to safeguard the funds and property of clients coming into their possession in the practice of law. These assets must be kept separate from the attorney's personal and business assets and should not be used for any purpose other than as directed by the client. The attorney is specifically obligated to notify a client promptly when client funds or property is received; to provide the client with appropriate accountings; and to disburse promptly all funds and property to which the client is entitled. Non-cash property, such as bonds and securities, should be clearly identified as client property and secured in the attorney's safe or safe deposit box. [RPC 1.15](#) imposes upon the attorney the duty to comply with the recordkeeping provisions of [R. 1:21-6](#).

What does [R. 1:21-6](#) require for recordkeeping?

All attorneys who engage in the private practice of law in New Jersey are required to maintain at least two bank accounts: an attorney trust account and an attorney business account. [R. 1:21-6](#) clearly defines the type of accounting records attorneys are required to keep and imposes the requirement that these records must be fully reconciled with one another at least monthly.

What is an attorney trust account?

It is a special bank account into which must

be placed all funds that are entrusted to the attorney's care while the attorney is acting in a legal representative capacity on behalf of a client. Funds received as executor, guardian, receiver or trustee are to be placed into separate fiduciary accounts.

Funds that are entrusted to the attorney's care that belong partly to a client and partly to an attorney must also be deposited into the attorney trust account. The attorney's portion can be withdrawn when due unless the client disputes the withdrawal after receiving proper notice of the attorney's bill.

The disputed portion must remain in the trust account until the dispute with the client is resolved. Trust accounts must be maintained in a financial institution located in New Jersey and approved by the Supreme Court of New Jersey. To be approved, a financial institution must agree to notify the Office of Attorney Ethics whenever an attorney's trust account check is drawn on an account with insufficient funds.

The account must include the prominent designation, "Attorney Trust Account" and the checks and deposit slips for the account must be imprinted with that title. Disbursements from a trust account must be made to named payees and not to cash. Only attorneys admitted to practice in New Jersey are permitted to sign trust account checks.

Can personal funds be deposited for bank service charges?

count because it would constitute active cAn attorney can deposit up to \$250 in personal funds into the attorney trust account to pay service charges and other fees incurred in connection with the account. These funds must be recorded on a ledger, and all service charges properly must be reflected there.

No other personal funds should be deposited into the trust account, as that would constitute active commingling of personal