



# PUT INTO practice

THE PROFESSIONAL NEWSLETTER OF LAWYERS MUTUAL

 **LAWYERS  
MUTUAL**

LIABILITY INSURANCE  
COMPANY OF  
NORTH CAROLINA

FALL 2009 ■ FOCUS: TRUST ACCOUNTS

## A DAY IN THE LIFE

It begins like any other day.

You arrive at work, park in your usual spot, crack a joke to the receptionist, pour a cup of coffee and settle into your office, where you begin flipping through the morning mail.

One letter immediately catches your eye. It's from the bank.

Ordinarily, banking correspondence goes to Bill the bookkeeper, which is obviously where this one had first gone, because it had been opened and a bright post-it note is stuck on the outside that says, "See me!! Bill!!"

Bill is not an exclamation-point kind of guy. You feel your throat tighten.

Inside the envelope is a check drawn on your Client Trust Account that has been returned for insufficient funds. You remember the check well. You signed it last week and presented it to your grateful client, Mr. Smith, as his share of the settlement of his personal injury case. It had been a successful conclusion to a difficult case – until now.

You reach for the phone to call Bill the bookkeeper. Before you do, the receptionist buzzes to say Mr. Smith is on the line. Your chest starts to pound. You know, of course, why he's calling. You wrote him a bad check, albeit inadvertently. You take the call and manage to calm Mr. Smith down, somewhat, by explaining that the bounced check was a mistake that would be quickly fixed.

After hanging up, you race down the hall and find Bill frantically searching for the trust account books. Your senior partner Jerry keeps those records in his office, which is locked. Jerry hasn't come in yet. In fact, Jerry has been absent quite frequently in recent months.

As the receptionist searches for a master key, the branch manager of your bank calls. There is a major problem with the trust account, the manager reports. A flood of dishonored checks are cascading from it.

Your heart is knocking like shoes in a clothes dryer. You call Jerry at home but get no answer. You try his cell phone but get sent to voice mail.

The next day you get a call from an investigator at the State Bar. The Bar had been notified of the bounced checks by the bank, as required by the Rules of Professional Conduct. The investigator

faxes you a consent order to have all of the firm's banking records released to the State Bar. You still haven't been able to contact Jerry.

In the ensuing weeks, a depressing scenario unfolds:

The State Bar investigator camps out in your office, poring over not only the trust account records but the firm's operating account and your personal checking accounts as well.

Your trust account is frozen, preventing activity on ongoing cases. You discover a shocking number of trust account checks payable to Jerry and deposited to his personal

account, most of which have no case numbers or client references. Some are made out to "cash."

Jerry is still missing in action. You learn he has separated from his spouse, which comes as a surprise to you, and has been living in an apartment that is now vacant.

The State Bar initiates disbarment proceedings against Jerry.

You notify your professional liability carrier, who informs you that there is likely no insurance coverage because Jerry's acts were intentional.

Inside the envelope is a check drawn on your Client Trust Account that has been returned for insufficient funds. You remember the check well.

# put PROFESSIONALISM into practice

How frequently would the word “trust” appear in your State of the Law Firm address?

How about “professionalism” or “pride?”

The question is suggested by a recent exhibit at the National Constitution Center in Philadelphia. The display consisted of 41 large billboards emblazoned with the words from every presidential State of the Union address – beginning with President Washington’s initial report to Congress on the health of the infant republic – sorted by frequency and ranked in descending size in the manner of an oversized eye chart.

A glance at any one of the signs and a perusal of the keywords used by each chief executive offered a fascinating snapshot of the priorities and historical circumstances of each administration.

For example, the most-used words in President Lincoln’s address were “emancipation,” “rebellion,” and “proclamation.”

For President Eisenhower, it was “nuclear,” “planning,” and “scientific.”

Other interesting rhetorical results:

- President Washington: “Gentlemen, provision, fellow.”
- President Jackson: “Bank, money, payment.”
- President Polk: “Oregon, California, thirtieth.”
- President Theodore Roosevelt: “Corporations, railroads, wages.”
- President Franklin Roosevelt: “Democratic, unity, allies.”
- President Lyndon Johnson: “Tonight, Vietnam, try.”
- President George W. Bush: “Terror, Iraq, Iraqi.”
- President Obama: “America, Americans, child.”

What if the words spoken in your office were recorded, subjected to a text search, and displayed on a billboard in your front lobby?

Would the results include phrases like “trust, professional, pride, service, ethics, integrity, skill, experience, competence, honesty, clients, commitment, value, worth, dedication, diligence, and punctuality?”

Or would the sign show some less-flattering words, such as “greed, tardiness, neglect, sloppiness, apathy, disorganization, delay, excuses, suspicion, dishonesty, inattention, blame, evasion, or defensiveness?”

The bottom line: words matter. What comes out of our mouths has the power to elevate and inspire, or to contaminate and depress.

Do a text search of the conversations that take place every day in your office. Make a commitment to fill your firm’s glossary with powerful, positive language.

## A Day in the Life from page 1

The phone is ringing off the hook with calls from Jerry’s clients. They are upset, to put it mildly. They want to know what’s going on. Most of them come by to pick up their files, meaning your firm’s revenue drops in half overnight.

The local newspaper and television station cover the incident. Their stories erroneously identify the firm as being under investigation by the State Bar, not Jerry individually.

Friends at the YMCA and at church look at you questioningly. Colleagues at the monthly bar luncheon gaze at you sympathetically.

Worse of all, your sense of trust and confidence is shattered. You’ve known Jerry for years. You thought you could trust him. You feel deeply betrayed.

Practicing law is no longer fun. In fact, it has become a nightmare.

You’ve never had any trouble with the Bar before. Neither you nor anyone else in your firm had any knowledge of Jerry’s wrongdoing. In the latest audit of the firm’s accounts, everything had looked just fine; though admittedly that audit had occurred two years ago.

As the shock subsides, you begin second-guessing yourself. You realize you should have kept closer tabs on the trust account. You never should have entrusted the account to Jerry alone. You should have implemented safeguards. You should have noticed the warning signs of Jerry’s absenteeism and erratic behavior.

It ends like no other day. You leave the office past midnight, your head aching, knowing that the next day and many days to come will be filled with worries and woe.

Thanks for reading the inaugural issue of “Put into Practice” – LML’s new communication tool for you, our clients. We want to start by thanking you – we appreciate your loyalty and your business. In today’s economy, we aren’t taking anything for granted, especially you. Our theme – trust accounts – is to remind us that good business practices shouldn’t be based on trust alone, but in solid procedures and checks and balances, especially where our client’s money is concerned. We hope this issue will encourage you to do a mid-year audit of not only your trust account, but the systems you have in place to protect it. For future issues, let us know topics of interest to you. Share your perspective with us.

## Trust Has Nothing To Do With It

The Lawyer's Trust Account – what a misnomer! It implies that our clients and the public can and should trust the personal integrity of lawyers (or their partners, or their associates, or their administrative staff, etc., etc.) to handle money properly.

When a client engages a lawyer, he or she makes a business judgment that the lawyer is competent and worthy of trust to handle a legal matter. But that's as far as their trust should have to go. They should be confident that any money handled by the lawyer is protected by procedures and controls, and more procedures and controls. Why do you trust the bank (though perhaps only up to FDIC limits these days)? Because of the myriad procedures and protections in place to make sure the teller does not slip any money into his pocket!

OK, you know you're honest, but how do you give confidence to a new client and avoid becoming an innocent victim in your own law firm? Certainly, a good start is dealing with good people. Pick your partners and associates and staff wisely. Do background checks on prospective employees and know your partner's background. Also read and understand your professional liability policy. Most malpractice policies exclude coverage for intentional wrongdoing. The Lawyers Mutual policy, for example, says: "This policy does not afford any coverage or benefits whatsoever with respect to ... any claim or suit arising out of any active or deliberate dishonest or fraudulent acts or omissions of any insured or an employee of an insured committed with actual dishonest or fraudulent purpose of intent."

When it comes to really giving your clients something they can trust and yourself peace of mind, though, consider the following:

### Is a CPA part of your team?

Lawyers Mutual did a survey a few years back that asked questions about the management practices of law firms. Of those firms whose answers showed good financial management, the most common link was the heavy involvement of a CPA in the firm's trust accounting, operational accounting and payroll. Plugging a CPA regularly into the right spots is less expensive than you might think and will make practicing law a lot easier.

### Separation of Duties.

The odds of two people colluding to steal are far less than for just one. "The tasks of posting, depositing, and disbursing trust account funds should be handled by different members of the staff," according to the State Bar's handbook. "If this is not possible, an attorney may want to reconcile the trust account periodically or have an independent party [read "CPA"] do so. Resolve discrepancies in a trust account reconciliation as soon as possible. Try not to sign blank checks, and do not make a check out to cash or bearer." To the extent possible, different employees should pick up the mail, log in checks and make deposits.

### Put your procedures in writing.

Perhaps in the form of a manual. Take the time to educate your staff. Identify those individuals who have check-signing authority – require two signatures for checks over a certain sum. Have someone other than the bookkeeper review bank statements and correspondence regarding the trust accounts. Scrutinize checks for suspicious signatures. Pay particular attention to any blank, void, and canceled items. Retain all voided checks.

### Know the Rules for managing the trust account.

In general, the requirements for safekeeping property, including managing the trust account, are found in Rule 1.15. An authoritative and free resource is the N.C. State Bar's "Attorney's Trust Account Handbook," which can be found on the Bar's website [www.ncbar.com](http://www.ncbar.com). "The security of a trust account is proportional to the interest and attention the attorney devotes to the operation of the account," according to the handbook. The 49 page manual includes relevant Rules of Professional Conduct, ethics opinions and forms.

### Put legal fees in the right place.

Know whether a fee should be deposited in the trust account or the general operating account. Review N.C. State Bar ethics opinion 2008 FEO 10 regarding minimum fees that are paid in advance. Call the Bar if you're unsure where a fee should go.

### Slow down.

Never act in haste when processing checks or disbursing funds. Use "deposit only" stamps and pre-numbered checks. Make deposits daily, or in an otherwise timely manner.

Misappropriating funds from a client or from your firm is the surest way to lose your law license.

It is also tantamount to a death sentence.

Those sad facts are borne out by the most recent report from the N.C. State Bar's Disciplinary Department. The statistics show that twenty lawyers were disciplined in the Spring 2009 quarter. Of that group:

- One lawyer in Charlotte was disbarred for misappropriating \$350,000 in entrusted funds.
- One lawyer in Burgaw was disbarred for misappropriating \$1,623,000 in entrusted funds.
- One lawyer in Fayetteville was suspended for failing to supervise two different legal assistants at different times, enabling one assistant to misappropriate trust account funds and the other to engage in mortgage fraud.
- Two lawyers who had previously been disbarred saw their Petitions for Reinstatement denied. One lawyer had misappropriated client funds, while the other had taken funds from her law partners.

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## Trust from page 3

### Keep the books secure.

Designate a responsible person to maintain control over the physical check-book. Designate a back-up for when that person is unavailable. Keep the records under lock and key when not in use. Trust records should never leave the office. Make sure all checks are accounted for when an employee resigns or is fired.

### Document the client's file.

The case file should contain documentation of receipts and disbursements. Monitor fee payments, outstanding balances and collection efforts.

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*Pick your partners and associates and staff wisely. Do background checks on prospective employees and know your partner's background. Also read and understand your professional liability policy. Most malpractice policies exclude coverage for intentional wrongdoing.*

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### Watch out for red flags.

Pay attention to changes in the lifestyle of your partners and employees. Warning signs might include a dramatic increase (or decrease) in possessions, travel, or social activities. Personal issues such as family or marital problems, absenteeism, habitual tardiness, bankruptcy, poor attitude, drinking or substance abuse could lead to embezzlement. Procrastination and sloppy bookkeeping are sometimes a "cover" to conceal embezzlement.

### Be attentive to risks specific your area of practice.

A busy real estate practice means an active trust account, often with large balances on hand at any given time. Firms handling probate and estate cases might have files that remain open for years, which are ripe targets for embezzlement.

If you aren't a natural at crunching numbers, all this may seem daunting, but then it becomes that much more important. Enlist a CPA to educate you and your staff and put procedures in place. Adopt a mindset that good financial management isn't extra work, but just part of the process of earning a comfortable living practicing law.

## CLE SCHEDULE:

Nov 13 - Asheville at the Doubletree Biltmore

Nov 20 - Triangle at the NC Bar Center in Cary

Dec 4 - Charlotte-Concord at the Embassy Suites in Concord

# THE RISK MAN

The Risk Man has left the building . . . and moved to Pocatello, Idaho where he now lives his dream of writing, running a coffeehouse and contributing his wisdom to Lawyers Mutual.

I am a new lawyer in Durham. Recently I was shocked to realize I was two days away from a discovery deadline that I had no chance of meeting

## Dear Risk Man:

My firm has a largely District Court practice in which many legal fees are paid in cash. I worry about keeping accurate track of the currency. Any suggestions? *Cash Flow in Fayetteville.*

## Dear Cash Flow:

The key is having an effective office policy that includes adequate safeguards. Such a policy might require that a receipt from a sequentially numbered receipt book be given to any client who pays in cash, along with a follow-up procedure whereby files are audited and clients who paid in cash are contacted to make sure they received a receipt. The receipt book should be kept in a central and safe location and should never leave the office. The book should be checked at regular intervals for irregularities, or to see if any slips have been altered or removed. Designate one person as the primary cash handler, and someone else to tally receipts and reconcile accounts. These are merely some ideas for developing a safe procedure. Other tips might come from your accountant or bookkeeper, the N.C. State Bar's guidelines, and your own experiences.

## Dear Risk Man:

I want to help an out-of-state lawyer obtain *pro hac vice* status here in North Carolina to assist in complex litigation. Is there anything I should do as the sponsoring attorney? *Associating in Asheville.*

## Dear Associating:

N.C.G.S. 84-4.1 governs the limited practice of out-of-state lawyers (*pro hac vice* admission). If you are a North Carolina lawyer sponsoring an out-of-state lawyer seeking admission *pro hac vice*, you must file a registration statement with the N.C. State Bar within 30 days of the entry of the order granting PHV admission. Additionally, as required on the [registration statement](#), you must notify the State Bar upon conclusion of the case. The registration form and other important information related to *pro hac vice* admission can be found on the [FAQ page](#) at the Bar's website, [www.ncbar.com](http://www.ncbar.com).

## Dear Risk Man:

In our firm, I am in charge of training new associates and clerks. During orientation, I used

to give them what I thought was useful advice on the hazards of appearing before a certain District Court judge. Now, however, instead of merely recounting horror stories, I instruct the greenhorns to tag along the next time one of our lawyers is scheduled to appear before the judge in question. The new lawyers never fail to return to the office illuminated, or at least entertained. There's no substitute for first-hand experience, I suppose. *Mentoring in Mecklenburg County.*

## Dear Mentoring:

Or as Benjamin Franklin said: "Tell me and I forget. Teach me and I remember. Involve me and I learn."

## Dear Risk Man:

I am a new lawyer in Durham. Recently I was shocked to realize I was two days away from a discovery deadline that I had no chance of meeting. I wasted one day worrying before picking up the phone and calling opposing counsel to beg for an extension. Imagine my surprise when my opponent not only granted my request but even followed up with an email confirming the extension. My faith in humanity has been restored. *Relieved in Raleigh.*

## Dear Relieved:

According to the Rules of Professional Conduct: "As professional colleagues, lawyers should encourage and counsel new lawyers by providing advice and mentoring; foster civility among members of the bar by acceding to reasonable requests that do not prejudice the interests of the client; and counsel and assist peers who fail to fulfill their professional duties because of substance abuse, depression, or other personal difficulties."

## Dear Risk Man:

What's wrong with lawyer jokes? *Chuckling in Charlotte.*

## Dear Chuckling:

Lawyers don't think they're funny and other people don't think they're jokes.

## PERSPECTIVE. Get Into It.

A wise mother once counseled – “Son, if you’re in something, get into it! If you’re not into it, then get out!”

We’ve all experienced the difference between being into something or not. When we say we’re “into” Star Trek or Springsteen or the Charlotte Panthers, what we mean is that we love Spock and the Boss and can’t wait until the opening kickoff this fall.

Are you into practicing law?

If so, then you have boundless energy and endless ideas. You tick through your to-do list with ease, and you enjoy interacting with clients and colleagues. It’s as if someone has opened a spigot and enthusiasm pours out.

If you’re not into what you’re doing, your day is a drag. A mere glance at a case file can induce stomach pains. The thought of meeting with clients or returning phone calls can bring on a migraine. You’d rather be left alone.

No one is always in either category, of course. We slide back and forth, often many times during a single day. But if you find yourself not “into” your work more often than you’re “into” it, don’t despair. Change can be quick and convenient— and you don’t even have to call Dr. Phil.

First step – recognize the problem. Personal improvement requires self-awareness. Be honest with yourself about your strengths and weaknesses. Maybe it’s not the law profession that is discouraging you, but the practice area you’re stuck in, or perhaps the partner you’re paired up with.

Career paths are rarely straight lines. They twist and turn, often taking off in unexpected directions. If you feel you want to try out some new professional muscles, talk to a trusted colleague in your

firm or local bar. Another great resource is BarCARES, which has pulled many North Carolina lawyers out of job ruts. This confidential counseling service offers three free sessions a year in which you can consult with a career counselor or psychologist who specializes in guiding lawyers to a more satisfying professional life.

Second step – understand that attitude makes all the difference. You can simply decide to be excited about what you do for a living. Look at your own career as an opportunity to take care of someone who really needs your help. When you do, you’ll get a sense of satisfaction, in addition to a fee.

There is an Eastern saying: “When you’re picking grapes, pick grapes! When you’re doing laundry, do the laundry!” Approach even mundane tasks with zest and appreciation, then watch the rewards start to flow.

Third step – focus! Focus on the things you like about your practice. Make a list of the practice areas or type of cases that most suit you. Focus on delegating tasks that distract or annoy you. Focus on a daily schedule that allows you to be productive. Focus on things outside your practice that bring enjoyment.

Fourth step – reinforcement. Take a client to lunch to get to know them better. Talk about what you do with pride, and take an interest in the client as a person. You’ll return to work invigorated, and who knows? You might even get a referral down the road. Next day, take a colleague to lunch. Compare your practices: what works and what doesn’t. More referrals will surely follow.

Visualize the most successful and happy lawyer you know, then become that lawyer. It might sound corny, but it can happen if you “get into it.”

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