

## TRUST ACCOUNT INVESTIGATIONS WITH LIMITED INFORMATION



## Who Did He Think He Was Fooling?

- ▶ Narcissistic, manipulative, cunning
- ▶ "A good lawyer can't also be a good bookkeeper; I'm a good lawyer but not a good bookkeeper"
- ▶ Claimed ignorance
- ▶ Blamed wife/secretary
- ▶ Didn't fool anybody

## Self Report – Kind of

- ▶ Overdraft notification to Montana State Bar Association
  - ▶ State Bar standard inquiry letter
    - ▶ Past 3 months' bank records
    - ▶ Check register
    - ▶ Cash receipts/disbursement journals
    - ▶ Client ledgers
- ▶ Self Report = Attorney copied ODC with his response
  - ▶ Provided QuickBooks records and CPA "audit" report

## Incomplete and Inaccurate Information

- ▶ QuickBooks Records
  - ▶ Not all transactions entered
  - ▶ Incorrect subaccounts
- ▶ CPA "Audit"
  - ▶ CPA audits not useful for our purposes
  - ▶ CPAs not looking for same discrepancies
  - ▶ Reconciliation for bookkeeping purposes

## Attorney's Response Inadequate

- ▶ Attorney's explanation didn't address real issues
  - ▶ Overdraft from Funds Transferred – anticipating settlement check
    - ▶ **TRANSFERS – BIG RED FLAG!!**
  - ▶ First Time Transferring Funds
    - ▶ **HIS RECORDS SHOWED TRANSFERS BACK TO 2012**
  - ▶ Immediately Corrected
  - ▶ “Borrowed” and “Co-Mingled”

## FOLLOW UP INQUIRIES

- ▶ Remaining bank records for the years 2011-2014
  - ▶ Trust account and operating account
  - ▶ Including checks, deposit slips
  - ▶ Trust account check register
  - ▶ Trust account general ledger and client ledgers
- ▶ Attorney-Client Fee Agreements for 2011-2014
- ▶ Settlement Disbursement Statements for 2011-2014

## FOLLOW UP INQUIRIES

- ▶ Received most information requested after several months
- ▶ No trust account ledger or individual client ledgers
  - ▶ Had 175 personal injury clients during a 4-year period
  - ▶ Some 6-figure settlements
  - ▶ Some cases involved substantial number of transactions
- ▶ No check register
- ▶ Account never reconciled
- ▶ Didn't know the requirements

## INVESTIGATION – THE FUN BEGINS

- ▶ Data Entry – leads to interviews
- ▶ Excel for isolated incident, minimal transactions, or short time period
- ▶ QuickBooks for multiple transactions, multiple clients, and multiple years
- ▶ Washington State Bar Association auditors
  - ▶ WSBA - TRUST ACCOUNTING USING QUICKBOOKS® PRO® 2012

## Data Entry with Limited Details

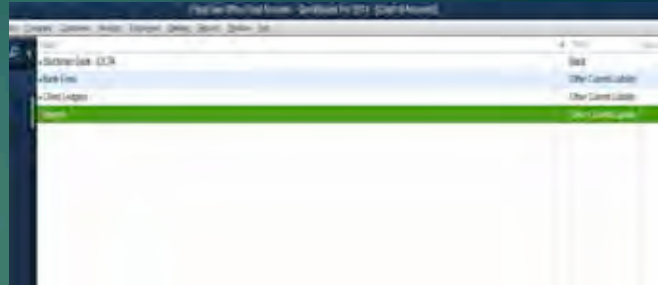
- ▶ Get Details about clients and cases
  - ▶ Contingency fee case or Retainer/Hourly Fee
  - ▶ Personal injury case
  - ▶ Addresses/location
- ▶ Checks – no client reference
- ▶ Deposit slips – client and deposit amount
- ▶ Algebra, logic, and deductive reasoning

## QuickBooks Data Entry

- ▶ Boring but Informative
- ▶ Become familiar with Clients, Cases, Transaction History
- ▶ QB allows you to create various reports = Efficiency
- ▶ Export into Excel = Create Exhibits

# QuickBooks Setup

- ▶ Set up “Company” for attorney trust account
  - ▶ WSBA Manual will get you started
- ▶ “Accounts” will auto-populate
  - ▶ Delete all or make inactive
  - ▶ Create account for bank [Bank Name]
  - ▶ Create accounts as Other Current Liabilities:
    - ▶ Client Ledgers
    - ▶ Interest (for IOLTA interest)
    - ▶ Bank Fees



# GETTING STARTED

- ▶ Create Check Register / Trust Account General Ledger
  - ▶ While Bank is selected, click “Use Register” under Edit tab
  - ▶ Enter transactions by date on checks / deposit slips
  - ▶ Create individual Client Ledger as you go
  - ▶ Reconcile account to check for accuracy
  - ▶ Print Check Register by month or year
- ▶ First Entry = Account Beginning Balance
  - ▶ Beginning balance on first bank statement of investigation

A screenshot of the QuickBooks software interface showing a check register. The window title is "QuickBooks Online - [Company Name] (Month: Year)". The table has columns for Date, Description, Debit, Credit, and Balance. The data rows show transactions with dates, descriptions like "Account Administration", "Check Ledger", "Check", "Check Ledger", "Check Ledger", and "Check Ledger", and corresponding debit and credit amounts. The balance column shows the running total for each row.

Date	Description	Debit	Credit	Balance
1/1/2017	Account Administration		7,000.00	7,000.00
1/1/2017	Check Ledger	200.00		6,800.00
1/1/2017	Check		80.00	6,920.00
1/1/2017	Check Ledger	100.00		6,820.00
1/1/2017	Check Ledger	100.00		6,720.00
1/1/2017	Check Ledger	100.00		6,620.00
1/1/2017	Check Ledger	100.00		6,520.00
1/1/2017	Check Ledger	100.00		6,420.00

## No Wonder He Was Confused

- ▶ Deposit Slips – client name and amount of deposit
- ▶ Checks to Attorney – no client referenced
  - ▶ Fees Earned for which Client?
- ▶ Checks to Medical Providers – no client referenced
  - ▶ Who's Medical Bill?
  - ▶ Match by Deposit Amount = same as check to provider
  - ▶ Match by Location

## Deductive Reasoning, Logic & Algebra

- ▶ Amount deposited for client
- ▶ Subtract amount paid to client = 2/3 of settlement funds
- ▶ Remainder 1/3 = attorney's fees (if costs included, will vary slightly from 33/66 split)
- ▶ Some deposits for client = payment to medical provider



# Client Ledgers

▶ QB - separate client ledgers

▶ Reports feature

▶ Client ledgers

▶ All transactions for client

▶ Ending balance

▶ Positive, negative or 0

▶ **33 CLIENT LEDGERS SHOWED DISCREPANCIES**

▶ **GET ATTORNEY'S EXPLANATION AND MAKE ADJUDGMENTS ACCORDINGLY**

# Ledgers with Negative or Positive Balance – What Does It Mean?

## POSITIVE BALANCE

Remaining funds belong to: Client, attorney or third party =

**CO-MINGLING AND/OR MISAPPROPRIATION**

## NEGATIVE BALANCE

Attorney overpaid self, client or third party – used funds belonging to another =

**MISAPPROPRIATION**

Type	Date	Num	Name	Memo	Amount	Balance
<b>Anthony H.</b>						
Deposit	07/14/2014	DEP	Deposit		698.00	698.00
Check	07/14/2014	2612	Anthony H.		-698.00	0.00
Deposit	07/24/2014	DEP	Deposit		459.69	459.69
Check	07/24/2014	2619	Anthony H.		-459.69	0.00
Deposit	07/25/2014	DEP	Deposit		41,104.00	41,104.00
Check	07/25/2014	2620	Anthony H.		-32,692.20	8,411.80
			FUNDS REMAINING IN IOLTA		8,411.80	8,411.80

Type	Date	Num	Name	Memo	Amount	Balance
<b>Janet H.</b>						
Check	09/23/2014	2683	Bozeman Back & Neck Clinic		-570.00	-570.00
Deposit	10/22/2014	DEP	Deposit		1,000.00	1,000.00
Check	10/22/2014	2740	Foust Law Office	Atty Fees	-333.33	666.67
Check	10/22/2014	2739	Janet H.		-666.67	0.00
Check	12/19/2014	2832	Bozeman Back & Neck Clinic		-4,050.00	-4,050.00
Check	12/19/2014	2833	Janet H.		-8,496.79	-12,546.79
Check	12/19/2014	2834	Foust Law Office	Atty Fees	-6,783.21	-19,330.00
Deposit	01/05/2015	DEP	Deposit		19,330.00	0
			REMAINING BALANCE		-570.00	-570.00



# FOLLOW UP QUESTIONS BROUGHT MORE FOLLOW UP QUESTIONS

- ▶ “Borrowed Funds” from clients = Get Details
  - ▶ Which Clients?
  - ▶ How Much?
  - ▶ Explain?
  
- ▶ Negative or Positive Balance Remaining = Get Details
  - ▶ Memos with explanation, supporting docs for all **33** clients/discrepancies

# Transactions that Need Answers

- ▶ Several transactions unable to match with client
- ▶ Create separate ledger for “Unknowns”
- ▶ Sent list of the “Unknowns” to attorney for explanation – which client?

Unkn/Trans			
00122012 1888	Billings Clinic		4,368.87
06052011 1808	Verast Psychological Services		1,000.00
06052011 1807	Verast Psychological Services		470.00
06122011 1844	Verast Psychological Services		750.00
06122011 1845	Verast Psychological Services		490.00
05052011 1875	Parent-Lee Office		4,100.00
05052011 1879	Verast Psychological Services		1,300.00
05112011 1921	Verast Psychological Services		950.00
05182011 1898	St. Vincent Hospital		2,400.00
11232011 1731	Medical Management Resources		1,815.00
02182012 1819	Verast Psychological Services		1,300.00
02042012 1826	Verast Psychological Services		500.00
03192012 1862	Eurostar Massage		5,000.00
03082012 1873	Restoration Massage Therapy, LLC		380.00
03082012 1874	Verast Psychological Services		100.00
06112012 1915	Verast Psychological Services		900.00
06082012 1939	Verast Psychological Services		490.00
06062012 1940	Carex (Paragon) Connecticut		875.00
05122012 1850	Neuro Rehab		3,000.00
07042012 1885	Verast Psychological Services		400.00
06062012 2011	Summit Chiropractic & Massage		1,600.00
10022012 2023	Atlanta Women's Physic		164.63
11062012 2067	Ascend Wellness		440.00
02062012 2127	Summit Chiropractic & Massage		4,230.00
02062012 2134	Alpha Chiro and Spine		350.00
02072012 2139	Ascend Wellness		805.00
02072012 2136	Dr. Archer		125.00
02112012 2151	Parent-Lee Office		1,028.28
02122012 2152	Robertson Chiropractic		2,400.79
04042012 2199	Dr. Kathryn Hirsch		4,450.00
04042012 2198	Armedham Medical Resources		713.90
04042012 2198	Gregory Paul, MD		186.88
04042012 2195	University Pediatrics		465.54
04042012 2191	Restoration Family Chiropractic		39.40
04042012 2178	St. Vincent Hospital		271.98
04042012 2162	Robertson Chiropractic		84.30
04042012 2166	University Health Center		4,825.84
04042012 2163	Armedham Partners of Maryland		3,280.37
04042012 2167	Eastern Psychological Associates		836.47
04042012 2166	St. Vincent Hospital		184.96
04182012 2172	St. Vincent Hospital		10,038.71
05112012 TRANS	Armedhammas (Sent to Parent-Lee) Acpt		738.91
TOTAL			502,080.84



# WHAT I FOUND

1. Earned Fees in Trust Account = **Co-Mingling**
2. Co-Mingled Fees Not Sufficient to Cover Improper Transfers = **Misappropriation**
3. Fees Paid by Check Before Receiving Settlement = **Misappropriation**
4. Clients Did Not Receive All Funds from Settlement = **Misappropriation**
5. More Funds Disbursed Than Received = **Misappropriation**

# CO-MINGLED FEES AND COSTS

- ▶ Did not withdraw some fees and costs - **attorney admitted**
  - ▶ Asserted he left fees/costs in account and later transferred out
- ▶ Ask attorney for:
  - ▶ Names of clients
  - ▶ Amount
- ▶ Verify clients, amounts, and dates using client ledgers
- ▶ Create Excel Spreadsheet

Type	Date	Num	Name	Memo	Amount	Balance
<b>Anthony H.</b>						
Deposit	07/14/2014	DEP	Deposit		698.00	698.00
Check	07/14/2014	2612	Anthony H.		-698.00	0.00
Deposit	07/24/2014	DEP	Deposit		459.69	459.69
Check	07/24/2014	2619	Anthony H.		-459.69	0.00
Deposit	07/25/2014	DEP	Deposit		41,104.00	41,104.00
Check	07/25/2014	2620	Anthony H.		-32,692.20	8,411.80
				FUNDS REMAINING IN IOLTA	8,411.80	8,411.80

CO-MINGLED FUNDS: Earned Fees and Costs Not Withdrawn from Trust Account (as of 12/31/14)			
Client Name	Date Fees/Costs Earned or Deposited	Amount	
McDonald	3/13/2013	\$ 22,040.91	
Gonsales	7/13/2014	\$ 34,895.48	
Harris	3/25/2014	\$ 8,411.80	
Orury	8/25/2014	\$ 3,000.00	
Farrington	9/9/2014	\$ 22,247.08	
Mounthou	10/7/2014	\$ 7,509.00	
Spence	12/23/2014	\$ 1,036.33	
Lacotte	12/23/2014	\$ 3,742.79	
McAndrew	12/24/2014	\$ 14,083.85	
<b>TOTAL CO-MINGLED FUNDS</b>		<b>\$ 114,854.79</b>	

# Proving Misappropriation and Not Simply Co-Mingling

- ▶ Earned fees in trust account to cover future transfers = **WHAT?!**
- ▶ From client ledgers, found date fees were earned → entered amount of earned fees into spreadsheet
- ▶ Transfers began in 2012 - **BEFORE** he began leaving fees in trust account
- ▶ Transfers (Advances) Exceeded Co-Mingled Fees (Reimbursements)

DATE	TYPE	TRANSACTION DETAIL	MEMO	DEBIT	CREDIT	BALANCE OF TRANSFERS
07/11/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	2,000.00		(561,529.30)
07/15/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	5,000.00		(566,529.30)
07/17/2014	DEP	Deposit	Client's Fee		11,000.00	(555,529.30)
07/21/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	2,000.00		(557,529.30)
07/21/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	2,500.00		(560,029.30)
07/29/2014	DEP	Deposit	Client's Fee		8,811.00	(551,218.30)
08/15/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	3,000.00		(554,218.30)
08/18/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	2,000.00		(556,218.30)
08/20/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	3,000.00		(559,218.30)
08/25/2014	DEP	Deposit	Client's Fee		2,000.00	(557,218.30)
08/27/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	1,000.00		(558,218.30)
08/31/2014	DEP	Phone Transfer from Trust Open Acct	Reimbursement		1,000.00	(557,218.30)
09/04/2014	DEP	Phone Transfer from Trust Open Acct	Reimbursement		750.00	(556,468.30)
09/05/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	700.00		(557,168.30)
09/09/2014	DEP	Deposit	Client's Fee		22,247.00	(534,921.30)
09/10/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	2,000.00		(536,921.30)
09/19/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	3,000.00		(539,921.30)
10/01/2014	DEP	Deposit	Miscellaneous Fee		1,500.00	(538,421.30)

DATE	TYPE	TRANSACTION DETAIL	MEMO	DEBIT	CREDIT	BALANCE OF TRANSFERS
11/18/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	2,000.00		(540,421.30)
11/21/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	2,000.00		(542,421.30)
12/08/2014	DEP	Phone Transfer from Trust Open Acct	Reimbursement		2,000.00	(540,421.30)
12/11/2014	DEP	Phone Transfer from Trust Open Acct	Reimbursement		1,500.00	(538,921.30)
12/22/2014	DEP	Deposit	Client's Fee		1,499.00	(537,422.30)
12/22/2014	TRAM	Miscellaneous Debit to Trust Open Acct	Advance	4,000.00		(541,422.30)
12/29/2014	DEP	Deposit	Client's Fee		1,100.00	(540,322.30)
12/31/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	1,000.00		(541,322.30)
12/31/2014	DEP	Deposit	Miscellaneous Fee		12,000.00	(529,322.30)
12/24/2014	TRAM	Phone Transfer to Trust Open Acct	Advance	1,200.00		(530,522.30)
Total of TRANSFERRED FUNDS AND REIMBURSEMENTS				178,420.00	155,502.70	

# Fees/Costs Paid in Advance = Misappropriation

- ▶ Used date transaction cleared the bank to determine
  - ▶ Dates on checks/deposit slips can be deceiving – not always true or correct
- ▶ 20 cases - paid himself before settlement funds received – totaled nearly \$90,000
- ▶ Some clients paid before settlement funds received
- ▶ Used funds belonging to others to cover these payments

Type	Date	Num	Name	Memo	Amount	Balance
Gerald H.						
Check	05/07/2014	2545	Trust Law Office	Atty Fees	-7,153.80	-7,153.80
Check	05/22/2014	2546	Trust Law Office		75.36	-7,229.16
Deposit	05/21/2014	DEP	Deposit		5,040.00	-2,189.16
Deposit	05/21/2014	DEP	Deposit		34,944.00	32,754.84
Check	06/05/2014	2555	Gerald H.		-32,744.84	0.00
Deposit	07/14/2014	DEP	Deposit		10,000.00	10,000.00
Check	07/14/2014	2513	Gerald H.		-8,000.00	2,000.00
Check	07/14/2014	2514	Trust Law Office	Atty Fees	-2,000.00	0.00
					0.00	0.00

## Some Clients Didn't Receive All Funds

- ▶ Not all settlement funds disbursed to some clients
  - ▶ Total = \$8,400
- ▶ Clients didn't know
  - ▶ Went several years without funds
- ▶ Attorney didn't know
  - ▶ Paid with personal funds after made aware
- ▶ Inadvertent, but misappropriation
  - ▶ Funds eventually disbursed appropriately

Type	Date	Num	Name	Memo	Amount	Balance
Terra Q.						
Check	06/24/2012	1945	Clara Lindberg Chiropractic		-875.00	-875.00
Deposit	06/25/2012	DEP	Safeco	Medical	934.00	259.00
Deposit	08/16/2012	DEP	Safeco		424.95	424.95
Check	08/16/2012	1972	Frost Law Office		-141.45	282.90
Check	08/18/2012	1971	Terra Q.		-282.90	0.00
Deposit	09/17/2012	DEP	Safeco		5,500.00	5,500.00
Check	09/17/2012	1994	Terra Q.		-3,898.29	2,411.71
Check	09/17/2012	1996	Frost Law Office		-2,411.71	0.00
FUNDS REMAINING IN IOLTA						259.00

## More Going Out Than Coming In

- ▶ 5 cases - more funds were disbursed than received
- ▶ Totaled approximately \$1,700
- ▶ Inadvertent – poor bookkeeping
- ▶ Misappropriation
  - ▶ Used funds belonging to someone else to cover the overpayments

Type	Date	Num	Name	Memo	Amount	Balance
Amber H.						
Deposit	07/25/2011	DEP	Management Associates		1,879.15	1,879.15
Check	07/25/2011	1586	Frost Law Office		-559.72	1,119.43
Check	07/25/2011	1585	Amber H.		-1,119.43	0.00
Deposit	02/13/2012	DEP	Deposit	American National Property	3,500.00	3,500.00
Check	02/13/2012	1817	Frost Law Office		-1,969.67	1,530.33
Check	02/13/2012	1816	Amber H.		-2,333.33	-500.00
Deposit	07/23/2012	DEP	Deposit	Mountain West Farm Bureau	5,000.00	5,000.00
Deposit	07/23/2012	DEP	Deposit	Mountain West Farm Bureau	5,000.00	10,000.00
Check	07/23/2012	1954	Frost Law Office		-3,868.33	6,131.67
Check	07/23/2012	1953	Amber H.		-4,191.67	0.00
FUNDS MISAPPROPRIATED						-500.00

## Rule Violations Charged

- ▶ Rules 1.15, 1.18, 8.4(c), MRPC, and Trust Account Maintenance Rules
- ▶ Did not contest the charges = would not agree to Indefinite Suspension
- ▶ At hearing - my testimony, his testimony, my spreadsheets
- ▶ Attorney requested discipline of admonishment and teach CLEs

## Discipline Imposed by Supreme Court

- ▶ What ODC recommended & more
- ▶ Violated Rules 1.15, 1.18, 8.4(c), MRPC
- ▶ Indefinite Suspension, 7 months with conditions
  - ▶ Must Petition for Reinstatement
  - ▶ Pay ODC \$30,000, plus additional costs
  - ▶ Upon reinstatement, reports to ODC for 10 years
- ▶ Petitioned for reinstatement
  - ▶ Commission recommended reinstatement with conditions
  - ▶ Court approved