

# New Jersey Law Journal

VOL. CXCIV - NO.5 - INDEX 269

FEBRUARY 2, 2009

ESTABLISHED 1878

## Law Office & Trust Account Management

### Trust Accounting Technology: Navigating Tricky Territory with Digital Help

By Christy Burke

Trust accounting management is very tricky territory for lawyers — and often they get tripped up negotiating its obstacles. Basically, as an attorney managing trust accounts, you are serving as steward of your client's money. Any improper use or incomplete tracking of those funds can, and most likely will, get you into a lot of trouble.

Penalties for mismanaged trust accounts can include consequences such as damage to the lawyer's reputation or disciplinary reprimands. On the most serious end of the spectrum, when the mismanagement is deemed intentional and is actually a theft, severe repercussions such as disbarment or jail time could follow, and of course there is always the possibility that the client will sue the attorney for damages.

In the state of New Jersey, lawyers

---

*Burke is a public relations and marketing expert specializing in the legal and legal technology industries. She founded and runs Burke & Company, a NYC-based consulting firm. Themis/Clio, which is mentioned in this article, is one of Burke's clients.*

are subject to random audits of their trust and business account records to determine compliance with the N.J. Supreme Court's mandatory recordkeeping rule, New Jersey Court Rules R.1:21-6 and ethics Rule of Professional Conduct 1.15 ("Safekeeping Property"). If a lawyer knowingly misappropriates client funds, the Supreme Court of New Jersey mandates virtually automatic disbarment, as set forth in the case of *In re Wilson*, 81 N.J. 451 (1979).

Technology has evolved to the point where nearly every function of a lawyer can be facilitated or accelerated — or both. E-mail and office applications create the digital landscape that lawyers and their staff work within every day. Software has become more intuitive, and the legal technology industry has boomed to the point where New York LegalTech is overflowing with hundreds of vendors all presenting products and services to lawyers and support staff. With all of this technology available, it's clear that attorneys have a multitude of options available as they seek to manage trust accounts to the flawless level that is required by legal and ethical standards. But the real question is — what technology is best suited to help lawyers with trust account management?

Attorney Jeffrey M. Allen is a partner and co-founder of California law firm Graves and Allen. He is also the technology editor of the ABA's *GP Solo* magazine. According to Allen, "Almost all lawyers are using some form of technology to manage trust accounts, though a handful of them are still doing it manually." Allen notes that trust accounting infractions are all too common, from commingling of client monies to outright theft. He acknowledges that technology can be a lawyer's ally in maintaining scrupulous, detailed trust account ledgers and subledgers.

Allen recommends that attorneys select a comprehensive bill-paying program with a trust accounting program built in. He notes that some attorneys will try to make Excel fulfill their needs, but that Excel simply isn't designed to do accounting and doesn't really provide adequate support. He still uses an older version of Timeslips that is compatible with his Mac, since the newer versions of Timeslips don't support Macs. For accounting, Allen uses Peachtree to set up separate Trust records. He then reconciles both Timeslips and Peachtree by exporting data from both and comparing the figures, ideally on a monthly basis.

The most common discrepancy he sees is inconsistent client coding — for example, one program will call the client "XYZ Company" and the other will refer to the client as "Smith," who is the contact person at XYZ. "In bookkeeping with trust accounts," says Allen, "consis-

tency from the very beginning is critically important.” Allen frequently self-audits his data entry into Timeslips and Peachtree, and also has his bookkeeper check his work as well.

Recently, Allen notes that there has been an influx of Web-based Software-as-a-Service solutions for lawyers, some of which include trust accounting modules and functionality. Given the mobile nature of today’s professionals, Internet-based solutions certainly offer an attractive option for convenience’s sake. Not all products are created equal, though, and there is a wide range of functionality and products to choose from.

One such product is Clio, a Web-based software-as-a-service (SaaS) product created by Vancouver-based Themis Solutions. Clio was introduced on October 1, 2008, specifically targeting the solo and small-firm attorney market. Prior to its release, Allen had suggested to Themis’ founders Jack Newton and Rian Gauvreau that Clio should include a trust accounting module. Themis agreed with Allen and created the module, which was fully intact by the time of their product launch.

According to Gauvreau, Themis’ vice president, “Improper administration of trust accounts is among the most frequent sources of ethics and disbarment issues in the legal profession, and it doesn’t take much mismanagement before an attorney can be subject to discipline. Law societies and bar associations require lawyers to keep detailed records of the transactions that flow through their trust accounts, and in case of audit, they need to be able to produce a detailed ledger which has an audit trail.”

Gauvreau says that Clio’s trust accounting module was built to track: (1) how much money is in the trust account; (2) how much money the attorney is holding for each client; (3) a detailed dis-

cernment of whose money is whose, to avoid commingling of funds; and (4) which money has been earned by the attorney. He notes that many law practice management systems have a trust accounting module — some are desktop products and others are Web-based like Clio.

Good trust accounting software enforces simple, universal rules, telling attorneys how much money they have in the account(s), and what proportion of the money belongs to each client. And the program should not allow entries that will produce a negative balance for a client, or allow them to pay a bill to a vendor out of the trust account.

Catherine Merino Reisman is partner and co-founder of Reisman Carolla LLP in Haddonfield, N.J. Reisman recently started using Clio, but before that, she had used various methods and technologies to manage her trust accounts. Reisman says that in the state of New Jersey, the penalties for trust accounting mismanagement vary depending on whether the misappropriation of funds was knowingly made. Lawyers have the duty to ensure that the figures get reconciled at the end of every month. “If you’re a New Jersey attorney, you can’t simply say ‘I didn’t know’ and expect to be excused for mishandling trust accounts. You need to design an accounting system that you can rely on to help you manage the information properly.”

Reisman says, “The first few months I was in my own practice, I used Excel spreadsheets that were linked to each other. Now I print out what I have in Clio at the end of every month and reconcile it with my bank statement. Using this technology, I accurately track client ownership of the monies in my trust account.”

According to Reisman, using software specifically designed for trust accounting gives this treacherous area of administration the attention it deserves. “Lawyers

often make inadvertent mistakes with trust accounting, but it doesn’t matter to the state if your mistake was inadvertent or not — it’s still your responsibility.”

Lawyers can evaluate their technology options and determine what the right solution is for them, but it’s incredibly risky to ignore the need for such assistance in their practices. Kensi Gounden is manager of standards and education for the Law Society of British Columbia, and he is in a position to see a lot of the woes that result from trust account mismanagement.

Gounden comments, “Trust accounting is a stumbling block for most lawyers. Attorneys are not trained as accountants and the accountant’s concepts of debit and credit are counterintuitive for the lawyer. Technology can definitely assist lawyers in keeping track of trust accounts.”

“Excel can track the basics — money in, money out. However, in a situation customized to a client, it’s better to get a more detailed picture. You may have a second ledger and subledgers, and may need to track remaining balances. Simple programs like Excel simply do not do that.”

Gounden says that there are many software products that incorporate trust accounting functionality, such as LexisNexis’ PCLaw, Gavel & Gown Software’s Amicus Attorney, ESILAW, and the aforementioned Clio. “Much of the software is very useful, but the lawyer still needs to understand the underlying trust accounting rules and requirements to operate it effectively.”

For New Jersey lawyers, trust accounting is a high-stakes game played on perilous terrain, and there are many pitfalls along the way. However, by employing the latest tools of desktop and Web-based software, attorneys can navigate through the challenges and come out the other side unscathed — and victorious. ■