

LAW FIRM SOLUTIONS MAY 2012: STRATEGIES AND SOLUTIONS FOR CONTINUING TO GROW YOUR FIRM

This is the final issue of Law Firm Solutions. We want to thank you for all your support and interest over the years. As the firm has grown, we have expanded the number of publications and alerts that we offer. As a result, the information contained in Law Firm Solutions is being duplicated in our other communications.

We would like to ask a few questions about you and your thoughts on this newsletter. We would very much appreciate if you would take a minute to please answer a very short survey. The link can be found in your email under, "A Note to Our Readers."

If you have any questions, please contact us at contacts@markspaneth.com or at 212.503.8846.

LAW FIRM TRUST ACCOUNTS: WHAT THEY DID NOT TEACH YOU IN LAW SCHOOL COULD JEOPARDIZE YOUR CAREER

The quickest route to disbarment or severe disciplinary action for a lawyer resides in the client trust account function. Complaints and violations with regard to trust account management can strip you of your license to practice law. Though the consequences of such mismanagement can be dire, law schools do an abysmal job of training law students on how to handle trust accounts.

Poor management due to lack of knowledge and training is the cause of most trust account problems. Yet, the Bar ethics committee treats mismanagement due to lack of knowledge of the rules almost as harshly as it does deliberate misappropriation. If the trust account violation is found to be unintentional and negligent, the results can be disciplinary action and civil liability. If the trust account mismanagement is found to be intentional, the results can be disbarment, civil liability and criminal liability.

Trust account infractions can be avoided by following very basic and simple rules. The simplicity of the controls is one of the things that makes a trust account violation so easy to prove. There is a basic paper trail, and it is easily followed. Just as easily identifiable is any lack of paperwork.

Delegating Trust Account Management Does Not Relieve Your Responsibility

Any lawyer responsible for day-to-day processes in a matter has trust account responsibility for that matter. No one else. A lawyer cannot avoid trust account responsibility by delegating to any other person or institution. In fact, a lawyer can be disciplined for failure to supervise and review activities of anyone in the firm involved in maintenance of trust accounts and trust account refunds relating to any of his matters.

The following are examples of circumstances that can bring disciplinary action back to the lawyer's door, even if the client receives all funds due.

- Unreasonable delay in returning, paying or depositing trust account funds.
- Failure to segregate funds.
- "Borrowing" the money, even for a few hours.
- For being technically "out of trust".

- Inadvertently allowing the funds of one client to be used to pay another client due to a bounced check that wasn't the lawyer's fault.
- Failure to maintain required records.
- Failure to have required records segregated and available for immediate inspection even though there are no financial irregularities.
- Failure to properly safeguard trust account records.
- Failure to produce trust account records even though there have not been any financial improprieties.
- Failure to train, manage or supervise the non-lawyer staff involved with trust accounts.
- Failure to properly supervise and review activities of outside management firms responsible for trust accounts.
- Failure to supervise other lawyers in the firm with respect to trust accounts and trust monies.
- Improper trust account acts or omissions of partners even though no one lost any money.
- Failure to properly use a client trust account even though the lawyer has acted on the client's written instructions and consent.

Ten Commandments of Trust Accounts

Rule 1. Have a trust account. The need could arise at any time, through a completely unexpected turn of events. Open one as soon as you begin your practice of law. It is highly unlikely you will never use it. For the cost of a few dollars in check printing and account maintenance charges, you will always be prepared. If you are in a firm that has a firm trust account, you should have separate accounts for your matters unless you can sign on the firm's trust account and are willing to be responsible for what other signatories on the account do with the money you deposit.

Rule 2. Never let anyone else sign trust account checks. Use of mechanical or rubber stamp signatures also is discouraged.

Rule 3. Obtain from your state bar and fully understand your Interest On Lawyers' Trust Account (IOLTA) rules. Every state requires the use of special accounts where the interest goes to fund a special cause such as legal aid. Your bank has an agreement with the state bar, and there is no option to not use the IOLTA account. Your bank has a communication obligation to the bar disciplinary authorities if improprieties are noticed.

Rule 4. Immediately notify the client each time something is added to the client's account balance and each time something is taken from the account balance.

Rule 5. Unearned fees and unexpended costs belong in the trust account until earned or spent. The key words here are ***earned*** and ***spent***. The money belongs to the client and thus, in the trust account, until the earned or spent condition exists.

Rule 6. Do not commingle your funds with client funds in the trust account. Remove funds immediately upon being earned. The state bar ethics hotline can tell you how much you may keep in the account to cover check printing and other charges. The IRS does not like to find earned fees in the account on December 31 because it smells of deferring earned income until the next taxable year. Take the necessary steps to transfer earned fees from the trust account before you spend them. Never write a check for personal or office expenses from a client trust account. Think of it in this manner – it's not your money until it's *earned* and *transferred*.

Rule 7. Be sure you understand the exact nature of the item deposited or credited to the trust account. Let all deposits clear before writing checks against them. If the deposit bounces or does not clear before you write a check, you are in violation of the rules.

Rule 8. Reconcile the bank trust account monthly. You are not required to physically do the reconciliation, but you are required to personally examine the reconciliation. You are personally responsible for others' mistakes. This cannot be delegated. Have the bank account statements come directly to you without being opened by anyone else and take a few minutes to look at them. This is a great deterrent to tempted employees. Without your hands-on supervision, those involved in the trust account process may feel that you have no clue.

Rule 9. Reconcile and examine the individual client trust account balances monthly and do not delay giving clients their money.

Rule 10. Be alert to third-party claims. If there is an unresolved dispute between third parties or between you and third parties over funds in the trust account, get an ethics opinion.

What Must Go Into a Trust Account?

The American Bar Association Model Rules of Professional Conduct address the issue of trust accounts in rule 1.15. The intent of the rule is that a lawyer may not commingle funds of the client or third parties with the lawyer's own property, and an assiduous accounting of such trust funds or property must be maintained by the lawyer. While this rule appears quite straightforward, questions arise as to whether particular funds should be deposited into trust accounts or whether they belong to the lawyer when received. Some common examples and their proper handling follow:

- An advance of fees is placed in trust if the advance is securing payment of a fee for future service.
- If an advance is not in the nature of a nonrefundable, prepaid fee, and is not intended to become the lawyer's property until and unless earned, the funds should be placed in trust.
- A nonrefundable advance fee or retainer should not be placed in trust because it is the property of the lawyer.
- Advances for costs and expenses should be placed in trust.

As always, if you have questions about your trust accounts, please call the law firm specialists in our firm.

CLOUD COMPUTING AND MOBILE DEVICES POINT TO TRUE LAWYER MOBILITY

When Apple introduced its first personal computers more than 30 years ago, Steve Jobs supposedly said that unleashing the creative power of thousands of people with PCs would far exceed the creativity to be realized from a small number of large computers. His comment then is even more applicable today as mobile devices and cloud computing move to the forefront, ushering in radical structural changes for businesses, including law firms.

At the recent Softworld event in London, business software developer The Access Group released the findings of a study from the University of Kent's Centre for Future Studies. The report identified key technological trends that will affect small and medium-sized business between now and 2020. It anticipates that smartphones will overtake PCs as the most popular platform to access the web by 2013. Among the trends: Cloud computing will be mainstream for everyday computing by 2020.

The mobile cloud – the intersection of mobile tools and cloud computing – will create opportunities for new applications and business processes, leading to an explosion of business-ready, self-service technologies.

Cloud Computing Offers Immense Benefits to Law Firms

Cloud computing is a term for technologies that provide computation, software, data access, and data storage services at remote locations. A parallel to this concept can be drawn with the electricity grid, wherein end-users consume power without needing to understand the component devices or infrastructure required to provide the service.

Cloud computing describes a new supplement, consumption, and delivery model for IT services based on Internet protocols. Providers deliver applications via the internet, which are accessed from web browsers and desktop and mobile apps. The business software and data are stored on servers at a remote location. Cloud computing is not “remote computing” that many already know – logging onto a computer at another location and accessing that computer alone. Because your software and data are stored in the cloud, you can access your law firm data anytime and anywhere.

As law firms rapidly migrate to cloud computing and data storage, they can expect to reap many benefits: economic savings, improvement to processes, agility, technical improvements not inherent from internal data structures, and strategic benefits possibly including competitive advantage.

Security is a real concern, particularly for law firms. Significant advances have been made in this area, with some saying that electronic data rooms are extremely secure – that the primary hosting facility has bank-level security. Nevertheless, lawyers and law firms will want to proceed with care.

Many law firms may wish to go with a hybrid form of cloud computing. An example would be software and applications reside on a public facility, but all data continues to reside on the firm’s server. While addressing security concerns, this approach does not offer the benefits of true mobility.

To date, there is only a smattering of law firm specific guidance on cloud computing. With benefits too compelling to ignore, that is changing. One book has been published, “Cloud Computing For Lawyers and Executives: A Global Approach” by Thomas J. Shaw, Esq., and others are expected to be published soon.

Mobile Devices Join the Cloud and Provide True Mobility for Lawyers

The number of applications now available for smart phones and tablets is not precisely available, but the number is somewhere in excess of 600,000 and may be as high as 1 million.

With this proliferation of apps, combined with mobile cloud computing, it is not surprising that business CEOs are excited about the possibilities. Many of the initial apps were pure entertainment, but then developers got busy and apps for true life and business improvement now are extensive.

Lawyer-specific applications for smart phones and tablets include downloaded legal research databases, litigation references such as Federal Rules of Evidence and more, presentation software to create and share presentations, text and audio note taking, voice recognition dictation, time entry, legal calendaring, and much more. All these apps have improved efficiency for lawyers, but any information entered by the lawyer has to be transferred to the firm’s server. Adding cloud computing to the mix means entering

directly into the firm's data, so everything is up-to-date at all times.

With the advent of cloud computing and more apps for smart phones and tablets, it won't be long before lawyers in your firm are truly mobile, with access to everything the office desktop offers and more. They will have the ability to access their data wherever they are and using whatever device is at hand.

EASY UPDATES TO PERSONAL INFORMATION

Two often overlooked areas when reviewing personal financial and legal situations are designated beneficiaries and home inventory records.

Beneficiary designations should be checked for bank accounts, asset ownership, brokerage firm accounts, tax-favored retirement accounts, company benefit plans, life insurance policies, annuities, and 529 college accounts.

One of the most common situations where beneficiary designations are out of date is when a divorce occurs. The divorce documents may spell out that your spouse has no rights to your retirement or insurance funds. However, a Supreme Court ruling upheld that the beneficiary designation rules even when the divorce agreement states otherwise. In another instance, the Supreme Court ruled that the federal *Employee Retirement Income Security Act* (ERISA) trumps state law governing beneficiaries.

Divorce is not the only instance that may prompt you to change beneficiaries. Perhaps you need to designate more inheritance to one child than to another, or to provide more for a challenged sibling or parent.

If you are married you likely have accounts set up with you and your spouse as joint owners with right of survivorship. In this instance you may wish to name some secondary beneficiaries to cover all possibilities.

Creating home inventory records is another of those pesky things we keep meaning to do. The New Year is a great reminder to proceed, and technology just made the chore much easier.

In the past, we made physical lists of home inventory, perhaps we took pictures, and then we stored these records just where they would be in as much danger as the inventory itself – in the home.

Now technology has come to our rescue. You still need to go through your home taking pictures and making lists, but now your data can be stored safely and securely off-site, modified whenever you wish, retrieved as needed, and reports printed. Here are three home inventory web sites to assist you:

- **www.knowyourstuff.org**. Sponsored by the Insurance Information Institute, this site provides free, secure online storage in an easy-to-use format.
- **www.whatyouown.org**. This program also is free, and received a CNET editors' rating of five stars. You download the program, so storage is on your own computer.
- **www.stuffsafe.com**. Free and user-friendly, you even can update from your smart phone. Storage is on-line.

SPOTLIGHT ON MP&S

MP&S SPONSOR OF NYU HOSPITALITY CONFERENCE

MP&S is a sponsor of the *34th Annual New York University International Hospitality Industry Investment Conference*, June 3-5, 2012, at the New York Marriott Marquis. This major event attracts hospitality industry leaders from around the world. Larry Cohen, MP&S Executive Consultant, will be part of a panel discussion on "Focusing on the Capital Agenda", and MP&S will have a booth at the conference to showcase who we are and the value we bring to our clients.

MP&S NAMES TWO NEW PARTNERS AND ONE PRINCIPAL

MP&S has recently named two new partners and a principal to its Tax Practice. Based in our headquarters in Manhattan, these new appointees have significant experience advising high-net-worth individuals, closely held businesses, family groups and small businesses on tax matters.

Alan Blecher, JD, Principal, assists high-income and high-net-worth individuals and their closely held businesses with tax planning. With a particular focus on partnerships, limited liability and S-Corps, he advises clients on such issues as public debt offerings, sales of family businesses and restructurings of distressed entities. Mr. Blecher holds a B.S. and J.D. from Fordham University and is a member of the American Bar Association, Section of Taxation.

Laura LaForgia, CPA, Partner, advises on tax issues affecting high-net-worth individuals, family groups, estates, trusts and private foundations. She provides guidance on income tax, estate and gift tax, foreign transaction reporting, multi-state taxation and financial planning. Ms. LaForgia holds a B.B.A. in Accounting from Adelphi University and an M.S. in Taxation from Long Island University. She is a member of the Estate Planning Council of New York City, the National Association of Female Executives and the New York State Society of CPAs (NYSSCPA).

Martin Hyman, CPA, Partner, specializes in tax affecting high net-worth individuals, family groups, small businesses and their owners. He has 25 years of public accounting experience and serves on the New York, Multistate and Local Taxation Committee of the New York State Society of CPAs (NYSSCPA). Mr. Hyman holds a B.S. in Accounting from the State University of New York at Plattsburgh and an MBA from Hofstra University.

MORISON INTERNATIONAL WINS INTERNATIONAL ACCOUNTING BULLETIN AWARDS

Morison International, the association of independent accounting and consulting firms, of which MP&S is a member, enjoyed the recognition of the global accounting industry when it won both "Association of the Year" and "Rising Star Association" at this year's *International Accounting Bulletin* awards.

FOR FURTHER INFORMATION

If you have any questions, please contact **Robert I. Feldman** at 212.710.1660 or rfeldman@markspaneth.com or **Howard K. Warshaw** at 212.710.1673 or hwarshaw@markspaneth.com, or one of the following Law Firm Services Partners:

Steven L. Berse: sberse@markspaneth.com

Thomas H. Engelhardt: tengelhardt@markspaneth.com

Michael J. Fosorile: mfosorile@markspaneth.com

Mark Levenfus: mlevenfus@markspaneth.com

Andrew H. Kubrick: akubrick@markspaneth.com

In addition, information on Marks Paneth & Shron's Law Firm Services can be found at www.markspaneth.com.

IRS CIRCULAR 230 DISCLOSURE

Treasury Regulations require us to inform you that any Federal tax advice contained in this communication is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed herein.

© Marks Paneth & Shron LLP 2012 | www.markspaneth.com

MANHATTAN | LONG ISLAND | WESTCHESTER | CAYMAN ISLANDS

[Privacy Policy & Legal Disclaimer](#)