

TRUST AND BUSINESS ACCOUNTING FOR ATTORNEYS

PRACTICAL SKILLS SERIES

2008 Edition Written by

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PREFACE

The lawyer's responsibility to maintain inviolate the funds of clients and to account fully and unhesitatingly therefor lies at the bedrock of public confidence in the legal profession. Clients have for centuries trusted lawyers to handle their funds simply because of their respect for the legal profession. As former Chief Justice Robert N. Wilentz put it:

It is a trust built on centuries of honesty and faithfulness.

No other explanation can account for clients' customary willingness to entrust their funds to relative strangers simply because they are lawyers. *In re Wilson*, 81 N.J. 451 (1979).

Over 40 years ago in 1967, New Jersey adopted a detailed recordkeeping rule, *R.1:21-6* (Appendix A), governing trust and business accounting. All attorneys are charged with knowledge of and responsibility for compliance with its mandates. The enactment of *R.1:21-6* served as the foundation for the education of New Jersey lawyers regarding their trust and business accounting responsibilities. Then, in 1978, the Lawyer's Fund For Client Protection recommended, and the Supreme Court of New Jersey supported, development of one of the first Random Audit Compliance Programs in the country. With the full support of New Jersey lawyers, that program began conducting audits in 1981. Its primary purposes are to check compliance with *R.1:21-6*, to educate the Bar and avoid improper recordkeeping practices.

Another key component in trust accounting education was my recommendation and the Supreme Court's adoption in 1987 of a rule requiring that trust and business accounting be a mandatory part of the New Jersey Skills and Methods Course (*R.1:26*). As a result, each and every attorney admitted since 1987 has been specifically educated on proper trust and business accounting procedures.

The first book on *Trust and Business Accounting for Attorneys* was published in 1986. It is distributed to all Skills and Method Course participants. Through publication by the New Jersey Institute for Continuing Legal Education (I.C.L.E.), not only new bar members, but, also, many older practitioners, have availed themselves of this resource.

Trust and Business Accounting for Attorneys has also filled a void that extends beyond New Jersey. In 1989 the Board of Professional Responsibility of the Supreme Court of Tennessee issued Formal Ethics Opinion 89-F-121 entitled "The Mechanics of Trust Accounting," which adopted verbatim a large portion of this New Jersey treatise. That same year, the State of Virginia was given permission to reproduce the New Jersey treatise with attribution on a not for profit basis. In 1992 the California State Bar Association developed a

"Handbook on Client Trust Accounting for California Attorneys" with acknowledgment that the idea arose out of this New Jersey work. After years of obscurity, the subject of a lawyer's fiduciary responsibilities is finally receiving the attention it clearly deserves.

With the leadership of the Supreme Court of New Jersey, as well as the support of the lawyers in this State, we are well on our way to ensuring that lawyers know their duty to protect the public through scrupulous adherence to their fiduciary obligations. Moreover, this work on *Trust and Business Accounting for Attorneys* will lead every lawyer to realize that full compliance with our recordkeeping rule is not only easy, but helpful for the attorney as well.

During my years in the disciplinary system in New Jersey, it has become obvious that it is the small firm practitioners who will benefit most from these educational programs. Larger firms establish committees to review firm accounting procedures. Most larger firms have full-time bookkeepers, and accounting firms are also on retainer. According to 2007 statistics compiled from our Annual Attorney Registration Statement, there are 34,166 lawyers in the private practice who responded to indicate their firm size. Based upon these responses to questions regarding the size of their firm, it is estimated that those lawyers practice in 14,852 law firms. Three-quarters of all private law firms (74.4%) are sole practitioners, 11.4% are in two-person firms, and 8.9% are in firms of from three to five attorneys. It is this overwhelming majority of small firm private practitioners to whom this work is primarily addressed and for whom the systems have been designed. Rule 1:21-6 and the systems discussed in this book are based upon the commonly used double-entry bookkeeping model.

For additional information on our Random Audit Program, the names of qualified financial institutions approved as trust account depositories and other information about New Jersey's attorney discipline and fee arbitration programs, log onto the Office of Attorney Ethics website at: www.judiciary.state.nj.us/oe/index.htm.

I acknowledge with gratitude those who have contributed to this work. The entire staff of our Random Audit Compliance Program has been instrumental in influencing its contents. Their daily work with attorneys in the field insures that this work keeps hold of the pulse of private practice.

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