

# AGENDA ITEM

**DATE:** May 5, 2014

**TO:** Members, Regulation, Admissions and Discipline Oversight

**FROM:** Doug Hull

**SUBJECT:** Additional material on Client Trust Accounting Audit

---

Attached are two documents related to the proposal to audit Client Trust Accounts:

1. The ABAs Model Rule For Random Audit Of Lawyer Trust Accounts
2. Chart of Jurisdictions with Random Audit Programs from ABA's Standing Committee on Client Protection

They are being distributed at the request of your chair.

# **ABA Model Rule For Random Audit Of Lawyer Trust Accounts - Preface**

## **Preface**

This rule is predicated upon the adoption by the American Bar Association of Recommendation 16 of the Report of the Commission on Evaluation of Disciplinary Enforcement (the "McKay Commission"), which provided that random audits of lawyer trust accounts be authorized by court rule. The McKay Commission determined that random audits were a proven deterrent to the misuse of money and property in the practice of law and that examination of trust accounts by court-designated auditors provided practitioners with expert and practical assistance in maintaining necessary records and supporting books of account.

1. The [highest court of the jurisdiction] shall approve procedures to randomly select lawyer or law firm trust accounts for audit.
2. An audit of a lawyer or law firm trust account conducted pursuant to this rule shall be commenced by the issuance of an investigative subpoena to compel the production of records relating to a lawyer's or law firm's trust accounts. The subpoena shall contain a certification that it was issued in compliance with this rule, that the lawyer or law firm was selected at random, and that there exist no grounds to believe that professional misconduct has occurred with respect to the accounts being audited. The subpoena shall be served at least [10] business days before commencement of the audit.
3. With respect to each audit conducted pursuant to this rule, the examiner shall:
  - (1) determine whether the lawyer's or law firm's records and accounts are being maintained in accordance with applicable rules of court; and
  - (2) employ sampling techniques to examine "selected accounts," unless discrepancies are found which indicate a need for a more detailed audit. "Selected accounts" may include money, securities and other trust assets held by the lawyer or law firm; safe deposit boxes and similar devices; deposit records; cancelled checks or their equivalent; and any other records which pertain to trust transactions affecting the lawyer's or law firm's practice of law.
4. The examiner shall prepare a written report containing the examiner's findings, a copy of which shall be provided to the audited lawyer or law firm.
5. In the event that the audit report asserts deficiencies in the audited lawyer's or law firm's records or procedures, the lawyer or law firm shall, within [10] business days after receipt of the report, provide evidence that the alleged deficiencies are incorrect, or that they have been corrected. If corrective action requires additional time, the lawyer or law firm shall apply for an extension of time to a date certain in which to correct the deficiencies cited in the audit report.

6. All records produced for an audit conducted pursuant to this rule shall remain confidential, and their contents shall not be disclosed in violation of the client-lawyer privilege.
7. Records produced for an audit conducted pursuant to this rule may be disclosed to:
  - (1) the lawyer disciplinary agency or to a court to the extent disclosure is necessary for the purposes of the particular audit;
  - (2) the lawyer disciplinary agency for the purposes of a disciplinary proceeding; and
  - (3) any other person, including a law enforcement agency, with the permission of the [highest court of the jurisdiction].
8. A lawyer or law firm shall cooperate in an audit conducted pursuant to this rule, and shall answer all questions pertaining thereto, unless the lawyer or law firm claims a privilege or right which is available to the lawyer or law firm under applicable state or federal law. A lawyer's or law firm's failure to cooperate in an audit conducted pursuant to this rule shall constitute professional misconduct.
9. No lawyer or law firm shall be subject to an audit conducted pursuant to this rule more frequently than once every [three] years.

#### **Comment**

The rule proposes a basic structure and system for a random audit program, including such procedural safeguards as adequate prior notice before the commencement of an audit; written audit reports; the opportunity for an audited lawyer or law firm to respond to an examiner's report; the preservation of confidentiality of client records; and the frequency of audits conducted by random selection.

The rule contemplates that assigned agencies will tailor or augment these basic procedures to address specific conditions, needs, and concerns which exist in their jurisdictions. Certain jurisdictions, for instance, issue an informal notice of audit rather than a subpoena. Such local rules require the assignment of administrative responsibility for the jurisdiction's random audit program to the lawyer disciplinary agency, the lawyers' fund for client protection, or other appropriate court-designated entity.

AMERICAN BAR ASSOCIATION  
STANDING COMMITTEE ON CLIENT PROTECTION

**Jurisdictions with Random Audit Programs**

1.      **Arizona**      Arizona Supreme Court Rule 43.  
<http://www.myazbar.org/LawyerRegulation/Rule43.pdf>
2.      **Connecticut**      Connecticut Practice Book: Rule 2-27(e) (Effective July 1, 2007)  
[http://www.jud.ct.gov/sgc/SGC\\_Rule13\\_0407.pdf](http://www.jud.ct.gov/sgc/SGC_Rule13_0407.pdf)  
[http://www.jud.ct.gov/Publications/PracticeBook/PB1\\_2009.pdf#page=114](http://www.jud.ct.gov/Publications/PracticeBook/PB1_2009.pdf#page=114)
3.      **Delaware**      Supreme Court Rule 66(c)(10), Lawyer's Fund for Client Protection and Delaware Lawyers' Rules of Professional Conduct, Rule 1.15(e). (Effective July 1, 2003).  
<http://courts.state.de.us/lfc/rules/rule66.pdf>  
<http://courts.state.de.us/lfc/rules/rule1.15.pdf>
4.      **Hawaii**      Rules of the Supreme Court of Hawaii, Rule 2.24(b), Audit of Trust Accounts; Rules of Professional Conduct Rule 1.15(h) RSCH 2.24  
<http://www.state.hi.us/jud/ctrules/rgta.htm>  
<http://www.state.hi.us/jud/ctrules/oal/2008/rsch2.24am.pdf>  
Revised Effective Date Order  
[http://www.state.hi.us/jud/ctrules/oal/2008/rsch2.24\\_am2.pdf](http://www.state.hi.us/jud/ctrules/oal/2008/rsch2.24_am2.pdf)
5.      **Iowa**      Supreme Court Rule 121.4)(?)  
Supreme Court Rule 39.2(3)(c) and Disciplinary Rule Canon 9 Preserving Identity of Funds and Property of a client DR 9-102 Audits  
<http://www.legis.state.ia.us/DOCS/ACO/CR/LINC/09-23-2010.chapter.39.pdf>  
[http://www.judicial.state.ia.us/regs/trust\\_outline.rtf](http://www.judicial.state.ia.us/regs/trust_outline.rtf)
6.      **Kansas**      Supreme Court Rule 216A, Compliance Examinations by the Disciplinary Administrator  
<http://www.kscourts.org/rules/Rule-Info.asp?r1=Rules+Relating+to+Discipline+of+Attorneys&r2=290>  
<http://www.kscourts.org/rules/Rule-List.asp?r1=Rules+Relating+to+Discipline+of+Attorneys>

7.       **Nebraska**       Nebraska Court Rules: Trust Fund Requirements for Lawyers - Chapter 3, Article 9, §§ 3-901 to 3-907 - cite as Neb. Ct. R. §.  
<http://www.supremecourt.ne.gov/rules/pdf/Ch3Art9.pdf>
8.       **New Hampshire**   Supreme Court Rule 50-A Certification Requirement (requires spot compliance to audits for cause and authorizes audits as deemed necessary to protect public)  
<http://www.courts.state.nh.us/rules/scr/scr-50-a.htm>
9.       **New Jersey**       Supreme Court Rule, Rule 1:21-6(h)  
<http://www.judiciary.state.nj.us/rules/r1-21.htm>
10.      **North Carolina**   N.C.G.S. §84-21, Rules and Regulations, Subchapter B. Discipline and Disability Rules § .0128(b); Rules of Professional Conduct Rule 1.15-3(h) Records and Accountings,  
<http://www.ncbar.gov/rules/rules.asp>
11.      **Vermont**           Vermont Rules of Professional Conduct, Rule 1.15A(c)  
[http://vermontjudiciary.org/LC/Shared%20Documents/PRO MULGATED-JUN1709-VRPC.pdf](http://vermontjudiciary.org/LC/Shared%20Documents/PRO%20MULGATED-JUN1709-VRPC.pdf)  
(Supreme Court may order audit at any time)
12.      **Washington**       Washington State Court Rules: Rules for Enforcement of Lawyer Conduct. Title 15: Audits and Trust Account Overdraft Notification, Rule 15.1(a) Random Audits (effective October 1, 2002)  
[http://www.courts.wa.gov/court\\_rules/?fa=court\\_rules.display&group=ga&set=ELC&ruleid=gaclc1515.01](http://www.courts.wa.gov/court_rules/?fa=court_rules.display&group=ga&set=ELC&ruleid=gaclc1515.01)

**Copyright © 2011 American Bar Association. All rights reserved. Nothing contained in this chart is to be considered the rendering of legal advice. The chart is intended for educational and informational purposes only. We make every attempt to keep the chart as accurate as possible. If you are aware of any inaccuracies in the chart, please send your corrections or additions and the source of that information to Selina Thomas, (312) 988-6721, [selina.thomas@americanbar.org](mailto:selina.thomas@americanbar.org)**