NEW YORK CITY BAR

REPORT BY THE PROFESSIONAL DISCIPLINE COMMITTEE

EVALUATING TRUST ACCOUNT OVERSIGHT MECHANISMS

The stewardship of client funds held in attorney trust accounts is an important aspect of professional responsibility for attorneys. In New York, the conduct of attorneys is governed by the four Judicial Departments of the Appellate Division of the New York State Supreme Court and the Grievance Committees appointed by that court.[1] There are eight Grievance Committees within New York State.[2] Each Department of the Appellate Division appoints to a Grievance Committee or Committees a chief attorney and other staff as deemed appropriate.[3] New York's Grievance Committees are responsible for investigating and prosecuting complaints of professional misconduct against lawyers and for enforcing the standards set by the New York Rules of Professional Conduct ("RPC").[4] Each state has a similar set of rules governing the ethical conduct of attorneys.

The standards pertaining to the oversight and maintenance of attorney trust accounts, as well as the duty to safeguard and account for clients' funds, are found within those rules. Few, if any, of an attorney's professional obligations are as crystal clear as the duty to safeguard client funds.[5] Many states have chosen to regulate attorneys beyond the rules of professional conduct by implementing specific loss detection and prevention devices to better protect client funds held in attorney trust accounts. Two common measures, which have been adopted in New York, are written notices by insurers to claimants of payment in settlement of any third-party liability claim[6] and dishonored check/overdraft notices by banks.[7] A third measure, used less frequently because of its perceived costs and logistics, is the random auditing of attorney trust accounts. States that have instituted random audit programs choose attorneys within their jurisdictions to audit through various methods and then regulators or accountants review the trust accounts of those selected attorneys for compliance with state rules. The term "random" in a random audit program simply

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[1] New York State Unified Court System. Attorney Grievance Committees, https://ww2.nycourts.gov/attorneys/grievance/index.shtml (All websites last accessed on July 8, 2025).

[2] New York Lawyers' Fund for Client Protection. Attorney Grievance Committees, https://www.nylawfund.org/site/attorney-grievance-committees/.

[3] 22 NYCRR §1240.4.

[4] The New York Rules of Professional Conduct have been adopted by the Appellate Division of the New York State Supreme Court, and are published as Part 1200 of the Joint Rules of the Appellate Division (22 NYCRR Part 1200).

[5] *Matter of Galasso*, 2012 NY Slip Op 7050, ¶ 4, 19 N.Y.3d 688, 694.

[6] *See* 11 N.Y.C.R.R. 216.9 (A).

[7] *See* 22 N.Y.C.R.R. Part 1300.

About the Association

The mission of the New York City Bar Association, which was founded in 1870 and has more than 20,000 members, is to equip and mobilize a diverse legal profession to practice with excellence, promote reform of the law, and uphold the rule of law and access to justice in support of a fair society and the public interest in our community, our nation, and throughout the world.

means there are no specific indications of wrongdoing to trigger the audit. Despite the perceived costs, random audit programs are a powerful tool in the arena of proactive attorney regulation. They both protect the public and educate lawyers to be better guardians of client funds. The First and Second Judicial Departments of the Appellate Division have rules in place authorizing the creation and implementation of a random audit program, but no such program has been put in place.[8]

In New York, audits of attorney trust accounts are triggered by either a complaint filed by an individual, usually a client, or the Grievance Committee's receipt of a dishonored check or overdraft report from a bank.[9] In a typical audit, a Grievance Committee staff member reviews six months of bank and bookkeeping records, including bank statements, canceled checks, deposited items, and the attorney's general ledger. Such audits may reveal violations of the bookkeeping rules prescribed in RPC Rule 1.15(d), such as the failure to keep a proper ledger, or something as serious as defalcations of clients' funds. This policy paper analyzes random audit programs that have been developed in other states and discusses the potential implementation of such a program in New York.

I. OVERVIEW

Government regulators have utilized random audits for several reasons. Random audits are a fair method of allocating resources (i.e., since regulators cannot audit everyone, random audits give every potential subject a similar probability of being chosen); random audits are effective policy tools to encourage regulatory compliance and uncover noncompliance; and randomization by government agencies allows for policy evaluation.[10] In the context of attorney discipline, random auditing of an attorney's trust account was contemplated as early as 1970 by the American Bar Association ("ABA"). An ABA-sponsored report on professional discipline, known as the Clark Report, assembled and studied information relevant to all aspects of professional discipline.[11] The Clark Report was a direct response to the chaotic state of attorney discipline within the states at the time. The Special Committee on Evaluation of Disciplinary Enforcement of the ABA, which issued the report, spent three years conducting a nationwide examination of lawyer disciplinary procedures.

The Clark Report summarized the status of disciplinary enforcement by addressing 36 pervasive problems at the time. Proposed recommendations for each problem were discussed. Problem number 32 pertained to trust accounts. The problem identified was twofold: states were not requiring attorneys to keep accurate records of client funds in their possession and states were not auditing attorney trust accounts. It was noted that solicitors in England and Canada were

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[8] *See* Appellate Division, First Judicial Department, Rule 603.27, "Random Review and Audit"; Appellate Division, Second Judicial Department, Rule 691.12, "Regulations and Procedures for Random Review and Audit and Biennial Affirmation of Compliance." For full text of rules, *see* appx 1.

[9] *See* 22 N.Y.C.R.R. Part 1300.

[10] Wood, Abby K. and Grose, Christian R., "*Random Audits and Regulatory Compliance*" (2019). The Regulatory Review, 2019. Available at https://www.theregreview.org/2019/11/21/wood-grose-random-audits-regulatory-compliance/.

[11] A.B.A. Special Committee on Evaluation of Disciplinary Enforcement (1970) [hereinafter Clark Report].

required to maintain complete books, as well as "submit [their] books to audit and file the auditor's certificate with the local bar association."[12] In the spring of 1964 in Toronto, the Clark Report described a blitz of more than 400 spot audits, which resulted in the "tightening up of records and bookkeeping procedures which could be measured statistically."[13] The Clark Report ultimately recommended "a court rule requiring (1) that all attorneys maintain the records pertaining to client funds required under the provisions of Disciplinary Rule 9-102(B)(3) for a reasonable period after final distribution of the funds has been made; and (2) that these records be audited annually."[14] The reasoning was that maintenance of "complete financial records concerning client funds" in a lawyer's possession and "[to] have the records audited annually should act as a powerful deterrent to mishandling of the funds."[15]

After the Clark Report was published, several states implemented random audit programs. In 1973, Iowa became the first state to launch such a program. New Jersey and the State of Washington soon followed. The term "audit" in a random audit program does not refer to an examination of a law firm's financial statements. Rather, an audit by a regulator generally means a review of an attorney's bank and bookkeeping records to determine whether the attorney is complying with a state's professional ethics rules on possessing, maintaining, and disbursing client funds. Some regulators call these audits, perhaps more precisely, compliance reviews. The records requested by regulators in a random audit are initially limited to the trust account and usually require the attorney to produce: 1) a general ledger or journal, which records and sufficiently describes all deposits and disbursements from the trust account; 2) bank statements; 3) canceled checks; 4) deposited items; 5) individual client ledgers; and 6) a three-way reconciliation report containing the adjusted bank balance, the general journal/ledger balance, and the total of the client ledger balances. If the first review of a trust account shows compliance on a summary level, a detailed examination of the data is generally not pursued by the regulator. However, if serious rule violations are found, such as balances below zero or checks payable to cash, a forensic style audit may be performed by either the initial reviewer or a second auditor. Reconstruction of ledgers or reviewing source documents to verify transactions are typically not done unless very serious violations are present.

Although New York has not established a random audit program, judges and practitioners have been contemplating the idea for several decades, and the First and Second Judicial Departments of the Appellate Division went so far as to adopt rules allowing for the creation and implementation of such programs. The New York bar explored the issue of random trust account audits as early as 1987, when the Hon. Francis T. Murphy, Presiding Justice of the First Judicial Department, proposed such a program. Bar associations statewide pushed back on the proposal, questioning the cost efficiency and need. These concerns are being echoed even today by practitioners who, perhaps understandably, would rather avoid being audited. However, implementing such a program is possible under the current Appellate Division court rules and should be seriously considered.

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[12] *Id.* at 172.

[13] *Id*.

[14] *Id*. at 173.

[15] *Id.*

Notably, the Appellate Division Rules – 22 NYCRR § 603.27 (First Judicial Department) and 22 NYCRR § 691.12 (Second Judicial Department) – authorize the Grievance Committees to "propose regulations and procedures for the proper administration of the [random trust account audit] program." And in March 2015, support for a random audit program was voiced by then Executive Director of the New York State Lawyers' Fund for Client Protection, Timothy O'Sullivan, during a public hearing before the Commission on Statewide Attorney Discipline ("Commission").[16] The Commission was created by former Chief Judge of the State of New York, Jonathan Lippman, to conduct a comprehensive review of New York's attorney disciplinary system. Mr. O'Sullivan proposed reforms to the existing court rules and procedures in an effort to further the goals of protecting the public and detecting and deterring lawyer misconduct.[17] He encouraged the Commission to recommend adoption of a uniform court rule authorizing random audits, perhaps even on a pilot project basis, throughout New York State.[18] According to Mr. O'Sullivan, "[o]ur Fund's recent experience suggests that random audits should be considered as a possible addition to our client protection system in New York."[19] He gave examples of thefts of personal injury settlements by two disbarred attorneys over a twelve-year period.[20] Those thefts were not detected by the Payee Notification or the Dishonored Check Rule.[21] Mr. O'Sullivan concluded that "[a] random audit program may have deterred, detected and prevented these losses by these two lawyers, which will now likely result in about $3 million in awards from the Lawyers' Fund."[22]

This policy paper will provide an overview of how random audits have been implemented in other states and share the observations of the regulators overseeing those programs. The ABA Standing Committee on Public Protection in the Provision of Legal Services conducted its triennial Survey of Lawyers' Funds for Client Protection for the 2020, 2021, and 2022 calendar years across the United States.[23] The survey polled states on the status of loss prevention programs in their jurisdictions such as trust account overdraft reporting, payee notification, mandatory fee arbitration, mandatory written fee agreements, random audits, etc.[24] According to the survey,[25] fourteen states reported having enacted random audit programs and six states reported such

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[16] *Chief Judge's Hearing: Commission on Statewide Attorney Discipline* (N.Y. State Unified Court System, Mar. 2015). Available at https://ww2.nycourts.gov/sites/default/files/document/files/2018-06/AlbanyTranscript.pdf.

[17] *Id*. at 8-9.

[18] *Id*. at 8.

[19] *Id*. at 9.

[20] *Id*.

[21] *Id.*

[22] *Id*. at 10.

[23] American Bar Association - Survey of Lawyers' Funds For Client Protection 2020-2022, https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/2020-2022cp-survey.pdf.

[24] *Id*. at 17.

[25] *Id*. at 21.

programs were under study.[26] All twenty states were contacted to discuss their random audit programs, but only nine of them confirmed having some form of auditing program in place for attorney trust accounts, namely: California, Connecticut, Delaware, Iowa, Kansas, New Jersey, North Carolina, Vermont, and Washington.

For this policy paper, regulators from those nine states were contacted for information about their programs. Regulators provided data on the history of their programs, their goals, funding sources, whether statistics are kept, and whether their programs are viewed as cost effective. States with significant similarities are grouped together.

II. DISCUSSION

A. New Jersey, North Carolina, and Connecticut

These states are leaders in proactive regulation, having developed comprehensive random audit programs. Each state has a dedicated random audit team and generates statistics on their programs.

New Jersey

Since 1981, the Supreme Court of New Jersey has authorized a random audit program for attorney trust and business account records. The Office of Attorney Ethics, an investigative and prosecutorial arm of the New Jersey Supreme Court, manages the Random Audit Compliance Program ("RACP"). The RACP has three goals: education, deterrence, and detection of misappropriation.[27] The central purpose is educating attorneys on the proper method of compliance with the recordkeeping and ethical responsibilities under New Jersey's Rules of Professional Conduct Rule 1.15 and Court Rule 1:21-6.[28] An active auditing program is an incentive for attorneys to keep good records and avoid temptation to misuse trust funds.[29] The random selection process does occasionally uncover some level of theft.[30] Abuse of a client's trust in holding escrow funds has been recognized in New Jersey as particularly reprehensible. New Jersey has a bright line policy which calls for automatic disbarment of attorneys who knowingly misappropriate client funds.[31] Until recently, there was no possibility of reinstatement following a disbarment for the knowing misappropriation of client funds. In 2022, the Chief Justice of the New Jersey Supreme Court, Stuart Rabner, agreed to reevaluate the imposition of permanent disbarment in those cases

[26] The fourteen states were Arizona, Connecticut, Delaware, Hawaii, Idaho, Iowa, Kansas, Maine, Montana, New Jersey, North Carolina, Vermont, Washington and West Virginia; and the six states which had random audit programs under study were California, Illinois, Louisiana, New Mexico, Oregon, and Wisconsin.

[27] Random Audit Program, N.J. Courts, https://www.njcourts.gov/attorneys/attorney-ethics-and-discipline/random-audit-program#toc-the-random-audit-program-has-three-goals.

[28] *Id*.

[29] *Id*.

[30] *Id*.

[31] *See In re Wilson*, 81 NJ 451, 454 (1979) and *In re Hollendonner*, 102 NJ 21 (1985).

if substantial mitigation was present.[32] In 2024, after a series of administrative determinations, disbarred attorneys now have a path to readmission in New Jersey. Automatic disbarment, however, remains in place.

A decades-long uncompromising approach to attorneys who steal from their clients is perhaps why New Jersey's random audit program is so robust. Joseph Strieffler, Chief Auditor of the RACP, provided information for the policy paper and gave a presentation to the members of the Professional Discipline Committee on April 10, 2024. According to Mr. Strieffler's statistics, from July 1, 1981, through December 31, 2023, New Jersey's RACP completed a total of 18,222 audits. A total of 831 attorneys (4.5% of the total audits completed) were referred for discipline due to findings made during a random audit. Of those 831 referrals, 270 attorneys (32%) have been disciplined in some form (115 of those attorneys were disbarred); and 561 of the 831 attorneys (68%) were offered an Ethics Diversionary Program to improve their trust account recordkeeping.

New Jersey spends more than any other jurisdiction on its random audit program. Its proposed disciplinary budget for 2025 was $17,177,236.00.[33] On November 14, 2024, the New Jersey Supreme Court adopted the proposed budget and approved the overall annual assessment of $267.00 for attorneys.[34] The disciplinary portion of the annual assessment is $201.[35] According to information submitted by Mr. Strieffler, the Office of Attorney Ethics allocates its funding as follows: Disciplinary Investigations & Prosecutions - 70.5%; Disciplinary Review Board - 21.5%; and its random audit program - 8.0%. The RACP's funding is sufficient to retain several skilled auditors, most with advanced degrees in accounting or certifications in fraud examination. The RACP team is comprised of six auditors, including Mr. Strieffler, and one department secretary. In 2023, the RACP conducted 769 audits of law firms.[36] Until California became a random audit state, New Jersey had the largest population of lawyers to audit.[37] As of December 31, 2023, New Jersey's attorney population was 39,311.[38] In 2023, twelve lawyers were disciplined through the detection efforts of the RACP, including three disbarments.[39] Although technical accounting deficiencies are regularly found and corrected, the fact is that only 1.5% of the audits uncover serious ethics violations.[40] Technical deficiencies of client funds are usually the result of improper or negligent bookkeeping and not venal or intentional. "Although not quantifiable, the deterrent

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[32] *See In re Wade*, 250 NJ 581 (2022) (the investigation began after the respondent was selected for a random audit).

[33] N.J. Sup. Ct. Disciplinary Oversight Comm., Proposed 2025 Attorney Discipline Budget: Comments Requested by November 4, 2024 at 4, https://www.njcourts.gov/sites/default/files/notices/2024/10/n241003a.pdf.

[34] Supreme Court of New Jersey, Adoption of 2025 Attorney Discipline Budget and Approval of Annual Attorney Assessment for 2025, Notice no. n241118a (November 14, 2024), https://www.njcourts.gov/sites/default/files/notices/2024/11/n241118a.pdf?cb=38b75bc5.

[35] *Id*.

[36] Office of Attorney Ethics, Supreme Court of N.J., Annual Report 2023 (July 3, 2024) at 1, https://www.njcourts.gov/sites/default/files/attorneys/office-of-attorney-ethics/oae-report-2023.pdf.

[37] *Id*. at 14.

[38] American Bar Association, Profile of the Legal Profession: Demographics (2024), https://www.americanbar.org/news/profile-legal-profession/demographics/.

[39] Annual Report 2023, *supra* at 1.

[40] Annual Report 2023, *supra*, at 15.

effect on those few lawyers who might be tempted otherwise to abuse their clients' trust is undeniably present."[41]

The selection process in New Jersey is purely random. The RACP utilizes a computer program based on a Microsoft Corporation algorithm using telephone numbers.[42] The algorithm automatically drops out of the selection process any attorneys randomly audited within the past five years.[43] All law firms, regardless of size have an equal likelihood of being selected for a random audit.[44] The audits are always scheduled in writing two to four weeks in advance.[45] Enclosed with the audit notice is the New Jersey Attorney's Guide to the Random Audit Program and Attorney Trust Accounts and Recordkeeping manual.[46] The auditor will conduct an initial interview with the responsible attorney followed by the examination and testing of the law firm's financial recordkeeping system.[47] The full-time law firm will receive a field audit conducted at the attorney's law office. A part-time law firm will need to mail the bank and bookkeeping records to the Office of Attorney Ethics – a personal visit to a part-time law firm is not required. Records for all trust accounts, business accounts, and fiduciary accounts are subject to review by the auditor assigned. Every audit will entail a two-year review of bank statements, cancelled checks, wire advices, deposit slips, 3-way trust reconciliations, client trust ledgers, checkbook stubs or registers, and, if necessary, case files. Following the audit, there will be an exit conference to review the findings, which may include a deficiency checklist and corrective action plan.[48] If corrections are not undertaken by the attorney, the matter may be referred for formal disciplinary action. If serious issues are detected during the audit, the matter will be referred to the First Assistant Ethics Counsel, who will decide if the matter should be docketed for an ethics investigation.

A review of the New Jersey Lawyers' Fund for Client Protection Quarterly Reports showed the following reimbursement awards for the last four published quarters for thefts of client funds, as of the date of this paper[49]:

Quarter	Amount reimbursed in stolen trust fund money
January through March 2025	$75,267.60 - 11 claims (7 lawyers involved)
October through December 2024	$49,527.50 - 13 claims (8 lawyers involved)
July through September 2024	$250,201 - 7 claims (5 lawyers involved)
April through June 2024	$753,861.59 - 15 claims (9 lawyers involved)
Total:	$1,128,857.69 - 46 claims (29 lawyers involved)

[41] Annual Report 2023, *supra*.

[42] Annual Report 2023, *supra*.

[43] Annual Report 2023, *supra*.

[44] Annual Report 2023, *supra*, at 16.

[45] Annual Report 2023, *supra.*

[46] Annual Report 2023, *supra*, at 17.

[47] Annual Report 2023, *supra*, at 16.

[48] Annual Report 2023, *supra*.

[49] History of the Fund, N.J. Court, https://www.njcourts.gov/public/get-help/lfcp#toc-quarterly-reports.

In New York, there are 187,656 practicing attorneys with a registered address within New York State,[50] about five times the number of attorneys in New Jersey. Each state's fund for client protection has a maximum award ceiling of $400,000. The amounts of the awards granted by the client protection funds, however, were much higher in New York. In 2024, the Trustees of the New York Lawyers' Fund for Client Protection approved 94 awards representing reimbursements of stolen clients' funds for a total of $11.6 million,[51] more than *ten times* the $1,128,857.69 in reimbursements New Jersey paid over a twelve-month period.

The modest awards in New Jersey for thefts of client funds should be attributed to New Jersey's proactive stance towards attorney regulation. The Office of Attorney's Ethics' Trust Account Overdraft Notification Program, Random Audit Compliance Program and preventative education of the bar supports what is called New Jersey's "culture of compliance."[52] The combination of education and quality assurance efforts aims to ensure that attorneys in New Jersey understand the obligations of the profession.[53] New Jersey stands ready to assist New York in developing its random audit program, as it did recently in California.

North Carolina

North Carolina, like New Jersey, has one of the oldest random audit programs in the nation. It began in 1985. The North Carolina Bar established trust accounting standards and implemented a random audit program. The Office of Counsel is the legal department of the North Carolina State Bar, which consists of disciplinary staff, authorized practice staff, an investigations department, the Attorney/Client Assistance Program, the Trust Account Compliance Department ("TAD") and the Trust Accounting Compliance Program ("TAC"). The Director of the TAD was interviewed for the policy paper. The random audit program's stated purpose is to reduce the incidence of misappropriation and mishandling of clients' funds by monitoring compliance with the procedures and recordkeeping requirements established by the North Carolina Rules of Professional Conduct.[54] The audits contemplated by this rule are procedural – primarily designed to alert members of the bar to the requirements for maintaining lawyers' trust accounts.[55] During an audit, the lawyer must provide 12 months of financial activity, including canceled checks, deposit slips, bank statements, ledger cards, check stubs, receipts, and software registers.[56] Until recently, the North Carolina Bar selected certain judicial districts to be audited each fiscal quarter, and lawyers

[50] Profile of the Legal Profession, *supra*.

[51] Lawyers' Fund for Client Protection of the State of New York, Annual Report of the Board of Trustees for Calendar Year 2024 at 11, https://www.nylawfund.org/images/uploads/pdfs/AR_2024.pdf.

[52] Office of Attorney Ethics, Supreme Court of N.J., Annual Report 2023 (July 3, 2024) at 14, https://www.njcourts.gov/sites/default/files/attorneys/office-of-attorney-ethics/oae-report-2023.pdf.

[53] *Id*.

[54] North Carolina State Bar, Trust Account Handbook (Nov. 2017), at 51, https://www.ncbar.gov/media/283992/trust-account-handbook.pdf.

[55] Alice Neece Mine & Bruno DeMolli, The Randomness of Trust Account Audits (or Why Bruno May Pick on You and Your Trust Accounts Next Quarter), N.C. State Bar, https://www.ncbar.gov/for-lawyers/ethics/ethics-articles/the-randomness-of-trust-account-audits-or-why-bruno-may-pick-on-you-and-your-trust-accounts-next-quarter/.

[56] North Carolina Bar Trust Account Handbook, *supra*, at 52.

within those districts were randomly chosen based on their judicial district membership designations. About 60 audits per quarter are conducted. No member will be audited more than once every three years. North Carolina prefers to do the audits in person – about 75% are done at the attorney's office.

The audit findings are documented in a Random Audit Report in the North Carolina State Bar Journal, which is published quarterly. The Report lists the counties where the audits for that quarter were conducted, and it lists the upcoming counties where the next quarter's audits will occur. It also provides the results of the audits for the last quarter. In the Winter 2024 Edition of the North Carolina State Bar Journal, the third quarter random audits of 2024 were reported.[57] The most common rule violations were failure to escheat unidentified/abandoned funds (34%); failure to provide a copy of the Bank Directive regarding checks presented against insufficient funds (26%) and failure to sign, date, and/or maintain reconciliation reports (24%). Areas of consistent rule compliance included, *inter alia*, properly maintaining individual ledgers; properly preventing bank service fees from being paid with entrusted funds; properly maintaining a ledger of lawyer's funds used to offset bank service fees; promptly removing earned fees or cost reimbursements; and promptly remitting clients' funds in possession of the lawyer to which clients were entitled. The report for the Fourth Quarter Random Audits was published in the Spring 2025 Edition of the North Carolina State Bar Journal.[58] The most common rule violations were failure to complete quarterly transaction reviews (43%); failure to escheat unidentified/abandoned funds (38%); failure to complete monthly bank statement reconciliations (33%); and failure to identify the client and source of funds, when the source was not the client, on the original deposit slip (33%). Areas of consistent rule compliance included, *inter alia*, properly maintaining individual ledgers; preventing over disbursing funds from the trust account resulting in negative client balances; and providing written accountings to clients at the end of representation or at least annually if funds were held for more than 12 months.

During the interview with the Director of TAD, she related that in 2024, the North Carolina Bar made two changes to its random audit program. It created TAD, and it amended the program rules so that attorneys are now selected at random *statewide* rather than by judicial district. Judges, prosecutors, public defenders, in-house attorneys, and anyone who does not maintain a trust account are excluded from the eligible pool. TAD will provide education to lawyers on the particulars of trust account management and offer guidance on improving their practices. It will also take the lead in the development of educational materials, such as revising the Lawyer's Trust Account Handbook and tutorials. Trust account workshops are also provided upon request of any local bar president. TAD oversees the random audit program, as well as TAC, which was created in 2011. TAC was a direct response to the random audit program. North Carolina saw the need for education in response to the audits revealing a large number of attorneys deficient in maintaining their trust account records. A lawyer may be referred to TAC if found to have significant trust account compliance issues after an audit. Participation in TAC is voluntary and requires communication with the State Bar's trust account compliance counsel. The Grievance Committee

[57] North Carolina State Bar (2024) *North Carolina State Bar Journal* (Vol. 29, No. 4) at 62, https://www.ncbar.gov/media/730816/journal-29-4.pdf.

[58] North Carolina State Bar (2025). *North Carolina State Bar Journal*, (Vol. 30, No. 1) at 46, https://www.ncbar.gov/media/730822/journal-30-1.pdf.

in North Carolina may elect to stay a grievance and offer a lawyer TAC monitoring of a trust account for up to two years.[59] North Carolina invested in TAC to ensure that the lawyers who were deficient in their recordkeeping were identified and then trained and tutored to be compliant. Ultimately, better recordkeeping protects funds in trust accounts, as well as the perception of the public that the bar is being vigilant in its monitoring of fiduciary funds. Lawyers suspected of misappropriation, criminal conduct, dishonesty, fraud, misrepresentation, or deceit will not be offered the opportunity to participate in TAC.

The North Carolina State Bar Office of Counsel has a team of investigators and support staff, headed by a Director of Investigations, who are charged with conducting investigative or "deep" audits in cases referred to them by the random audit program. There are currently nine investigators. The Office of Counsel's investigators also review those trust accounts flagged by the dishonored check notification rule.

Like New Jersey, North Carolina is extremely committed to proactive attorney regulation. Bar dues are also the source of funding for the random audit program. North Carolina continues to modify and expand its random audit program. It created TAC to further educate its bar on trust account recordkeeping. It recently created TAD to streamline its process of monitoring attorneys' trust accounts and their education. Like New Jersey, North Carolina reports the findings of the audits in detailed fashion. Keeping statistics is an important component of any program to gauge its success. Both jurisdictions report these are highly successful programs given the misconduct that they have uncovered by random audits and the extensive training provided to those who would not have been identified absent a random audit program. The Director of TAD reported that if an attorney is re-audited, the audit compliance rate usually increases to around 80%.

Connecticut

Another state proactive in attorney regulation is Connecticut, which began its random audit program in July 2007. The First Assistant Bar Counsel who administers the random audit program for Connecticut's Statewide Grievance Committee provided information for this policy paper. She related that the impetus for the program was the result of a few serious defalcations by attorneys in connection with mortgage money.

The Connecticut Practice Book, which contains the rules and procedures for the Connecticut Courts, provides that the "Statewide Grievance Committee or its counsel may conduct random inspections and audits of accounts maintained pursuant to Rule 1.15 of the Rules of Professional Conduct to determine whether such accounts are in compliance with the rule and this section."[60] If violations are uncovered by the inspection and audit, the matter may be referred to a grievance panel for further investigation or to disciplinary counsel for presentment to the Superior Court.[61] Rule 13 of the Statewide Grievance Committee Rules of Procedure establishes the process for the random inspections and audits. The purpose of the program is to "ensure compliance with

[59] North Carolina Bar Trust Account Handbook, *supra*, at 52.

[60] Conn. Prac. Book §2-27(e).

[61] *Id*.

ethical rules…."[62] At a minimum, the random inspection and audit shall cover the previous six months from the date of the notice of the inspection and audit, and shall require the attorney to produce: (a) a receipt and disbursement journal identifying all deposits in and withdrawals from the account and showing the running account balance; (b) a separate accounting page or column for each client or third person for whom funds are held showing (A) all receipts and disbursements and (B) a running account balance; (c) at least quarterly written reconciliations of trust account journals, client ledgers, and bank statements; (d) a list identifying all trust accounts as defined in Practice Book §2-28 (b); and (e) all checkbooks, bank statements, and canceled or voided checks.[63] Attorneys with clients' funds accounts in Connecticut will undergo an on-site inspection or, for good cause shown, may deliver the records to the Statewide Bar Counsel's Office.[64]

The random audit team operates within the Bar Counsel's office of the Statewide Grievance Committee. It consists of one bar counsel, an administrative assistant and two full-time accountants. The database used in the selection process for auditing is a list of registration numbers attached to each client's funds account. If an audit and inspection does not disclose an apparent violation, Bar Counsel will notify the attorney and remove their account number from the selection process for a period of one year from the date the file is closed.[65] Bar Counsel performs between 250 and 300 audits each year.

The audit process in Connecticut not only looks at compliance, but has a forensic component, as follows:

> The audit team does a complete "drill down" of your trust account. Each auditor takes one month's bank statement and checks and compares those documents to the general ledger, each individual client ledger and the checks for that month. Every item is reviewed for accuracy and compliance with the Rules of Professional Conduct. One auditor will perform a three-way reconciliation of the trust account to the last day of the last month of the audit period.[66]

After the audit and inspection, Bar Counsel's Office will prepare and send the attorney a random audit report card noting any rule violations. The report card will also indicate any compliance measures the attorney is required to take. While the report cards themselves are confidential, the Statewide Grievance Committee maintains statistics on the issues uncovered during the audits.

First Assistant Bar Counsel provided three pie charts of the Random Audit Statistical Reports. Statistics have been kept in an accessible form since 2017. Bar Counsel provided the statistics for the individual years 2017 and 2024. She also provided a combined summary of all

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[62] Conn. Statewide Grievance Committee Rule 13(B).

[63] Conn. Statewide Grievance Committee Rule 13(C).

[64] Conn. Statewide Grievance Committee Rule 13(C)(4).

[65] Conn. Statewide Grievance Committee Rule 13(F).

[66] State of Connecticut Judicial Branch. "Frequently Asked Questions: Audit #5," https://www.jud.ct.gov/SGC/faq_audit.htm.

seven years beginning with 2017. In 2017, only 14% of the inspections and audits resulted in no report card being issued, meaning no deficits were found. In 2024, no report card was issued in 30% of those audited – almost a 50% improvement in just seven years.

Statistics provided by First Assistant Bar Counsel showed the most common violations of the Connecticut Rules of Professional Conduct detected during the random inspections and audits are:

- No disbursement/receipt ledger.
- No individual ledger card.
- Client ledger updates not performed on regular basis.
- No quarterly reconciliation.
- Quarterly reconciliation is not accurate.
- More than $500 in attorney's personal funds held in the bank account.
- The attorney is using the trust account for personal transactions.
- Memo description on checks is not sufficient.
- Memo description on deposit slips is not sufficient.
- Fee retainers not properly accounted for.
- Payments made to cash, cash withdrawals, debits, and on-line payments.
- Checks outstanding for over six months and the interest-holders are known.
- Funds in a trust account where the interest-holder is unknown.
- Un-reimbursed fees or service charges on the account.
- Attorney has failed to update the registration information.
- Attorney has not properly designated the account as a trust account.
- HUD-1 contained inaccuracies, errors, or omissions.
- Interest not remitted to Connecticut Bar Foundation.
- Overdrafts on the account were not reported to the Statewide Grievance Committee.
- Unacceptable storage location for financial data.
- Attorney is not maintaining financial data for at least 7 years.
- Financial documents prepared by attorney are illegible.

Since random audits were instituted, Connecticut's Client Security Fund showed a dramatic reduction in award payments. In 2007, the Client Security Fund paid almost $4,000,000 in claim reimbursements. Since 2007, the annual payments of the Client Security Fund were well below that amount except for 2019 when the fund reimbursed $4,992,58.74 in approved claims for an annual total of 64 claims.[67] It was the highest amount paid during any single year since the fund's inception. But it was an anomaly. The Fund's reimbursements since 2019 are as follows:

[67] Connecticut Judicial Branch (2019). *Annual Report 2019*, https://www.jud.ct.gov/csf/Reports/19_annual.pdf.

Annual Reporting Year[68]	Amount reimbursed in stolen trust fund money
2020	$739,370.73 (29 claims)
2021	$275,786.39 (43 claims)
2022	$226,049.86 (50 claims)
2023	$1,859,297.94 (66 claims)
2024	$164,625.62 (34 claims)

B. Kansas and Washington

Washington and Kansas are both dedicated to proactive regulation and have in place auditors with strong accounting backgrounds. Although neither jurisdiction publishes statistics, regulators from both states firmly believe the random audits have a positive effect on the bar and indirectly on the public.

Kansas

In 2021, substantial changes to the Kansas attorney disciplinary process occurred when new rules were adopted by the Kansas Supreme Court. The idea was to increase efficiency, clarify the disciplinary process, and codify existing practices.[69] The new rules relating to the discipline of attorneys included Rule 236, entitled, "Compliance Examination by Disciplinary Administrator," which confers authority on the disciplinary administrator to conduct compliance examinations.[70] Another change was to permit attorneys to transfer unidentifiable funds held in the attorney's trust account to the Kansas Lawyers' Fund for Client Protection.[71]

The disciplinary administrator of the Office of the Disciplinary Administrator of the Kansas Judicial Branch was interviewed for this policy paper. The purpose of the compliance examination rule is educational in nature with an emphasis on providing assistance to attorneys on how to properly operate a trust account.[72] The rule allows the disciplinary administrator to conduct a compliance examination of any trust or other fiduciary account held by an attorney or law firm.[73] The disciplinary administrator must employ sampling techniques to examine the account selected unless a discrepancy is found that indicates a need for a more detailed examination.[74] The audits evaluate the internal controls, accounting policies, and other procedures of the law firm and include

[68] Connecticut Judicial Branch, Court Support Services Division Reports, https://www.jud.ct.gov/csf/#reports.

[69] Kansas Supreme Court. (2020, December). *Supreme Court adopts rule changes related to attorneys*, https://kscourts.gov/Newsroom/News-Releases/News/2020-News-Releases/December-2020/Supreme-Court-adopts-rule-changes-related-to-attor.

[70] Administrative Order 2020-RL-134 at 78-79 (Kan. Sup. Ct., published Dec. 31, 2020).

[71] Kan. Sup. Ct. R. 236(a)(a)(2)(c) and Kan. Sup. Ct. R. 241(c)(4).

[72] Stan Hazlett, The Changing Disciplinary Process, J. Kan B. Ass'n, Jan 2002, at 14.

[73] Kan. Sup. Ct. R. 236(a).

[74] Kan. Sup. Ct. R. 236(b)(2).

a substantive inquiry into a lawyer's handling of client funds.[75] The disciplinary administrator must determine whether the reviewed records are maintained in accordance with applicable rules.[76]

Attorneys are selected randomly using their bar registration numbers, which are fed through a random number generator. Three attorneys are selected each month. If the attorney was audited within five years, another attorney will be selected. Lawyers who do not maintain trust accounts are eliminated from the list. The audit includes an examination of canceled checks, deposit slips, bank statements, ledger cards, and the bookkeeping/software system (*i.e.*, check stubs, receipts, disbursement journals, software registers, etc.).[77] After the compliance review, the attorney will receive a report from the auditor.[78] If a deficiency is found, a lawyer has up to 14 days after service of the report to provide evidence that the alleged deficiency either is incorrect or has been corrected.[79] In the rare event that serious violations of Rule 1.15 are detected, a complaint will be docketed for a full disciplinary investigation.

The Office of the Disciplinary Administrator has had no more than two auditors performing compliance examinations. The auditors are not part of a separate department in the office. Currently, Jeffrey D. Baker, an experienced attorney and Certified Public Accountant, is the only auditor on staff. According to the disciplinary administrator, the success of Kansas's random audit program is largely due to the skill set of its auditors. Mr. Baker has conducted approximately 90 audits since he was hired in June 2022. The Kansas Lawyer Trust Account Handbook supplements the random audit program, which is provided to all Kansas attorneys at their swearing in ceremony. The Handbook provides a detailed explanation of the three-way reconciliation process with step-by-step instructions.

The random audit program in Kansas is used as an opportunity to educate attorneys. Once the attorneys understand the goals of the program, they are receptive and appreciate the guidance Mr. Baker gives. The disciplinary administrator estimated that 80-85% of lawyers audited were attempting to maintain accurate records. Since Mr. Baker began, only two compliance reviews have led to docketing and that was due to a failure to respond. Kansas does not publish any statistics on its random audit program, but anecdotally, the disciplinary administrator believes it is successful. Moreover, the feedback from attorneys who have undergone compliance exams is very positive.

Washington

In 1977, Washington was one of the first states to authorize random audits. In 2015, a major rule change occurred, adding details to the scope of the random audit program. Title 15 of the Rules for Enforcement of Lawyer Conduct authorizes the Office of Disciplinary Counsel of the Washington State Bar Association to examine the books and records of any lawyer or law firm

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[75] Kansas Lawyer Trust Account Handbook (Sept. 2023), at 39.

[76] Kan. Sup. Ct. R. 236(b)(1).

[77] Kansas Lawyer Trust Account Handbook, *supra*, at 39.

[78] *Id*.

[79] Kan. Sup. Ct. R. 236(f).

selected at random to determine whether the lawyer or law firm is complying with RPC 1.15A, 1.15B, and other Rules of Professional Conduct referencing RPC 1.15A or RPC 1.15B.[80] Within the Office of Disciplinary Counsel is an Audit Department headed by a Managing Disciplinary Counsel, who was interviewed for this policy paper. The random examination program assesses trust account compliance and educates practitioners on the proper handling of client funds held in trust.[81] In 2015, auditors were added to the staff of the Office of Disciplinary Counsel.

The selection process limits examinations to lawyers on active status and utilizes the principle of random selections by Bar Number of all active status lawyers.[82] A lawyer or law firm will not be subject to random examination if previously selected within seven years preceding the drawing.[83]

An examination of a randomly selected trust account denotes the initial review.[84] A re-examination denotes a further examination, as may be ordered by a review committee.[85] Examinations and reexaminations under this rule will entail a review and testing of the internal controls and procedures used by the lawyer or law firm to receive, hold, disburse and account for money or property as required by RPC 1.15A, and a review of the records of the lawyer or law firm required by RPC 1.15B.[86]

At the conclusion of the examination or re-examination, the Office of Disciplinary Counsel may (1) conclude the examination by issuing a report summarizing its findings and take no further action; (2) issue a report summarizing its findings and either: (A) report the matter to a review committee with a recommendation to order corrective action by the lawyer and/or law firm and a re-examination of the books and records of the lawyer and/or law firm to commence within one year; or (B) report the matter to a review committee with a recommendation to order a disciplinary grievance be opened under Rule 5.3.[87]

During the COVID-19 pandemic, the Office of Disciplinary Counsel paused its random examination of books and records due to a staffing shortage. In May 2023, a Managing Disciplinary Counsel joined the Audit Department. One year later, an auditor was hired using funds from the State Bar Budget. By September 2024, the random audits resumed. The first selection was limited to 20 attorney trust accounts, which have been completed.

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[80] Wash. ELC 15.1(a).

[81] Washington State Bar Association. 2023 Washington Discipline System Annual Report, at 2, https://wsba.org/docs/default-source/licensing/discipline/2023-wa-discipline-system-annual-report.pdf?sfvrsn=44f81ef1_9.

[82] Wash. ELC 15.1(b)(1).

[83] Wash. ELC 15.2(b)(2).

[84] Wash. ELC 15.1(c).

[85] Wash. ELC 15.1(c).

[86] Wash. ELC 15.1(c).

[87] Wash. ELC 15.5(d).

The Audit Department requires an attorney to produce two months of bank and bookkeeping records for the review. The records are sent electronically. There are approximately 35,000 lawyers in Washington. The Managing Disciplinary Counsel hopes to complete about 60 audits each year. Although Washington, like Kansas, does not maintain published statistics, the Audit Department staff believes that the program creates good will for the attorneys who are being helped with their recordkeeping by the audits. Generally, the bar in Washington is receptive to the idea of random audits.

C. Vermont and California

Both Vermont and California have made tremendous strides to fortify their proactive regulation measures. They are unique in that the selection of attorneys for auditing is not completely random.

Vermont

Vermont is another state which believes in proactive attorney regulation. Its philosophy is to address risks to avoid problems, rather than react after attorney misconduct has occurred.[88] The Vermont Supreme Court oversees the professional conduct of all attorneys practicing in Vermont. The Court formed the Professional Responsibility Board to administer Vermont's professional responsibility program, which regulates the legal profession.[89] Reflecting its goal of greater accountability in the legal profession, Vermont's State Supreme Court amended Administrative Order No. 41 in July 2022, requiring Vermont attorneys to disclose their malpractice insurance status on their annual licensing statement.

In 2023, the Professional Responsibility Board reaffirmed its commitment to the trust account audit program.[90] The Rule for the audit program is found in Vt. R. Prof. Cond. 1.15A. A lawyer or law firm shall submit to a confidential compliance review of financial records, including pooled interest-bearing trust accounts, trust accounts, and fiduciary accounts by the Professional Responsibility Program's Disciplinary Counsel.[91] The minimal accounting controls required for client trust accounts are (1) a system showing all receipts and disbursements from the account or accounts with appropriate entries identifying the source of the receipts and the nature of the disbursements; (2) records for each client for whom property is held, which shall show all receipts and disbursements and carry a running account balance; (3) records documenting timely notice to each client or person of all receipts and disbursements from the account or accounts; and (4) records documenting timely reconciliation of all accounts maintained as required by this rule

[88] Vt. Judiciary, 2023 PRB Annual Report (2023), at 5, https://www.vermontjudiciary.org/sites/default/files/documents/2023%20PRB%20Annual%20Report.pdf.

[89] Professional Responsibility Board, Vt. Judiciary, https://www.vermontjudiciary.org/about-vermont-judiciary/boards-and-commitees/professional-responsibility.

[90] 2023 PBR Annual Report, *supra* at 3.

[91] Vt. R. Prof. Conduct 1.15A(c).

and a single source for identification of all accounts maintained as required in this rule. "Timely reconciliation" means, at a minimum, monthly reconciliation of such accounts.[92]

Disciplinary Counsel for the Professional Responsibility Program who manages the audit program was interviewed for this policy paper. He stated that audits of attorney trust accounts have been occurring in Vermont since approximately 2006. Their audit program identifies approximately 12 lawyers per year from the approximately 3,000 active bar members to undergo audits. The audits are conducted by a local accounting firm. In Vermont, the lawyers identified for the audits are not chosen randomly. The selection can be based on an attorney having a disciplinary history or the firm size – the larger firms are not typically audited. Solo practitioners and small firms are commonly chosen for the audits. About 10-15% of the reports from the auditing firm will result in further action by Disciplinary Counsel. Action may entail counseling the attorney or, if serious violations are identified, the attorney will be referred for prosecution. The reports are shared with the lawyer. The Vermont Judiciary was clear when the audit program was formed, it would not be used as a "gotcha" program. It was intended to be a compliance review, and, if minor errors are identified, the lawyer is simply asked to correct them. If an audit reveals more serious errors, Disciplinary Counsel may recommend participation in legal education or training on how to manage an attorney trust account. Re-audits may be recommended to ensure the problems uncovered during the first audit are truly remedied with the costs of the second audit being shifted to the attorney. While there are no published statistics on the results of the audits, Disciplinary Counsel stated confidently that there is a deterrent effect on the bar.

California

California is the latest state to implement proactive changes to its oversight of attorney trust accounts. Rule 9.8.5, approved by the California Supreme Court, effective January 1, 2023, directed the California State Bar to establish and administer a Client Trust Account Protection Program ("CTAPP") for the protection of client funds that facilitates the State Bar's detection and deterrence of client trust accounting misconduct.[93]

Under CTAPP, every licensed attorney in California must report whether they are responsible for managing an attorney trust account.[94] If yes, the attorney must attest to being knowledgeable and compliant with applicable rules and register each trust account in which the licensee held funds by identifying the account numbers and names of institutions where the attorney's trust funds were deposited.[95] The new rule also authorizes the California State Bar to implement other measures to ensure trust accounting compliance.[96] One of those tools is the Client Trust Account Annual Self-Assessment applicable to attorneys responsible for trust accounts.[97] The self-assessment has dozens of questions on reconciliation, IOLTA management,

[92] Vt. R. Prof. Conduct 1.15A(a)(4)

[93] Cal. Rules of Court, rule 9.8.5(a).

[94] Cal. Rules of Court, rule 9.8.5(a)(1)(A).

[95] Cal. Rules of Court, rule 9.8.5(a)(1)(B).

[96] Cal. Rules of Court, rule 9.8.5(a)(2).

[97] Cal. Rules of Court, rule 9.8.5(a)(2)(A).

recordkeeping, etc. The self-assessment helps attorneys to identify potential compliance issues and take corrective action as needed.[98] In addition to the self-assessment tool, compliance reviews of attorneys' trust accounts were mandated by the California State Bar.[99] The purpose of the review is to evaluate a lawyer's or law firm's adherence to California's Rules of Professional Conduct.[100] Depending on the findings of the compliance review, an investigatory audit may be required.[101] If selected for a compliance review, the attorney must retain a Certified Public Accountant to conduct the review *at the attorney's expense*.[102]

These changes were a direct response to the high-profile scandal involving Tom Girardi, a powerful figure in California's legal community, who was disbarred in July 2022, after misappropriating and embezzling millions of dollars from attorney trust accounts to fund a lavish lifestyle. On February 12, 2025, the Program Manager of the Client Trust Account Protection Program and Special Counsel of the Division of Regulation at the California State Bar were interviewed for this policy paper. They related that the trust compliance reviews are being implemented this year. If an attorney is selected for review, the attorney must retain an accounting firm trained in meeting the standards of the California Bar. The goal is to complete 800 compliance reviews each year.

Like Vermont, California's selection process for compliance reviews is not entirely random. Selection will be based on identified risk factors, such as having a high number of trust accounts, the attorney's field of practice, and whether the attorney has a history of misusing trust accounts. Business and Professions Code section 6091.4, effective January 1, 2025, makes compliance with the request mandatory and specifically makes inapplicable the attorney-client privilege and work product protection.[103] Given the sheer number of attorneys practicing in California, they related that the State Bar does not have the resources necessary to conduct the number of random audits needed to impact behavior. The California State Bar is fortunate to have research scientists on staff to capture data, analyze it and draw inferences. They expect to have data to support whatever conclusions they draw from the compliance review program once it is underway.

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[98] Handbook on Client Trust Accounting for California Attorneys, State Bar of California (2024), at 19, https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/Portals0documentsethicsPublicationsCTA-Handbook.pdf.

[99] Cal.R.Ct. 9.8.5(a)(2)(B).

[100] Handbook on Client Trust Accounting for California Attorneys (2024), *supra* at p.20.

[101] *Id.*

[102] Cal.R.Ct. 9.8.5(a)(2)(B).

[103] Cal.Bus.&Prof.Code §6091.4(b)(2024).

D. Delaware and Iowa

Delaware and Iowa have two of the oldest and random audit programs in the nation. Both of their audit programs operate within their client protection funds.

Delaware

In Delaware, the Lawyers' Fund for Client Protection ("the Fund") is charged with performing the compliance audits of attorney trust accounts. The Fund came into existence on January 1, 1968 by order of the Delaware Supreme Court.[104] The purpose of the Fund is "to establish, as far as practicable, the collective responsibility of the Profession in respect to losses caused to the public by defalcations of members of the Bar, acting either as attorneys or fiduciaries…."[105] Over time, the Fund acquired additional duties. An amendment, to the Supreme Court Rules of Delaware, effective May 31, 1975, authorized the Trustees of the Fund to conduct annual audits of the books and records of selected members of the Bar to verify compliance with Interpretive Guideline No. 2 of Disciplinary Rule 9-102 (now Rule 1.15).[106]

In the early eighties, an attorney refused to submit to a random audit, arguing that the requirement to produce his financial records for examination was invalid, unenforceable, and unconstitutional under both the federal and Delaware constitutions. He argued that mandatory audits violated his right to due process, right to privacy, as well as the attorney-client privilege.[107] The Delaware Supreme Court rejected the attorney's argument and affirmed the validity of the audit procedures.[108] Delaware realized early on the impact of compliance reviews on the Lawyers' Fund. Compliance reviews decrease the need for the Fund's remunerative functions, as it prevents ethical misconduct which results in claims against the Fund.[109]

The Rules of the Trustees of the Lawyers' Fund for Client Protection and Rule 1.15(e) of the Delaware Lawyers' Rules of Professional Conduct set forth the requirements for audits of a lawyer's financial books and records. The purpose is to verify the accuracy of the certificate of compliance filed each year by lawyers pursuant to Delaware Supreme Court Rule 69. Rule 1.15(d) or the Delaware Lawyers' Rules of Professional Conduct provides the extensive provisions of financial recordkeeping a lawyer in Delaware must follow when engaged in the private practice of law. The provisions are also reflected in the certificate of compliance, which must be filed on an annual basis. Rule 11 of the Rules of the Trustees of the Lawyers' Fund for Client Protection provides that on or before July 1 in each calendar year the Trustees shall select 60 individual members of the Bar or law firms, or a combination of both, whose books and records shall be examined during the next 12 months solely for the purpose of verifying the accuracy of the

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[104] Lawyers' Fund for Client Protection, Twenty-Five Year Anniversary Report, The Courts of Delaware, https://courts.delaware.gov/lfcp/anniv.aspx.

[105] *Id*.

[106] *Id*.

[107] *See In re Kennedy*, Del. Supr., 442 A.2d 79 (1982).

[108] *Id*. at 92-93.

[109] Lawyers' Fund for Client Protection, Twenty-Five Year Anniversary Report*, supra.*

certificate of compliance.[110] The Trustees select a Certified Public Accountant to make the audit or examination.[111] The cost of the audit is paid by the Trustees out of the Lawyers' Fund for Client Protection unless the audit discloses one or more failures to comply with the rules, or a shortage of funds, or both, which in that case, the cost of the audit may be shifted to the lawyer.[112]

According to the Executive Director of the Lawyers' Fund for Client Protection, who was interviewed for this policy paper, of the approximately 4,000 practicing members of the Delaware Bar, there are approximately 650 lawyers who are designated as responsible for the financial books and records of their firms or practices. Each attorney practicing in Delaware must provide the name of the responsible party in the firm who oversees the maintenance of the law firm's financial books and records. The Annual Reports of the Delaware Lawyers' Fund combine statistics of the compliance audits and the fund's reimbursements.[113] The Annual Report for 2018 is the last year posted on the website. Following the retirement of the Executive Director at the time, the Annual Reports were paused. On July 12, 2024, the Trustees of the Lawyers' Fund for Client Protections resumed their annual reports, the first one being the year 2023.[114]

The 2018 Annual Report documented ten claims filed with the Lawyers' Fund between July 1, 2017 and June 30, 2018 involving five lawyers.[115] Only one claim was paid in the amount of $9,872.00. The net assets of the fund though June 30, 2018 was $4,819,823.17.[116] Of the 60 lawyers and law firms randomly audited in the period ending June 30, 2018, 6% were found to have no comments, 46% were found to have minor comments and 48% were found to have more than minor comments.[117] Most of the instances of non-compliance were not material and corrected without the need for further action.[118] The 2023 Annual Report documented two claims filed with the Lawyers' Fund between July 1, 2022 and June 30, 2023 involving two lawyers and no reimbursements issued. Of the 60 lawyers and law firms randomly audited in the period ending June 30, 2023, 11% were found to have no comments, 54% were found to have minor comments and 35% were found to have more than minor comments. Most of the instances of non-compliance were not material and corrected without the need for further action. The net assets of the fund through June 30, 2023 was $4,830,826.34. The Executive Director does not believe that any funds have been paid to claimants alleging thefts of clients' funds since 2018, which she attributes to the

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[110] Supreme Court of Delaware (2023) *Rules of the Trustees of the Lawyers' Fund for Client Protection of the Supreme Court of Delaware*, Rule IX(2), https://courts.delaware.gov/forms/download.aspx?id=32698.

[111] *Id*. at Rule IX(3).

[112] *Id*. at Rule IX(4).

[113] Lawyers' Fund for Client Protection, Publications, Delaware Courts, https://courts.delaware.gov/lfcp/publications.aspx.

[114] The 2023 Annual Report was provided to the authors of this policy paper but does not appear on the Lawyers' Fund for Client Protection website.

[115] Lawyers' Fund for Client Protection, *2018 Annual Report*, Delaware Courts (2018), at 2, https://courts.delaware.gov/Forms/Download.aspx?id=107848.

[116] *Id*. at 3.

[117] *Id*.

[118] *Id*.

random audit program and generally the proactive attorney regulation stance of the Delaware Supreme Court.

Iowa

Iowa was the first state to form a random audit program.[119] The Iowa State Bar Association, like Delaware, recognizes how random audits impact its Client Security Fund. "We feel that the examinations deter the very small percentage of lawyers who might make use of the funds of others and in addition if someone does make the mistake of taking funds of others the tendency is to catch that culprit while the amount is small so that he or she can make restitution."[120] Lawyers in Iowa were generally found to be proud of the Client Security Fund and, most importantly, "[t]he examination procedures give the public a feeling of confidence and security."[121]

The Iowa Supreme Court has supervisory authority over all aspects of the practice of law. The Office of Professional Regulation administers the functions of the various boards and commissions charged with oversight of attorneys.[122] The auditors of attorney trust accounts are employed by the Client Security Commission, which also administers the Client Security Trust Fund.[123] There are currently six part-time auditors.[124] The audit staff routinely conducts audits of all lawyers in active practice in Iowa and examines their trust accounts, with the goal of examining each trust account every three to four years.[125] As of December 31, 2024, there were 21,154 attorneys licensed or registered to practice law in Iowa, of which 9,775 were active in status and able to practice law.[126] Cooperation by members of the bar with compliance reviews continues to be excellent and the majority of Iowa lawyers properly use their trust accounts.[127] Chapter 45 of the Iowa Court Rules sets forth the Client Trust Account Rules, including the required action upon receiving funds, disbursing funds and maintaining records.[128]

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[119] Iowa State Bar Association. (1981). *1980 Annual Report of the Client Security and Attorney Disciplinary Commission. Iowa Publications Online*, at 15, https://publications.iowa.gov/46807/1/iowa_state_bar_association_1981_OCR_.pdf.

[120] *Id*.

[121] *Id*. at 16.

[122] Office of Professional Regulation, Iowa Judicial Branch, *About OPR*, https://www.iowacourts.gov/opr/about-opr.

[123] *Id*.

[124] Iowa Judicial Branch, Office of Professional Regulation, Trust Accounts, OPR FAQs, "How Often Will My Account Be Audited? And Who are these Auditors?," https://www.iowacourts.gov/opr/attorneys/attorney-practice/practice-information/trust-accounts.

[125] Client Security Commission of the Supreme Court of Iowa, *2024 Annual Client Security Report* (Feb. 19, 2025), at 4, https://www.iowacourts.gov/static/media/cms/2024_Annual_Client_Security_Report_7064FC708BE14.pdf.

[126] *Id*. at 2.

[127] *Id*. at 4.

[128] Iowa Ct. R. ch. 45 (effective Sept. 2024), https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/12-31-2024.45.pdf.

In addition to its random audit program, the Commission has published an outline of Iowa trust account rules and procedures.[129] It provides forms, including those necessary for performing a triple reconciliation, as well as countermeasures to reduce the threat of fraud to a trust account and best practices. The executive director and director of client security of the Office of Professional Regulation periodically appear at continuing legal education events to discuss proper trust accounting procedures.[130] Iowa, like Delaware, is a leader in proactive attorney regulation.

When the circumstances warrant it, the audit costs are assessed to the attorney or attorneys who are signatories on the account if the audit reveals the account was not in substantial compliance with Iowa Rule of Professional Conduct 32:1.15 or chapter 45 of the Iowa Court Rules.[131] In calendar year 2024, $45,524 of the audit costs were recovered pursuant to Rule 39.10.[132] In 2024, $11,061 in reimbursement was recovered on prior claims paid by the funds.[133] Two new claims were received by the Commission in 2024, however, neither was paid.[134] One was denied, and the other is still pending. In recent years substantially all of the claims for reimbursement were denied for failing to qualify for reimbursement because they did not arise from the dishonest conduct of a member of the Iowa bar.[135]

Since the inception of the random audit program, "routine examinations confirm that the vast majority of Iowa attorneys diligently adhere to the trust account rules."[136] A review of the 2023 Annual Report of the Client Security Commission showed that $19,960.02 of audit costs were recovered,[137] and $14,670.55 in reimbursements were recovered on prior claims paid by the fund.[138] Fourteen claims were filed in 2023 with only one payment being authorized for $6,245.00 based on the actions of a suspended attorney. A review of the 2022 Annual Report of the Client Security Commission showed that $19,749.14 of audit costs were recovered.[139] Thirteen claims were filed in 2022 with only two payments being authorized for $2,976.45 and $3,242.00.[140]

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[129] Office of Professional Regulation of the Supreme Court of Iowa, Trust Account Outline (Mar. 2024), https://www.iowacourts.gov/static/media/cms/2_Trust_Account_Outline_Mar_2024_8589949DE8766.pdf.

[130] 2024 Annual Client Security Report, *supra*, at 5.

[131] Iowa Ct. R. ch 39 (Client Security Commission Dec. 2023), at 10, https://www.legis.iowa.gov/docs/ACO/CourtRulesChapter/05-30-2025.39.pdf.

[132] 2024 Annual Client Security Report, *supra*, at 5.

[133] 2024 Annual Client Security Report, *supra*, at 6.

[134] 2024 Annual Client Security Report, *supra*, at 7.

[135] 2024 Annual Client Security Report, *supra*, at 8.

[136] 2024Annual Client Security Report, *supra*, at 5.

[137] Client Security Commission of the Supreme Court of Iowa, *2023 Annual Client Security Report* (February 27, 2024), https://www.iowacourts.gov/static/media/cms/2023_CS_Annual_Report_1848CFCE4791F.pdf.

[138] *Id*. at 6.

[139] Client Security Commission of the Supreme Court of Iowa, *2022 Annual Client Security Report* (February 27, 2023), https://www.iowacourts.gov/static/media/cms/2022_Annual_Client_Security_Report_C17EF531EA1E1.pdf.

[140] *Id*. at 7.

III. THE ABA'S MODEL RULE FOR RANDOM AUDIT OF LAWYER TRUST ACCOUNTS[141]

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.

The McKay Commission, named after its first chair, Robert B. McKay, former Dean of New York University School of Law, examined the implementation of the Clark Committee Report.[142] Its goal was to provide a model for responsible regulation and to conduct a nationwide evaluation of lawyer disciplinary enforcement in the twenty-first century. In 1992, the McKay Commission recommended, *inter alia*, that courts adopt a rule providing for random audits of client trust accounts.[143] More than 30 years ago, the McKay Commission determined that "[t]rust account overdraft notification, record keeping and random audit rules have been enacted in a sufficient number of states for a sufficient time to judge their efficacy and any problems they might cause practitioners."[144] The Report found that in states that have used them, the measures "have proven effective to deter and detect the theft of funds even before clients file complaints."[145]

On February 14, 2025, a representative of the ABA's Center for Professional Responsibility was interviewed for this policy paper. She explained that the purpose of the random audit rule was to identify trust account recordkeeping issues before they morphed into something worse. The representative also explained that random audits are part of Proactive Management-Based Regulation ("PMBR"). PMBR refers to measures or concepts in regulation that seek to assist lawyers to develop ethical infrastructures that will help improve the delivery of legal services while preventing misconduct and malpractice. Other examples of PMBR are overdraft notification rules, payee notifications by insurance companies and fee arbitration. (So far, 35 states have overdraft notification rules, including New York.) It is difficult to quantify the success of random audit programs, she explained, because there is no way to know how many times

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[141] For full rule, *see* appx 2.

[142] American Bar Association Standing Comm. on Prof'l Discipline, (June 2014), *Report on the Lawyer Discipline System* (June 2014) at 8, https://www.ndcourts.gov/Media/Default/Court%20Administration/Disciplinary%20Board/2014%20ABA%20Report.pdf.

[143] American Bar Association Commission on Evaluation of Disciplinary Enforcement, Report of the Commission on Evaluation of Disciplinary Enforcement (McKay Report) (1992), https://www.americanbar.org/groups/professional_responsibility/resources/report_archive/mckay_report/.

[144] *Id.* at Recommendation 16.

[145] *Id.*

misconduct is prevented by the mere existence of a random audit program. She believes they work, noting that every time an attorney becomes a better recordkeeper because of an audit, the program is successful. Model programs like North Carolina and Delaware, she mentioned, are particularly successful because, in addition to compliance, they heavily emphasis educating members of their bars to keep accurate books and records.

IV. CONCLUSION

This policy paper provides a survey of random audit programs employed by states across the country and offers possible frameworks for the Grievance Committees in the State of New York to use as a model in formulating their initial random audit program. The states profiled in this report have taken proactive steps in their disciplinary structures to identify trust account problems before they arise or become worse. The number of lawyers practicing in the states with random audit programs ranges from 3,000 to 175,000. Each state has crafted a unique random audit program specific to its jurisdiction's needs and resources. The Grievance Committees in New York can draw upon the programs in place in these states to create New York's first random audit program and effectuate the rules already in place, at least in the First and Second Judicial Departments.[146]

A review of the reimbursement awards by the New York Lawyers' Fund for Client Protection should be incentive enough to launch a pilot random audit program. According to the Annual Report of the Board of Trustees for Calendar Year 2024, the Trustees approved 94 awards for a total of $11.6 million.[147] This was a 31% increase from the 72 awards granted in 2023, as well as a 90% increase in reimbursements payouts, which was a staggering $6.1 million in 2023.[148] In 2024, the largest category of awards, by the number of awards, reimbursed real property escrow losses ($9.9 million).[149] Thefts by lawyers of settlement proceeds accounted for the second largest amount of awards by category ($415,476).[150]

According to the Annual Report of the Board of Trustees for Calendar Year 2023 thefts of client settlement funds was even higher than in 2024 and accounted for the third largest amount of awards by category ($732,970).[151] The 2023 Annual Report noted "a disturbing trend over the past seven years where settlement losses have been among the largest category in the number of awards paid by the Fund."[152]

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[146] *See* note 1, *supra*, and Appendix.

[147] Lawyers' Fund for Client Protection of the State of New York, Annual Report of the Board of Trustees for Calendar Year 2024 at 11, https://www.nylawfund.org/images/uploads/pdfs/AR_2024.pdf.

[148] *Id*.

[149] *Id*.

[150] *Id.* at 10.

[151] Lawyers' Fund for Client Protection of the State of New York, Annual Report of the Board of Trustees for Calendar Year 2023 at 12, https://www.nylawfund.org/images/uploads/pdfs/AR_2023-Final.pdf.

[152] *Id.*

Whether a random audit program will lead to uncovering thefts of client funds or, at least, deter an attorney from committing theft, will never be known unless a program is implemented. Even a pilot program, as Mr. O'Sullivan suggested, would be a step in the right direction. Based on the data and interviews, random audit programs improve compliance with attorney trust account recordkeeping rules mandated by each jurisdiction. Compliance alone will help prevent inadvertent or negligent losses of client funds. Without a random audit program in New York, neither goal can be achieved. Huge sums of client funds are being stolen from attorney trust accounts every year, as documented by the Annual Reports of the New York Lawyers' Fund for Client Protection. There has not been a more appropriate time for the Grievance Committees in the First and Second Judicial Departments to develop a pilot random audit program.[153]

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July 2025

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[153] Consideration also should be given to developing a Trust Account Handbook modeled after the one in Kansas, which is particularly thorough, to be sent with the initial and renewal attorney registration materials. Educational programs, like Trust Schools, which are offered in a handful of jurisdictions by regulators, should also be contemplated by the Appellate Division.

APPENDIX 1

Appellate Division, First Judicial Department, Rule 603.27, "Random Review and Audit"[154]

§603.27 Random review and audit.

a. Availability of bookkeeping records; random review and audit. The financial records required to be maintained pursuant to Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), or by any other rule of this Court, shall be made available for inspection, copying and determination of compliance with court rules, to a duly authorized representative of the court pursuant to the issuance, on a randomly selected basis, of a notice or subpoena by the Grievance Committee.

b. Confidentiality. All matters, records and proceedings relating to compliance with Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), and this section, including the selection of an attorney for review hereunder, shall be kept confidential in accordance with applicable law, as and to the extent required of matters relating to professional discipline.

c. Regulations and procedures for random review and audit. Prior to the issuance of any notice or subpoena in connection with the random review and audit program established by this section, the Grievance Committee shall propose regulations and procedures for the proper administration of the program. The court shall approve such of the regulations and procedures of the Grievance Committee as it may deem appropriate, and only such regulations and procedures as have been approved by the court shall become effective.

d. Biennial affirmation of compliance. Any attorney subject to this court's jurisdiction shall execute that portion of the biennial registration statement provided by the Office of Court Administration, affirming that the attorney has read and is in compliance with Rule 1.15 of the Rules of Professional Conduct (Part 1200 of this Title [Rule 1.15]), as jointly adopted by the Appellate Divisions of the Supreme Court, and with this section. The affirmation shall be available at all times to the Grievance Committee. No affirmation of compliance shall be required from a full-time judge or justice of the Unified Court System of the State of New York, or of a court of any other state, or of a Federal court.

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Appellate Division, Second Judicial Department, Rule 691.12, "Regulations and Procedures for Random Review and Audit and Biennial Affirmation of Compliance"[155]

§691.12 Regulations and Procedures for Random Review and Audit and Biennial Affirmation of Compliance.

[154] Available at: https://nycourts.gov/courts/ad1/Committees&Programs/DDC/part603.shtml#s60327.

[155] Available at: https://iappscontent.courts.state.ny.us/aronline/Rule691_12.html.

(a) Availability of bookkeeping records; random review and audit. The financial records required by rule 1.15 of part 1200 of this Title shall be available at the principal New York State office of the attorneys subject hereto, for inspection, copying and determination of compliance with said Rule 1.15, to a duly authorized representative of the court pursuant to the issuance, on a randomly selected basis, of a notice or subpoena by this court or the appropriate grievance committee.

(b) Confidentiality. All matters, records and proceedings relating to compliance with rule 1.15 of part 1200 of this Title, including the selection of an attorney for review hereunder, shall be kept confidential in accordance with applicable law, as and to the extent required of matters relating to professional discipline.

(c) Prior to the issuance of any notice or subpoena in connection with the random review and audit program established by this section, the appropriate Grievance Committee shall propose regulations and procedures for the proper administration of the program. The Court shall approve such of the regulations and procedures of the Grievance Committee as it may deem appropriate, and only such regulations and procedures as have been approved by the Court shall become effective.

(d) Any attorney subject to this court's jurisdiction shall execute that portion of the biennial registration statement provided by the Office of Court Administration affirming that the attorney has read and is in compliance with rule 1.15 of part 1200 of this Title. The affirmation shall be available at all times to the grievance committees. No affirmation of compliance shall be required from a fulltime judge or justice of the Unified Court System of the State of New York or of a court of any other state, or of a Federal court.

APPENDIX 2

ABA Model Rule for Random Audit of Lawyer Trust Accounts[156]

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

[156]Available at https://www.americanbar.org/groups/professional_responsibility/resources/client_protection/apreface/.

(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.