



## COMPETENCY IN MAINTAINING TRUST ACCOUNT RECORDS

By: Renee E. Thompson<sup>1</sup>

The Florida Bar Board of Governors, Fifth Circuit Representative

Lawyers who are otherwise dedicated to the highest standards of ethics and civility can nevertheless run afoul of the Rules Regulating The Florida Bar, often for relatively minor transgressions involving trust accounts, resulting in disciplinary action. This can paint a false picture of a practitioner as lacking professionalism and ethics in the eyes of the profession, which not only diminishes the public's perception of lawyers but can have lasting effects on an attorney's ability to attract clients. This is especially true now that potential clients can view an attorney's ten-year disciplinary history online.

During my legal career, it seems that little technological advancement has been realized with regard to trust account records and methodologies for achieving compliance with the Rules Regulating The Florida Bar. For those attorneys who work in a larger firm setting, recordkeeping is likely not as much of a challenge if there are CPAs or other staff who help with the administration of recordkeeping. However, if you are the person performing the monthly reconciliations or overseeing them, it can be very time consuming. Fortunately, there



RENEE E. THOMPSON

is now emerging software that seeks to solve this long standing problem, as further addressed herein.

No matter how long you have practiced, your behavior sets you apart as a professional when delivering legal services to your clients. Chapter 5 of the Rules Regulating The Florida Bar covers all aspects of the ethical duties that apply with regard to trust accounting, specifically including the areas of record keeping and retention, reconciliation, accounting processes, and disbursement of trust monies. Attorneys are mandated to follow these

high standards to ensure accuracy in maintenance and disbursement of a client's trust funds. Attorneys must have a complete understanding of the Rule requirements or else face grave consequences. Having served on the Discipline Review Committee of the Bar's Board of Governors beginning in 2009 and now as a Designated Reviewer, it is undeniable that trust accounts are a constant source of bar grievance issues. In the past two fiscal years alone (2017-18 and 2018-19) over 17 percent of the discipline cases of the Bar have been related to trust account issues. Discipline is not only embarrassing and time consuming for all involved, but costly as well, and minimizing such expenses would provide a great benefit to the legal system.

*See "Competency" next page*

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## COMPETENCY

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Some attorneys spend an inordinate amount of time every month preparing handwritten records and reconciliations of their trust accounts in order to meet the high standards mandated by Bar Rules. While Bar Rules do not mandate the use of handwritten vs. electronic record keeping, keeping handwritten records can have its advantages, by ensuring a proper understanding of the rules in order to ensure compliance and by keeping attorneys from dealing with the electronic hitches that software can bring. However, handwritten records also have many disadvantages, primarily, the time it takes to maintain such records, but also the risk for potential inaccuracies that can occur from human error.

By contrast, maintenance of electronic trust account records, which can be accessed remotely and printed, is a method which can assist attorneys with the time it requires to maintain their records and can assure accurate calculations to avoid human error. However, it is not without its risks either. For decades, solos and small law firms have been using Excel and QuickBooks to track and manage their trust accounts. The Bar makes available to attorneys, free of charge, on LegalFuel.com, a series of Excel spreadsheets which can be downloaded and automatically calculate the required reconciliations once data is inputted and can be printed for physical retention. This method is a relatively easy way to ensure that records are maintained in accordance with Bar Rules. It can be a bit cumbersome to work within spreadsheets if you are not proficient with Excel. The Excel forms are set up with built-in formulas, but the user is still required to operate within Excel spreadsheets. Unfortunately, this method also does not allow you to print checks directly from it, and thus, the potential for writing a check that will result in insufficient funds is possible.

Additionally, QuickBooks and Excel spreadsheets can be flawed, because QuickBooks cannot perform a

three-way reconciliation to compare a month-end bank statement with a firm's trust ledger and client ledgers, and does not have easily created client ledgers. QuickBooks was not designed for law firms, so automated entries and multi-step work arounds can be time consuming, and ensuring compliance can often require other staff or a CPA to maintain these records accurately. When it comes to maintaining a client ledger, maintaining a three-way reconciliation of the trust ledger balance, the trust bank statement, and the sum of all individual client balances and not over-drawing a client ledger balance, there are still risks and pitfalls involved with the use of such programs. Further, maintenance of records electronically or in the cloud can be risky without printing copies of your records.<sup>2</sup>

No matter what method you choose, a more streamlined process for trust accounting would not only assist attorneys in avoiding professionalism issues but would also help the Bar to minimize disciplinary actions and the consequent procedural costs. Having worked as an attorney in a small firm setting, then as a partner in a mid-sized firm, and now as a solo practitioner in my own firm, I realized there must be a more efficient way to help small firm attorneys manage recordkeeping and to help relieve the time consuming nature of monthly reconciliations. In search of a new way, I spent the past two years working as a member of the Special Committee on Trust Accounting, looking at a possible custom software solution. As with all custom solutions, sometimes they offer more in dreams than in reality, but now as the current Chair of the Technology Committee for the Board of Governors and Member Benefit Liaison on the Board of Governors, I am very excited about the possibilities offered by new software on the market to help attorneys with competency in maintaining their trust account records.

Notably, The Florida Bar Board of Governors recently approved *TrustBooks*<sup>3</sup> as a new member benefit discount. What is promising about this new software are the built-in

safeguards that keep you from overspending a client's balance, the ability to perform three-way reconciliation automatically with electronic signoffs, and a function allowing a practitioner to print checks electronically and automatically generate reports compliant with Bar Rules. Whether used as a stand-alone program or in combination with a practice management program such as Clio, this software allows the user to print trust checks from the program so that a client ledger cannot be overdrawn. It also integrates with *LawPay* for credit card processing.

While the tried and true methods certainly work, your practice might nevertheless benefit from the systematized functions of newly developed and emerging software and technologies. Competency and professionalism in practice is judged many times not only by legal skills, ethics and substantive knowledge, but on sound practice management processes as well. Keeping accurate trust account records is no exception.

## Endnotes

1 Renee E. Thompson is a solo civil trial attorney and mediator from Ocala, Florida. She is an active leader in The Florida Bar, serving on the Board of Governors as the current Technology Chair and Member Benefit Liaison and on the Executive Council of the Solo and Small Firm Section. She is an adjunct professor at the University of Florida Levin College of Law in the area of Practice Management and Technology, and has received the General Practice/ Solo and Small Firm Section's Walter S. Crumley Award for her contributions in the area of Practice Management. She established a reputation at a young age as a high achiever, as President of The Florida Bar Young Lawyers Division and inaugural Chair of The Florida Bar Leadership Academy, and received the President's Award of Merit twice while serving on the Board of Governors.

2 The use of QuickBooks Cloud this past year proved that solely maintaining your trust accounting books in the cloud is not a viable option. In the Summer of 2019 QuickBooks cloud hosting provider iNSYNQ was hit with a ransomware attack that shut down its network making it impossible for them to safely access their data or backups. This ransomware attack left customers unable to access their accounting data for more than three days.

3 <https://www.floridabar.org/member/benefits/practice-resources/>





# KEY UPDATES IN EIGHT AREAS OF LAW

## FLORIDA LAW UPDATE 2020

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Welcome and Introduction  
Peggy Hoyt, Program Chair,  
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Business and Litigation Law  
Robert Clayton "Clay" Roesch,  
Orlando

8:50 AM - 9:40 AM  
Employment Law  
Kevin Johnson, Tampa

9:40 AM - 10:30 AM  
Animal Law  
Ralph DeMeo, Tallahassee

10:30 AM - 10:45 AM  
Break

10:45 AM - 11:35 AM  
Elder Law  
Peggy Hoyt, Oviedo  
Alex Douglas, Orlando

11:35 AM - 12:20 PM  
Estate Planning  
Peggy Hoyt, Oviedo  
Alex Douglas, Orlando

12:20 PM - 1:45 PM  
Lunch Break

1:45 PM - 2:35 PM  
Criminal Law  
Denis DeVlaming, Clearwater

2:35 PM - 3:25 PM  
Family Law  
Ralph T. White, Orlando

3:25 PM - 3:35 PM  
Break

3:35 PM - 4:25 PM  
Real Property  
Michael Gelfand,  
West Palm Beach

\*8.0 hours of CLE credit, 1.0 each in Business Litigation, Criminal Appellate, Criminal Trial, Elder Law, Labor and Employment, Marital & Family Law, Real Estate, and Wills, Trusts & Estates. Course number 3353.

# TROUBLE FROM DAY 1 – ENSURING YOUR EMPLOYEES ARE ELIGIBLE TO WORK

By: Christopher C. Johnson

Recently, there has been an increased focus on the country's immigration and naturalization policies. A collateral effect of that focus is a higher level of scrutiny on employees' eligibility to work, which has come in two forms: (1) more strict adherence to I-9 protocols and, in some states, the requirement to use a web-based system operated by the federal government known as E-Verify, and (2) more frequent ICE raids and worksite audits in industries that have a reputation of hiring ineligible employees. Attorneys need to be certain that their clients have managers designated to onboard employees that are well versed in employment eligibility processes to avoid potential violations.

Despite the added pressure on eligibility, the Department of Homeland Security still makes it illegal to discriminate in hiring and employment eligibility verification based on citizenship status, immigration status, or national origin. Therefore, employers cannot specify which document(s) an employee presents to establish employment authorization – if the document is found in the List of Acceptable Documents, then the employer must accept it. Employers are, however, under an obligation to review the documents presented and to make a determination that the document reasonably appears to be genuine and to relate to the person presenting it (and that it is not expired). And the document **MUST** be an original – copies or scanned images are not acceptable and cannot serve as the basis for establishing eligibility.

Once you have made the eligibility determination, your obligation does not end. The law requires employers to retain I-9s for either three years from the date of hire or one year from the date of termination, whichever is later. Employers



CHRISTOPHER C. JOHNSON

may keep a paper copy or choose to maintain the records electronically but the records need to be readily available should the employer end up being audited.

Following the trend of enhanced immigration scrutiny, several states now mandate that employers use the federal E-Verify system. The system requires employers to enter information provided by employees on their I-9 form, which is then compared to records available to the Department of Homeland Security and Social Security Administration. If the employee is deemed authorized, the system generates a verification number that must be recorded on the Form I-9.

Although not currently mandatory in Florida, the question is seemingly more of a “when” than an “if” the system will become mandatory. The Trump Administration's 2019 budget even contained a multi-million-dollar line item devoted to investing in making E-Verify mandatory across the country. The benefit to E-Verify for employers is that if the system authorizes an employee, the employer is insulated from any liability if it turns out the employee is not actually eligible to work. However, the stigma associated

with E-Verify can cause some otherwise legal workers to be fearful of being mistakenly classified as ineligible leading to a decrease in the potential applicant pool.

It is important that attorneys who are asked to evaluate I-9 compliance are up to date on the procedures involved in eligibility to work processes and begin anticipating the potential impact that a change to mandatory E-Verify would have in Florida.

**Chris Johnson** is a Partner with Johnson Jackson PLLC. He defends national and local employers in litigation and administrative proceedings against any claim arising from the employment relationship. Chris also advises clients in the prevention of litigation with a focus on the preparation and revision of his clients' policies and procedures to ensure compliance with the ever-changing legal requirements facing today's employers. Chris's practice focuses on ensuring that his advice puts his clients in the best position to defend themselves should litigation arise. Chris represents clients from various industries in both single plaintiff and class and collective actions – including nationwide defense of several of the largest restaurant companies in the country.

Chris received a Bachelor of Science in Business Administration from the University of Florida. He majored in Information Systems and Operations Management with an emphasis on using technology to make corporations' data systems and operations more efficient and effective. In 2013, Chris received his Juris Doctor, cum laude, from the University of Florida Levin College of Law. Chris is a frequent speaker on employment law topics to a wide range of employers, including training management-level employees on topics ranging from complaint investigation to wage-hour compliance. Chris has been recognized as a Rising Star by Super Lawyers magazine.



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**Laurie Lee, The Legal Department for Service Professionals, PA.**

# THE BUSINESS OF LAW: YOU AREN'T A COBBLER. YOU'RE A SADDLER.

By Laurie M. Lee

## Part 2: External Relationships

*\*This article is the second part in a series discussing legal aspects of running a law firm business. The first part discussed "Internal Relationships" such as relationships among law partners as well as relationships with workers (employees and contractors) in a law firm. You can find the first article in the Fall 2019 publication of The Florida Law Practice LINK.*

In the first part to this article series, I mentioned how often I hear the reference to the old tale about the cobbler's kids not having any shoes. As a business attorney for service professionals, I hear this from attorneys on a regular basis. That is to say, they are telling me that, despite being lawyers themselves, they are neglecting the legal aspects of their law firm businesses.

My response to them usually contains some reference to them being a "saddler" and not a cobbler. While they may both work with leather, a saddler makes saddles and not shoes. The same applies to attorneys who practice in an area other than business law. So I give them a pat on the back and reassure them that just because they went to law school doesn't mean they should know everything about business laws.

These are smart lawyers. They are at the top of their field in their practice areas, but when it comes to running their businesses, they know they need some help. I'll share with you what I share with them. There are seven areas of your business you'll need to keep an eye out for legal issues. These seven areas apply to law firms just as much as they apply to other professional service firms.



LAURIE M. LEE

### GOVERNMENT OVERSIGHT:

1. **Regulatory Compliance** – Specialized rules for certain professions, activities and locations.
2. **Entity Structure and Governance** – The care and maintenance of the "container" for your business.

### EXTERNAL RELATIONSHIPS:

3. **Client Relationships** – Establishing the "rules" and setting expectations for everyone.
4. **Vendor Relationships** – Getting what you want and need from other businesses.

### INTERNAL RELATIONSHIPS:

5. **Owner Relationships** – Responsibility and accountability for partners.
6. **Worker Relationships** – Making sure you deliver quality to your clients.

### WHAT WE CREATE:

7. **Intellectual Property** – Owning what you create (and what others have created for you).

For part two of this article series, I'm focusing on *EXTERNAL RELATIONSHIPS* of a law firm. Specifically, relationships with clients and relationships with vendors. The goal in our practice is to prevent legal problems for our clients, so we concentrate on promoting good business practices in these areas. It could be an easy step now or really hard steps later.

### Client Relationships

You already know the ethical rules we must follow with client engagements, so I'm not going to rehash them here. But there are two things I'd like to point out in this area:

*First*, I'd like to stress the importance of having an *ENGAGEMENT AGREEMENT* in place for every client, every time. There are so many benefits to having expectations for clients laid out in writing (not to mention that it helps with malpractice insurance and following our ethical rules). Some of us are required to have our engagements in writing, some of us are not (depends on our practice area). But I firmly and directly say to you that every one of us *SHOULD* do it.

There is not one circumstance that I can think of where it would be harmful and one hundred reasons why it would be beneficial. There are ways to have an engagement agreement in writing, every time with every client without it being burdensome to the flow of your practice.

*Second*, and this one is my favorite, you can use the engagement agreement as a marketing tool. You can use it to establish a better trusting

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## THE BUSINESS OF LAW

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relationship with your clients so that they: (1) feel more satisfied with your services, (2) talk about how wonderful you are, (3) refer others to you, and (4) hire you for additional services. Yes, there are ways to do this.

Having beneficial relationships with your clients always starts with setting expectations. The engagement agreement is the perfect way to set the tone for the entire relationship. There's no rule that says it can only contain the typical legal provisions.

For example, in our engagement agreement we have "client policies" that include expectations for how long it will take us to respond to emails or return phone calls, how we expect honesty from our clients and their commitment to acting ethically – and several other expectations that are important to us in our firm. An engagement agreement is an opportunity – please don't waste it.

### Vendor Relationships

We often see our clients (including law firms) in conflict with their vendors. Whether the vendors are IT managed services companies, marketing agencies, bookkeepers or landlords, the issues all come down to what services were supposed to be delivered. And guess where you find that information? In a vendor agreement!

Vendors usually have their own agreements because it's *their* business that is providing you with services. If a vendor does not have an agreement, beware. Contrary to old-fashioned "hand-shake" belief, going without a contract is NOT a good thing; especially when you're on the short end of not receiving the services you paid for.

For vendors with an agreement, most problems arise from a lack of understanding of that agreement. This can result from three situations: (1) you didn't read the agreement, (2) the agreement is confusing and you didn't ask questions to clarify, or (3) the agreement is too simple and didn't include all the deal terms you discussed in person – and you didn't ask for them to be added.

Lawyers are no different from normal business owners – we do all three of these things. No judgment here. When conflict happens – and it happens often – it leaves law firms with two options, neither of which is good for business: (1) live with the situation and do nothing, or (2) confront (and sometimes fight) the vendor.

Occasionally a third option is available – fire the vendor and move on. I say this is only available *sometimes* because there are often termination provisions in a contract that require a period of time for notice and/or a termination fee. It also may be cost prohibitive to onboard a new vendor.

In any event, conflicts with vendors are disruptive to business, embarrassing for lawyers, cause ripples in communities and take up way too much time to resolve. Most conflicts can be avoided on the front end by making sure the vendor has an agreement and the agreement says what it should say about the services you will receive.

### Law Firm Infrastructure

At the end of the day, law firms are businesses just like other professional service firms. We face the same issues other professionals face. It's important to put some legal infrastructure in place so you can avoid having issues in the future.

Focusing on legal infrastructure with your external relationships, relationships with clients and vendors, can help you run a more stable business and increase the enjoyment in your practice.

**Laurie M. Lee** of *The Legal Department for Service Professionals* has been a cobbler (business attorney) and member of the Florida Bar since 2003. She is AV Preeminent® Peer-Rated by Martindale-Hubbell® and was named North Florida Woman-Owned Small Business Person of the Year in 2019 by the U.S. Small Business Administration. The Legal Department, based in Jacksonville, provides direction and advice to small professional firms throughout the state of Florida. You can visit their website at [www.thelegaldepartment.law](http://www.thelegaldepartment.law).



## FLORIDA SMALL-FIRM PRACTICE TOOLS

1st Edition

BY STEVEN F. SAMILOW

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# PARALEGAL CORNER

## *News for Paralegals to Use...*

by Priscilla Horn Warren, CP, FRP

**Welcome to the Paralegal Corner, where you can find breaking news and other useful items (including website link information) pertaining to our profession.**

The Solo and Small Firm Section produced its winter workshop at The Florida Bar's Mid-Year Meeting at the Hyatt Regency in Orlando on February 7, 2020. The seminar title, "**SOS: Secure, Optimize, Systemize**," was an all-new CLE event (also via live webcast) on survive-and-thrive strategies for solo and small firms. I was invited to participate on the panel for the All Hands on Deck portion of the presentation, and the information on virtual assistance and virtual assignments was addressed in a question-and-answer format to provide seminar attendees with a working knowledge of this new opportunity for the solo and small firm practitioner. Additional information on the topics can be obtained by visiting the SSF website: [www.FLSoloSmallFirm.org](http://www.FLSoloSmallFirm.org) or you may contact our Section Administrator, Ricky Libbert, at [rllibbert@floridabar.org](mailto:rllibbert@floridabar.org) or 850-561-5631.

**COMING UP:** The Solo and Small Firm Section provides a Paralegal of the Year award to be given to that outstanding certified paralegal who has contributed significantly to the community and/or his/her law firm. The Section's purpose in providing this award is to recognize that very deserving individual for above-and-beyond efforts in achieving a high standard of professionalism in the delivery of paralegal service. A copy of the nomination form may be found at the SSF Section website, [www.FLSoloSmallFirm.org](http://www.FLSoloSmallFirm.org).



PRISCILLA HORN WARREN

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a year payment for affiliate member dues, you can peruse the SSF library of webinars for free CLE credit!) The SSF Section continues to offer online, lunchtime, Wednesday Webinars for CLE credit, available for free to all SSF members.

### **Other paralegal membership news:**

**FRPs:** There is a separate membership category within The Florida Bar for the Florida Registered Paralegal designation. For more information, please go to the main website: [www.floridabar.org](http://www.floridabar.org), and click on the **Florida Registered Paralegal tab**.

**PAE, INC:** It is also very beneficial for you to be a member of one of the local Paralegal Association of Florida chapters, not only for the benefits of networking and continuing education opportunities, but to maintain your professionalism and credibility within the paralegal community. For more information, their website is [www.pafinc.org](http://www.pafinc.org).



The Florida Law Practice LINK is prepared and published by The Florida Bar Solo & Small Firm Section.

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## THE BUSINESS OF LAW

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The new officers for the state paralegal chapter, PAF, Inc., began serving on January 1, 2020. Here is a list of the current officers:

**President:** Asha Maharaj-Lucas, FRP

**First Vice-President:** Jennifer Heape, CP, FRP

**Second Vice President:** Sherry Webber, CP, FCP, FRP

**Secretary:** Michelle Ridge, ACP, FCP

**Treasurer:** Patricia DeRamus, CP, ACP, FRP

**NALA Liaison:** Eva Gonzalez, FRP

**Director at Large:** Kylie Dror (Troyer), CP, FRP

Kindly refer to the PAF website, [www.pafinc.org](http://www.pafinc.org) for contact information for these officers with any questions or comments you have.

**NALA:** On the national level, please remember that NALA, the national paralegal association that provides the Certified Paralegal exam and designation, has discontinued the automatic one-year extension for recertification requirements. Several reminder emails will still be sent to CPs in time for them to meet their CLE credit requirements; however, if the Certified Paralegal fails to meet the CLE requirements prior to the current expiration date of the CP

credential, it will be revoked. CPs must complete a total of 50 hours during each five-year recertification period, including a minimum of 5 hours of legal ethics, and not more than 10 hours of non-substantive credit hours per reporting period. Please also note: there will be NO allowance for carry-over hours for CLE. If more than 50 hours are met within the required certification period, those hours will NOT be carried over to the next period. If you need more information, please go to the NALA website: [www.nala.org](http://www.nala.org).

Please do not hesitate to contact me with any questions or concerns. My direct email is: [pris2323@yahoo.com](mailto:pris2323@yahoo.com).



# MEMBER SPOTLIGHT

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