



MORE ABOUT LAWYER TRUST ACCOUNTS

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You may recall reading “*Best Practices for Trust Accounting*” which appeared in the May 6, 2013 issue of The Pennsylvania Bar News. [For a copy, email your request to lawpractice@pabar.org.] The response to the article was amazing, and I appreciate all the positive feedback. Some callers, however, raised the same question: where was the rule, regulation or statute which required that only a lawyer can sign trust account checks? All of the callers who raised the question had non-lawyers as primary or secondary signatories.

Before writing the article I had a similar inquiry from Michael Temin, an attorney at the Philadelphia office of Fox Rothschild, and a former long-time member of the Disciplinary Board. His query was in response to my making this statement at a seminar he attended. I advised Michael that my original information came from former PBA Ethics Hotline guru Louise Lamareaux, but that I was never provided with anything in writing. Louise had been at PBA so long, there was never a reason to question her response.

I have always been most appreciative of the wisdom Michael has shared with me from time to time, since I began my association with PBA in 1999. Predictably, Michael took the time to write back shortly thereafter to assure me that he had found the source Louise must have been referencing. The attorney signature requirement was confirmed. And so, it was included in my article with renewed confidence.

When I received several requests to be specific about the authority for the statement, I asked Michael Temin to let me know what authority he had found. In response he advised that the IOLTA pamphlet states: “Only an attorney admitted to practice in Pennsylvania should be a signatory for a Pennsylvania fiduciary account.” However, no authority was supplied for the statement.

Michael reached out to the original authors of the pamphlet. As it was written fifteen or twenty, or maybe more years ago, the authors —Robert Davis,

Samuel Miller, Edwin Frownfelter, and Paul Burgoyne— all of whom served on the Disciplinary Board, had a little difficulty recalling whether there was really any research of case authority, or whether a disciplinary decision existed to make such either mandatory or best practice.

When the dust settled, there was a consensus of these sage individuals on two issues:

“(1) there is no rule or direct case authority of which any of us are aware directly forbidding the practice of allowing non-attorney signatories on IOLTA and other trust accounts; and

(2) it is the unanimous and strong judgment in the minds of these lawyers who have collectively about 100 years of experience in prosecution and defense of attorneys in the attorney discipline system, that allowing a non-lawyer to be a signatory on IOLTA or other trust accounts is ‘a terrible idea.’”

If your firm is one which allows non-lawyer signatories, take note of the strong language used. You ignore best practices at your own peril.

Norristown family law attorney Barbara Zulick responded to my article with a compliment, and the forwarding of a post from one of the listservs she participates in, regarding a close call involving a trust account. Here’s the story:

I received a call this morning from a fairly large . . . law firm who reported that they were VERY close to losing nearly \$300k out of their trust account yesterday. As I understand it, the “bad guys” somehow gained access to the law firm’s account information at a credit union. The bad guys then logged in and said that they had “forgotten their password.” They received a new password. Using the account information and new password, the bad guys then



placed an online order for a wire (just under \$300k) to be sent to China. Fortunately, the credit union's procedure is to call the law office and confirm the wire. When the law firm received the call they shut it down and learned just how close the trust account had come to being robbed. If the bad guys had managed to re-direct the phone call to themselves to "confirm" the wire, or if the credit union had sent the wire without calling the firm, the money would have been gone.

If you haven't checked with your trust account institution(s) to determine what their security procedures are, you haven't done your required due diligence. Find out specifically what their procedures are to confirm a change of password before acting on any transaction based on the new password. Find out whether they take additional steps to confirm wire transfers.

In the same vein, Jeffrey P. Lewis, of the Philadelphia office of Eckert Seamans Cherin & Mellott, published an article in the July 15, 2013 issue of The Pennsylvania Bar News entitled "*Will a Professional Liability Policy Cover a Loss of Escrowed Money Resulting from a Phishing Scam?*" The referenced case (Stark & Knoll Co., L.P.A. v Proassurance Casualty Co) arose as a result of a forged bank check scam which caused the firm to suffer a \$200k loss from their trust account. As a result, the firm was forced to transfer funds from its operating account into its IOLTA account to make good on the loss. The law firm reported the loss as a claim to its professional liability carrier, which denied it.

I will not attempt to summarize the positions argued, nor the courts findings. The bottom line is, in this particular case, the insurer's policy language was subject to interpretation, and so the court ruled in favor of the firm. One key point was that the policy did not specifically exclude coverage for misappropriation by third parties.

Lewis' conclusion was that different policy forms are utilized by carriers, so the court's decision provides little indication of whether there is coverage for phishing scams in every policy. And no doubt following this ruling, many insurers will amend their policy language.

Does your policy afford any coverage? Only a careful reading of the language will determine whether it will or not. Of course, you're better off remaining well-educated about the latest scams and phishing schemes, in order to avoid a loss in the first place.

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Trust account mishandling, while most often unintentional, is right at the top of reasons why lawyers get caught up in the disciplinary process. Remember, even a meritless complaint from a former or current unhappy client usually leads to an examination of your trust account. That due diligence is included in response to virtually every complaint. Will your practices withstand the bright light of scrutiny? If you're not sure, give me a call.

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