

On January 1, 2008, the new rules approved by the Court of Appeals governing attorney trust accounts go into effect. These rules mark a significant change in the manner in which trust accounts must be maintained. Current rules require that attorneys open a trust account for the deposit of funds to be held for the benefit of clients or third persons (Rule 16-603); deposit received property into said accounts, unless the funds were received as payment for fees or expenses owed to the attorney (Rule 16-604); designate each account as "Attorney Trust Account" or "Attorney Escrow Account" (Rule 16-606); and refrain from misappropriating client property. Notably absent from these provisions is any guidance as to the mechanics of maintaining trust accounts on a day-to-day basis.

ALERT:

New Rules Governing Attorney Trust Accounts

By The Law Offices of Eccleston and Wolf

Pursuant to the new Rules (16-606.1) attorneys are required to keep detailed records regarding their trust accounts, including, but not limited to:

- 1) The name of the financial institutions where the accounts are maintained, the account numbers, and the dates on which the accounts were opened and closed;
- 2) A record of each account showing all deposits and withdraws in chronological order;
- 3) The date, amount and purpose of each deposit and disbursement;
- 4) For disbursements made by electronic transfer, a written memorandum authorizing the transaction and identifying the attorney responsible for the transaction; and
- 5) A Record for each client matter in which an attorney receives funds in trust, including the date of disbursement or deposit, the amount of the transaction, the purpose for which the funds are intended, the payee and check number for each disbursement,

the balance of funds remaining in the account in connection with the matter and, statements which identify the person to whom the unused balance is to be returned.

Moreover, attorneys will also be required to perform monthly reconciliations of all trust accounts, keep all records in a printable format that can be produced upon request, and maintain for at least five years, all end of month statements, cancelled checks, and deposit slips.

The significance of these changes to the current rules cannot be overstated. The Court of Appeals for the first time has set forth an extensive list of requirements regarding the maintenance of trust accounts. The new standards represent a blessing in the sense that strict adherence should ensure that an attorney is in compliance with trust account rules and therefore not subject to discipline. However, the new rules also pose a significant pit-fall since it will no longer be sufficient for an

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New Rules Governing Attorney Trust Accounts (continued)

attorney to simply maintain a positive balance in his/her escrow account. Instead, each dollar must be accounted for and earmarked to the particular client for which it was deposited. While the new rules set forth what most attorneys thought was required in order to properly maintain a trust account, the new rules set forth precise standards for record-keeping that will not be excused. Even a minor deviation from the aforementioned provisions will constitute a rules violation, thereby subjecting the attorney to possible discipline. As we all know, or should know, nothing brings swifter or stiffer sanctions than violations of the trust account rules.

Practitioners Note: This memorandum is not, and should not be considered, a complete recitation of requirements under the new rules. Its primary purpose is to alert practitioners to the fact that the rules have been altered in this area. It is strongly suggested that each attorney review the rules carefully and consult with an appropriate professional to ensure strict adherence with the provisions of Rule 16-606.1. Furthermore, while the new Rules do not go into effect until January 2008, attorneys should start implementing the necessary procedures immediately, to ensure that all problems and questions are resolved ahead of the impending changes.

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