



“The Lawyer Shall”... Really? I Did Not Know That.

NC State Bar Changed the Trust Accounting Rules on June 8, 2016 – Are You Compliant?

Your office's trust account procedures changed on June 8 and you might not have known it. When the summer issue of the *North Carolina Bar Journal* came out a few weeks back, there was a comprehensive article about the new rules entitled “[Coming to Terms \(and into Compliance\) with the Pending Trust Accounting Rule Amendments](#),” written by Peter Bolac, the State Bar's Trust Account Compliance Counsel. (A copy of that article is [linked hereto](#) for your reference and shared with the express permission of the State Bar and Peter Bolac.)

You may now remove the moniker “Pending” from the title of that article. They are “Pending” no more -- you are expected to know them and already be compliant with them. **Do I have your attention now?**

When we were in law school, we were trained to look for certain words when reading statutes or contracts that could change the whole meaning of a provision. For example, there is a big difference between “the lawyer **MAY** eat their vegetables” and “the lawyer **SHALL** eat their vegetables.” We were trained that the term “**MAY**” is permissive and allows action or withholding of action, while its much stricter companion, “**SHALL**”, is less understanding and requires action. In the revisions to the North Carolina Trust Accounting Rules, the State Bar is very fond of the phrase “THE **LAWYER SHALL...**”

We have prepared an abbreviated summary of the rule changes, which is linked [here](#) for your easy reference; however, here are three examples of the changes that require action on your part:

1) The Lawyer Shall . . . Include Client Information on Fee Checks From Trust Account Or You Cannot Collect The Fee

*Rule 1.15-2 (h) Items Payable to Lawyer. Any item drawn on a trust account or fiduciary account for the payment of the lawyer's fees or expenses shall be made payable to the lawyer and **SHALL** indicate on the item **by client name, file number, or other identifying information** the client **from whose balance on which** the item is drawn. **Any item that does not include capture this information may not be used to withdraw funds from a trust account or a fiduciary account for payment of the lawyer's fees or expenses.** (Emphasis Added)*

You may already have a similar process in your office, but please confirm that you are compliant with this section. You work too hard for your fees to even think that you would not be able to collect earned fees from your trust account.

2) **The Lawyer Shall . . . Take a One Hour CLE on The New Trust Accounting Rules Before Signing a Trust Account Check.**

Rule 1.15-2 (s)(1) . . . **Prior to exercising signature authority [on a trust account], a LAWYER or supervised employee SHALL take a one-hour trust account management continuing legal education (CLE) course approved by the State Bar for this purpose. (Emphasis Added)**

You may have been practicing law and signing trust account checks for fifty (50) years, but according to this rule – you need to take an hour CLE course on trust account management before signing any more checks. Everyone that will sign a trust account check in your office needs to take such a course.

You are in luck, Investors Title has prepared an “On-Demand” CLE video course that complies with this requirement. If you attended that course on our recent Risk Management CLE Seminars in the spring of 2016, then you are already compliant. If not, you can click the following link and be compliant in an hour: [NC Trust Accounting – What is Your Number](#) (or go to invtitle.com/events/nc | On-Demand | New Courses).

(Note: The State Bar has indicated that they will give you until the end of the year to get compliant, but this is probably the easiest way to get up to date on the changes in the rule. In this On-Demand Video, we go over the “now” current rule and point out of the material changes.)

3) **The Lawyer Shall . . . Be Responsible for Reviewing and Spot Checking the Reconciliation of the Trust Account.**

Rule 1.15-3 (d) (1) . . . For each general trust account, a printed reconciliation report shall be prepared . . .

(3) The **LAWYER SHALL** review, sign, date and retain a record of the reconciliations of the general trust account for a period of six years . . .

Rule 1.15-3 (i) (1) . . . *Reviews*

(1) Each month, for each . . . trust account . . . the **LAWYER SHALL** review the bank statement and cancelled checks for the month covered by the bank statement.

(2) Each quarter, for each . . . trust account . . . the **LAWYER SHALL** review the statement of costs and receipts, client ledger and cancelled checks of a random sample of representative transactions completed during the quarter to verify that the disbursements were properly made. . . . A sample of three representative transactions shall satisfy this requirement, but a larger sample may be advisable.

(3) The **LAWYER SHALL** . . . investigate, identify and resolve within ten days any discrepancies discovered during the monthly and quarterly reviews. . . .

You may be asking yourself: “When am I going to have time to practice law? If I had wanted to be an accountant, I would not have gone to law school.” At Investors Title, we are sympathetic to your situation. What you need is a tool to make these requirements easily manageable.

Even before these new requirements were drafted, Investors Title developed a compliance and security solution for trust account management. It is called ***iTracs***[®]. iTracs is an intuitive and automated trust account reconciliation platform that is compliant with the new State Bar requirements as well as ALTA's Best Practices.

Granted, there are things that iTracs cannot do for you because the rule says that the **LAWYER SHALL**; however, iTracs can (i) perform the daily, monthly and quarterly reconciliations that you are required to perform, (ii) produce the daily, monthly and quarterly reports that you are required to review, sign and retain, and (iii) provide additional tools to combat the evils of cyber fraud, escrow theft, and incomplete or incorrect trust account bookkeeping. iTracs is the tool that you need to stay ahead of the game, but, as with every tool, it needs to be used and maintained to achieve its effectiveness. If you are wondering how to comply with all of these new requirements, reach out to our iTracs team today at myitracs.com.

Life and the practice of law continue to evolve, and the requirements for the professional and ethical practice of law continue to grow. At Investors Title, we are dedicated to providing solutions to help keep our valued approved attorneys ahead of the game. Take advantage of all of our resources at invtitle.com. We will overcome and adapt to all of these changes together.



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Jon Biggs oversees risk management functions related to Investors Title's approved provider system. In this role, he oversees the approval process, develops educational seminars and communications-based initiatives involving approved providers and agents, and manages provider data and analysis related to the company's risk management efforts. Prior to joining Investors Title in 2012, he was partner at a firm in Durham, North Carolina, where he practiced residential and commercial real estate law for more than 20 years. Mr. Biggs holds a bachelor's degree from Duke University and a Juris Doctor from Wake Forest University School of Law.