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Trust Account Recordkeeping

In the latter part of 2007, I had the pleasure of addressing a number of bar associations across the state about the newly-adopted, and soon to be effective, rules on trust account recordkeeping. The most significant of these, in that it was entirely new, was Maryland Rule 16-606.1, which became effective on January 1, 2008. My colleagues and I were not as successful in alerting the Bar to the mandates of the Rule as we would have liked; hence, this discussion.

One of my duties is to review trust account overdrafts, which are reported to my office by the financial institutions that maintain lawyer trust accounts. Maryland Rule 16-610 requires such reports. When an overdraft is reported, we ask the responsible lawyer for an explanation and for records documenting the response. The records we ask for include bank statements, deposit slips, cancelled checks and client ledgers. Usually, the overdraft is explained satisfactorily as a simple error -- the bank's or the lawyer's. Frequently, the matter ends there. The problem we often see, however, is the state of the lawyer's record-keeping. This is so even when there is a reasonable explanation for the overdraft. When we determine that the client ledgers are not maintained appropriately, it leads us to investigate whether the other required records are also inadequate. The failure to maintain records consistent with the requirements of the rules can lead to serious consequences for the practitioner, including the imposition of sanctions.

Rule 16-606.1 requires client matter records. The records for each client matter in which the lawyer receives funds in trust must show the date and amount of the deposit or disbursement, the purpose for which the funds are intended, specific payment identification for each disbursement and the balance left in the account in connection with the matter, that is, for each client matter, there must be a running balance.

The rule also requires a record of transactions for the trust account as a whole. That record must show chronologically all deposits and disbursements from the lawyer's trust account and each deposit and disbursement must be specifically identified and recorded pursuant to the requirements of the rule. Those requirements include a record of the purpose of each transaction and a running balance.

One other ledger is required: a record of the funds of the attorney maintained in the trust account pursuant to Maryland Rule 16-607 b, which strictly limits deposits of lawyer funds.

The rule mandates a monthly reconciliation of all trust account records, client matter records, the funds of the attorney held in the account and the adjusted month-end financial institution statement balance. The absence of timely reconciliation permits mistakes to be buried, to be dug up at great expense, often accompanied by embarrassment, loss of client confidence and with the risk of sanctions.

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This article is not intended to comprehensively set forth the full requirements of Rule 16-606.1; those requirements are numerous but sensible. There is no substitute for reading the rule and strict compliance with its requirements. Most lawyers undoubtedly are observing them and software like QuickBooks permit compliance without much strain.

One last thing; somewhat off topic. Rule 16-606 requires trust accounts to have a title that identifies the name of the attorney and that clearly designates the account with one of three designations: "Clients' Funds Accounts," "Attorney Trust Account," and "Attorney Escrow Account." No other titles are permitted, not even those titled: "IOLTA." We have often heard the disclaimer that the title was one that the bank chose. We point out that it is the attorney's responsibility to know the rule. We give the attorney a chance to rectify the problem and, upon submission of copies of the new check and deposit slip, no further action is taken. Because banks appear to be unaware of the rule, we have recently alerted every financial institution that holds attorney trust accounts of the requirements of the rule. Let's hope that helps.