Expert Opinion

Legal Ethics and Attorney Discipline

Navigating a New Jersey Trust Account Audit

New Jersey's trust accounting rules are detailed and enforced. Even attorneys acting in complete good faith can feel stress when bookkeeping problems surface during an audit.

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For many attorneys, receiving notice of a random audit from the New Jersey Office of Attorney Ethics can generate much apprehension. Even well-managed firms may find themselves scrambling and asking: What records are auditors going to request? How far back will they look?

The good news is that a random audit does not mean the OAE suspects misconduct. In fact, for most firms, the process is ultimately about compliance with financial recordkeeping rules and education, not discipline.

According to the Office of Attorney Ethics Annual Report for 2025, the OAE's Random Audit Compliance Program conducted 609 audits across New Jersey law firms. Fourteen attorneys were disciplined because of issues uncovered during those audits, including three disbarments. Most problems identified were not theft or intentional misuse of funds but failure to keep financial records according to R. 1:20-6.

New Jersey is one of nine states which has such a program. Since 1981, the state's Random Audit Program has conducted financial compliance reviews designed to protect clients, deter misconduct, and ensure attorneys properly safeguard moneys in attorney trust accounts. In the 44 years of the program's existence, only 1.5% of audits have uncovered serious misconduct.

The amount of money in attorney trust accounts in New Jersey is significant. At any given time, New Jersey attorneys collectively hold nearly $3 billion in IOLTA trust accounts alone, in addition to funds maintained in estate, guardianship, trustee, and receivership trust accounts.

A Random Audit Is Not an Accusation

One misconception surrounding OAE audits is that selection means someone filed a grievance or the OAE suspects wrongdoing. Usually, neither is true.

Firms are selected using an algorithm tied to attorney registration information. Firms audited within the prior five years are generally excluded from selection.

After Receiving an Audit Notice Matter, What Should You Do?

The period immediately after receiving an audit notice can be the most important stage of the process. Too many lawyers may ignore the notice hoping the audit will go away only to realize later that it will not and that their records are incomplete and/or three-way reconciliations were not kept, and they must be rectified.

Hiring experienced ethics and professional liability counsel can help firms conduct an internal review to prepare for a successful audit. For example, the attorney will help the lawyer organize trust and business account documentation requested to make a clear presentation to the auditors. Counsel can help spot recordkeeping deficiencies before the auditor does and implement corrective measures proactively before the auditor arrives.

Most audit-related problems are not critical issues. Rather, they are recordkeeping deficiencies such as no three-way reconciliations, commingling earned legal fees and business account moneys, inactive trust account balances left unresolved, unsigned retainer agreements, failure to maintain separate business account receipt and disbursement journals, failure to timely disburse money to clients and third parties and not maintaining trust account records for seven years. In such instances, an attorney will be guilty of having violated RPC 1.15(a) by failing to comply with recordkeeping requirements of R. 1:21-6. Sometimes these derelictions are a result of improperly delegating trust account responsibilities to a bookkeeper or an accountant in violation of RPC 5.3 which could be uncovered in an audit. In the absence of negligent misappropriation, recordkeeping violations usually result in an admonition, reprimand or agreements in lieu of discipline. In 2025, attorneys completed 82 diversions, 53% (43) of those attorneys violated the financial recordkeeping rules.

That quantum of discipline is enhanced if additional, aggravating factors are present including maintaining substantial inactive trust account balances, i.e. clients have not received their money, or failing to correct recordkeeping deficiencies despite prior audits.

Counsel experienced in representing lawyers at remote or in-person audits can help to prepare attorneys and staff to answer auditor inquiries, prepare documents so materials are readily available to the auditors, clarify misunderstandings, and respond to accounting deficiencies.

Random audits are not the only way attorneys come to the OAE’s attention, however. Under New Jersey’s Trust Account Overdraft Notification Program, banks automatically report attorney trust account overdrafts to the OAE. Overdrafts as minimal as three dollars may be reported to the OAE.

In 2025, the OAE received 165 overdraft notifications involving attorney trust and IOLTA (Interest on Lawyers' Trust Accounts) accounts. The leading cause of trust account overdrafts related to law firm errors. Bank errors were the second leading cause (17.2%). Fraud—trust account or email hacking, check washing, email phishing, forged checks and fictitious client schemes—accounted for 10.9% of matters investigated in 2025 because of overdraft notifications.

Unlike a routine random audit, an overdraft notice can trigger a demand audit which entails heightened scrutiny into a firm's financial practices because an overdraft could signal a possible misappropriation of clients' funds.

At the conclusion of an audit, the OAE may determine that the firm is compliant or that deficiencies require correction. Experienced counsel can assist by responding to deficiency letters, preparing remediation plans, communicating with the OAE, and coordinating corrective measures.

New Jersey's trust accounting rules are detailed and enforced. Even attorneys acting in complete good faith can feel stress when bookkeeping problems surface during an audit. The key is to diligently maintain the books and records, especially three-way monthly reconciliations which can alert lawyers early to discrepancies in their trust accounts.

A random audit means your recordkeeping systems and procedures are about to be examined closely; how you prepare can make a substantial difference in the outcome. Experienced ethics counsel can help guide the process from initial response through remediation and resolution.

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