

IN THE SUPREME COURT OF THE STATE OF NEVADA

IN THE MATTER OF AMENDMENTS
TO SUPREME COURT RULE 78.5
REGARDING IMPLEMENTATION OF
RANDOM TRUST ACCOUNT
COMPLIANCE AUDITS.

ADKT 533

FILED

FEB 27 2018

*ORDER SCHEDULING PUBLIC HEARING
AND REQUESTING PUBLIC COMMENT*

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY *Elizabeth A. Brown*
CHIEF DEPUTY CLERK

On February 21, 2018, the Board of Governors of the State Bar of Nevada filed a petition to propose Supreme Court Rule (SCR) 78.5 to authorize the State Bar to conduct random trust account compliance audits of active attorneys licensed in Nevada. The proposed rule is attached as Exhibit A.


The Nevada Supreme Court will conduct a public hearing on the petition on Monday, April 2, 2018, at 3:00 p.m. in the Nevada Supreme Court Courtroom, 408 East Clark Avenue, Las Vegas, Nevada. The hearing will be videoconferenced to the Nevada Supreme Court Courtroom, 201 South Carson Street, Carson City, Nevada.

Further, this court invites written comment from the bench, bar, and public regarding the proposed amendments. An original and 8 copies of written comments are to be submitted to: Elizabeth A. Brown, Clerk of the Supreme Court, 201 South Carson Street, Carson City, Nevada 89701 by 5:00 p.m., March 26, 2018. Comments must be submitted in hard-copy format. Comments submitted electronically will not be docketed. Persons interested in participating in the hearing must notify the Clerk no later than March 26, 2018.

Hearing date: April 2, 2018, at 3:00 p.m.
Supreme Court Courtroom
408 East Clark Avenue
Las Vegas, Nevada 89101

Comment deadline: March 26, 2018, at 5:00 p.m.
Supreme Court Clerk's Office
201 South Carson Street
Carson City, Nevada 89701

DATED this 27th day of February, 2018.


_____, C.J.

cc: Vernon Leverty, President, State Bar of Nevada
Kimberly Farmer, Executive Director, State Bar of Nevada
All District Court Judges
Clark County Bar Association
Washoe County Bar Association
First Judicial District Bar Association
Administrative Office of the Courts

1 **EXHIBIT A**

2 **Rule 78.5. Maintenance of trust funds in approved financial institutions;**
3 **overdraft notification.**

4 **1. Clearly identified trust accounts in approved financial institutions**
5 **required.**

6 (a) Maintenance of Approved Trust Account. Active members of the State Bar
7 of Nevada shall deposit all funds held in trust in this jurisdiction in accordance with
8 S.C.R. [165] 217 in accounts clearly identified as "trust" or "escrow" accounts,
9 referred to herein as "trust accounts," and shall take all steps necessary to inform
10 the depository institution of the purpose and identity of the accounts. Funds held in
11 trust include funds held in any fiduciary capacity in connection with a
12 representation, whether as trustee, agent, guardian, executor or otherwise. Lawyer
13 trust accounts shall be maintained only in financial institutions approved by the
14 State Bar.

15 (b) Maintenance of Trust Account Records. Every lawyer engaged in the
16 practice of law in the State of Nevada shall maintain and preserve for a period of at
17 least five years, after final disposition of the underlying matter, the records of the
18 accounts, including checkbooks, cancelled checks, check stubs, vouchers, ledgers,
19 journals, closing statements, accountings or other statements of disbursements
20 rendered to clients or other parties with regard to trust funds or similar equivalent
21 records clearly and expressly reflecting the date, amount, source, and explanation
22 for all receipts, withdrawals, deliveries and disbursements of the funds or other
23 property of a client, and make such records available to the State Bar for inspection
24 upon request.

25 (c) Trust Account Audit. Every lawyer actively engaged in the practice of law
in the State of Nevada is subject to random compliance audit of the lawyer's trust
account and shall promptly cooperate with the State Bar's requests for information
regarding the same.

2. **Overdraft notification agreement required.** A financial institution
shall be approved as a depository for lawyer trust accounts if it files with the State
Bar an agreement, in a form provided by the State Bar, to report to the State Bar
counsel whenever any properly payable instrument is presented against a lawyer
trust account containing insufficient funds, irrespective of whether or not the
instrument is honored. The State Bar shall establish rules governing approval and
termination of approved status for financial institutions, and shall annually publish
a list of approved financial institutions. No trust account shall be maintained in any
financial institution that does not agree to so report. Any such agreement shall apply

1 to all branches of the financial institution and shall not be cancelled except upon
2 thirty days notice in writing to the State Bar.

3 **3. Overdraft reports.** The overdraft notification agreement shall provide
4 that all reports made by the financial institution shall be in the following format:

5 (a) In the case of a dishonored instrument, the report shall be identical to the
6 overdraft notice customarily forwarded to the depositor, and should include a copy
7 of the dishonored instrument, if such a copy is normally provided to depositors;

8 (b) In the case of instruments that are presented against insufficient funds but
9 which instruments are honored, the report shall identify the financial institution, the
10 lawyer or law firm, the account number, the date of presentation for payment, and
11 the date paid, as well as the amount of overdraft created thereby.

12 **4. Timing of reports.** Reports under paragraph 3 shall be made
13 simultaneously with, and within the time provided by law for notice of dishonor, if
14 any. If an instrument presented against insufficient funds is honored, then the report
15 shall be made within five banking days of the date of presentation for payment
16 against insufficient funds.

17 **5. Consent by lawyers.** Every active member of the State Bar shall, as a
18 condition of maintaining active membership in the State Bar, be subject to
19 [~~conclusively deemed to have consented to~~] the reporting, audit, and production
20 requirements mandated by this Rule.

21 (a) Certification of compliance with this Rule and consent shall be
22 acknowledged as part of every active member's annual licensing form. A member
23 shall immediately file with the State Bar an updated certificate of compliance and
24 consent upon:

- 25 (1) any change of law firm affiliation;
(2) opening of any trust account with a financial institution; or
(3) the utilization of any trust account for which there is no certification
and consent on file with the State Bar for said active member.

6. Costs. Nothing herein shall preclude a financial institution from charging
a particular lawyer or law firm for the reasonable costs of producing the reports and
records required by this Rule.

7. Financial institution immunity. A financial institution shall not be liable
for damages to any person or entity for any erroneous overdraft report filed in good
faith or for the unintentional failure to comply with this Rule.

8. Definitions. For purposes of this Rule:

(a) "Financial institution" includes a bank, savings and loan association, credit
union, savings bank, and any other business or person located in this state that
accepts for deposit funds held in trust by lawyers.

(b) "Properly payable" refers to an instrument which, if presented in the normal
course of business, is in a form requiring payment under the laws of this jurisdiction.

1 **9. Suspension for non-compliance.** All active members shall meet the
2 certification and consent requirements of this rule within 30 days of the effective
3 date of this rule or of becoming an active member of the State Bar. Active members
4 who fail to meet the requirements of this rule shall be notified of their non-
5 compliance, in writing, by the State Bar. Upon the expiration of 30 days from the
6 date the State Bar sends the member notice of non-compliance, said member shall
7 be suspended from membership in the State Bar, but may be reinstated upon filing
8 the certificate of compliance and consent with the State Bar. Additionally, clients'
9 funds which are nominal in amount or to be held for a short period of time shall also
10 be deposited and maintained in accordance with the provisions of Rule 217.
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBIT B

TRUST ACCOUNT AUDIT STATE COMPARISON

STATE	AUDIT SELECTION	NUMBER OF AUDITS PER YEAR
Arizona	Random	Rule not enforced
Connecticut	Random	250
Delaware	Random and at the discretion of supreme court or Lawyers' Fund for Client Protection	60
Hawaii	Can be ordered upon failure to file certificate of compliance or upon notification of dishonored check	Rule not enforced
Iowa	Random	Rule not enforced
Kansas	Random	24
Nebraska	Random; in practice the audit is usually ordered because of grievance or overdraft notice.	Rule not enforced
New Hampshire	Random; in practice the audit is usually ordered because of grievance or overdraft notice.	Statistics not available
New Jersey	Random	730
North Carolina	Random	60
Vermont	Random	10-20
Washington	Random and may be ordered as part of an investigation	80-100

EXHIBIT C

SURVEY REPORT

Random Trust Account Audit

November 22, 2017

The State Bar of Nevada sent a survey to 8,908 active and active exempt attorneys regarding their perceptions about a random trust account audit program; responses were received from 1,079 attorneys (12% of those surveyed).

DEMOGRAPHICS

1. Practice Setting: The majority of survey takers (76%) are in private practice.

- 10% are public lawyers
- 5% are in house counsel
- 3% are not working or are retired
- 2% are not working in the legal field
- 4% indicated "Other" as their practice setting.

Other

Newly admitted; seeking employment
Part time ADR only
Executive Director position dealing with legal issues from a supervisory standpoint
Judge (x5)
Judicial Law Clerk (x2)
Non-profit
Not practicing in Nevada
Retired
Faculty

OF THOSE IN PRIVATE PRACTICE

(A) Most (72%) work in firms that are in Nevada only; 13% work in regional firms and 7% are in national or multinational firms. 8% indicated "other" for practice setting (primarily multi-state or out of state practice)

(B) Most (48%) are in solo practice; 27% are in small, 2-4-person offices; 15% are in 5-14-person offices and 10% are in large, 15 person+ offices.

(C) A majority of attorneys (86%) have one trust account; 10% have two trust accounts; and 4% have three or more trust accounts.

(D) Most attorneys (70%) have authority to access client trust accounts to deposit or withdraw funds.

(E) Half (50%) stated that they or another attorney in the office conducts the day-to-day accounting for the office. For others, 34% hire an in-house accountant/staff person; 7% have a contracted accountant; 3% use a spouse or friend to conduct accounting; and 6% marked "other." Those who marked other indicated that a combination of themselves and a bookkeeper/accountant/office manager, that they were unaware or that they did not maintain a trust account.

PERCEPTIONS

Those surveyed were asked to respond to the following questions *with the assumption that they would not be exempt from audit.*

2. **Random Trust Account Audit Program Impact.** Those surveyed were asked to rate the level of impact a random trust account audit program would have on (1) Education; (2) Early Detection and (3) Deterrence. **Nearly half surveyed (40% – 53%) stated that there would be no impact; 40% stated there would be moderate impact for education and early detection.**

	No Impact	Moderate Impact	Large Impact
Education about trust account best practices	47.38%	40.52%	12.10%
Early detection of minor accounting issues	40.34%	41.56%	18.10%
Deterrence from intentional bad acts	53.13%	28.08%	18.79%

3. **Role of Random Trust Account Audits.** Those surveyed were asked to indicate how strongly they agreed with the following statements about random trust account audits. **Survey participants were divided on this issue, with nearly equal numbers of attorneys agreeing as disagreeing.**

	Disagree	Somewhat disagree	Neither agree nor disagree	Somewhat agree	Agree
They are an important aspect of a self-regulating profession.	33.94%	9.37%	16.52%	17.12%	23.06%
The possibility of being audited may cause lawyers to re-examine their accounting practices.	24.47%	11.18%	14.40%	26.69%	23.26%
They provide for a measure of public protection.	25.35%	10.10%	15.86%	25.25%	23.43%

4. **Deterrence.** Survey takers were specifically asked if they thought a random trust account audit program would deter misappropriation from client trust accounts. **Nearly half (47%) stated it would not deter misappropriation; 27% were unsure; and 26% affirmatively stated it would.**

5. **Usefulness for Others.** When asked if they thought there are lawyers or firms that may need assistance with establishing or maintaining their trust accounts, **41% of those surveyed said "Yes" and 46% said "Maybe."** The other 13% stated that others do not need assistance.

6. **Size of Law Firm.** Survey participants were asked if they thought the size of a law firm has an impact on whether trust account errors are made. **Most (53%) stated the size of the firm has no impact and 25% stated errors are more likely to occur in solo/small practices.** The remaining participants marked that

errors were more likely in large/multi-jurisdictional firms (8%); mid-sized firms (3%) and "Other" (11%). Those who marked "other" indicated:

- No opinion (x7)
- Unsure/Do not know (x32)
- It is the attention chosen to be given to the account that matters.
- I think the type of practice has an impact, that is, whether or not its the type of practice that handles substantial client funds.
- The size of the firm is not relevant versus the volume of clients.
- Depends on who handles the money/accounts
- Errors can happen in any size firm more frequently is solo or small firms
- The work of the accountant and the attorney in charge of the accounting affects this more than the size of the firm
- I have seen no data on this so I can't comment.
- Larger firms have established policies and procedures and the resources to back up errors.
- It is the person, not the size of the firm that would be more likely to "make errors" or embezzle funds
- I think generally mistakes might be more prevalent in smaller firms but i am not sure about that.
- Too hard to generalize
- Probably the bigger the more chance for "errors"
- This is an empirical question about which my personal opinion matters very little.
- Size may engender different problems! Small or solo may lack experience or funds to have good financial procedures. Mid-size or large may not pay enough attention, or have difficulty with having too many people involved.
- You should have stats on this rather than poll the perception of attorneys./ What does the research show?
- Errors are probably more likely to occur in large law firms. But smaller law firms offer more opportunities for mischief due to lack of oversight.
- I think the possibility of errors depends on the accounting experience/proficiency of the person handling such matters. It is probable that the larger the firm, the more likely an accounting professional handles such matters, which is how the size of the firm would impact the likelihood of errors. But even a solo could hire a professional.
- I have not had experience with Trust Accounts to be able to answer
- I would guess errors would be made more at a small practice bc the lawyers are managing it versus managing professionals
- I am no authority on this, but it stands to reason the more client money moving through a trust account, the more likely an error of accounting will be made, but this is likely not a universally applicable assumption.
- It could go either way

IF SELECTED FOR RANDOM AUDIT

Those surveyed were asked specific questions about concerns and procedural issues if selected for random audit.

7. **Level of Concern.** Those surveyed were asked to indicate their level of concern about the following factors if selected for random audit. **The biggest concerns were in regard to disruption of practice during the audit period and expenses related to the audit.**

	Not at all concerned	Moderately Concerned	Very Concerned
Confidentiality of client records/finances	25.35%	31.21%	43.43%
Disruption of practice during audit period	14.93%	26.84%	58.22%
Expenses related to responding to the audit	11.92%	31.52%	56.57%
Responsibility for audit findings if I do not have authority for firm trust account	49.90%	21.52%	28.59%
Methodology to randomly select lawyers/firms	24.90%	34.41%	40.69%
Qualifications of the auditor specific to law firm practices	19.31%	36.69%	44.00%
Reporting of errors to the state bar's Office of Bar Counsel	34.76%	29.78%	35.47%

8. **Audit Preparation/Correction.** Survey takers were given a list of statements and asked to rank how important each one was when preparing for an audit and ongoing audit procedures. **Four statements were ranked as being very important: (1) Having an audit checklist; (2) Ability to correct errors without a report to the state bar; (3) Being able to speak with someone about how to best prepare for the audit; and (4) Engaging in ongoing discussions with the auditor.**

	Not at all Important	Moderately Important	Very Important
Have advance notice/ability to straighten out accounting books prior to being audited.	25.41%	34.55%	40.04%
Request an extension of time.	19.67%	41.08%	39.25%
Have an audit preparation checklist.	5.69%	26.93%	67.38%
Speak with someone about how to best prepare for the audit.	9.28%	32.31%	58.41%
Request an exemption from audit.	28.91%	31.15%	39.94%
Provide additional/supporting documentation for requested records.	8.46%	38.33%	53.21%
Engage in ongoing discussions with the auditor.	6.83%	35.88%	57.29%
Correct errors without a report to the state bar.	8.47%	26.43%	65.10%

9. **Location of Auditor.** Survey participants were asked if they would prefer an auditor located onsite, off site or a hybrid of each. There was no clear consensus on this topic.

	%
An auditor on site to select and review records.	28.38%
An auditor off site with confidential electronic remittance of selected records.	26.95%
A hybrid of each.	20.70%
No preference.	23.98%
Total	100%

EDUCATIONAL TOOLS

Regardless of whether a random trust audit program is in place, survey takers were asked if they would be interested in educational tools.

10. **Educational Tools.** Of those who responded, 76% or more stated they would be interested in: (1) **Guidelines/best practices for establishing and maintaining a trust account (76%)** and (2) **CLE seminars regarding trust account best practices (77%).**

COMMENTS

Comments and/or concerns about a random trust account audit program were shared by 389 survey participants. They are listed below as unedited text and generally categorized as follows: (1) In Favor; (2) Opposed; (3) Cost Concerns; (4) Concerns for Solo/Small Practices; (5) Education Alternatives and (6) Other.

FAVORABLE COMMENTS

1. It is clear some attorneys cannot be trusted to not dip into their trust accounts. We need audits for deterrence.
2. I think that random audits may not deter purposeful misappropriation because people who believe they can do that likely believe they won't get audited/won't get caught. However, random audits could help attorneys with poor accounting practices due to ignorance/neglect and could catch errors made there or misappropriation but support staff that an attorney may not be aware of.
3. Random audits are probably a good idea. The concern is that the auditor will want to find problems or report problem that are not significant in order to justify his job. It should be made clear to the auditor that the best possible outcome if a finding that there are no problems of any consequence. He/she should not be paid a flat rate for each account review regardless of how much time they spend on the account or something like that so they are encouraged to help and find what he/she is doing right rather than just find what they are doing wrong. That's my opinion anyway.
4. I believe it is a great idea, it will help restore public confidence in the profession. I am concerned, however, regarding whether all firms will be randomly audited, and whether such an audit will present a difficult burden on very small firms.
5. I am a government lawyer, but I think this is an important tool for the Bar to examine accounts and head off problems.
6. I sit on the Northern Nevada Disciplinary Panel and we see a lot of trust account issues. This program would ultimately help members of our bar avoid serious issues down the road.
7. It is a great idea, especially after what Rob Graham did. No-one suspected that nice guy.
8. It's about time. I can't believe nothing like this is in place already. The audits should start with firms that handwrite (and don't print) trust checks.
9. I support a robust audit procedure with very limited extensions and exemptions. Accountability for client funds is a persistent problem in our profession.
10. Great idea
11. Random audits are needed. Should have been implemented years ago. If I sat on a jury in a trial against the bar for failure to properly monitor Robert Graham, I would award whatever the plaintiffs asked for.
12. It was hard to offer suggestions/thoughts since I've been retired, but certain areas of practice really need oversight to "get it right" - this is a good idea! Good luck.
13. This is a good idea. Random audits would have a beneficial effect on trust account issues.
14. The State Bar needs to take an aggressive stance here, after such a terrible situation of long-term ongoing fraud by Rob Graham. Randomly auditing a few attorneys a year is not going to deter the 'next' Rob Graham from ripping off clients. What might deter the next Rob Graham, is a State Bar that EDUCATES and actively ENCOURAGES the public to know their rights vis-a-vis what funds an attorney can righteously hold and for how long, and to register a complaint w/ the State Bar if this timetable is not being abided by. It is absolutely disgusting what he was able to get away with, and for how long. How about focusing LESS on substance abuse CLE requirements and MORE on actively encouraging the public to report financial shenanigans by Nevada attorney entrusted with their money????
15. I support random auditing, but practitioners should not be able to avoid the audit or obtain too many extensions. I suggest that, if the audit reveals problems, that the attorney(s) involved immediately

- disciplined by the bar, subject to the attorney(s) good faith effort in cleaning up the problems - possibly subject to a follow up audit. I would view this as a self-monitoring mechanism to prevent problems, not a disciplinary witch hunt to find and sanction attorneys.
16. I think the idea is a good one. However, I see two important issues; (1) it would be very important to establish what the parameters of the audit would be (i.e. not go beyond the iolta account and records relating thereto; and (2) that the bar utilize its people in-house to conduct and not an outside group. I have seen/experienced other state agencies utilize outside firms to conduct industry-specific audits that look/cause problems to justify the expense/need of doing so.
17. I welcome audits. The inconvenience of an audit is a worthwhile price to pay to protect the public from the Graham's with a bar card.
18. I do not have any contact with client funds, but I answered the questions about the importance of things as though I do. Otherwise, I would have had to answer that none of the issues were important to me. Same for the guidelines and CLE issue - definitely a good idea, even though I probably would not make use of it. I do wonder, though, what impact a determination that a firm has not following appropriate practices will have on the attorneys in the firm with no client fund contact. I think random audits will uncover people who have unknowingly not followed best practices, and therefore hope that the bar will be merciful for carelessness that does not result in actual harm, and instead of suspending or disbaring such attorneys will just impose educational requirements or account monitoring or similar measures to correct, and not punish lawyers for not being accountants. I do not believe that random audits will deter intentional misconduct, because I think attorneys who steal probably believe they are immune from discovery anyway. But I think random audits might uncover some such criminals, perhaps early enough for them to make restitution, and also perhaps prevent larger losses.
19. Although I recognize that some of our colleagues commit dishonest acts and some may need assistance with understanding the basic principles of trust accounts, my concern is that a random audit could result in disciplinary proceedings against any Nevada attorney whose audits turn up with any problems (i.e., anything less than a 100% "clean" audit). Additionally, the substantial expense of undergoing an audit would pose an undue financial hardship on solo attorneys like myself who practice in the ADR field and earn money sporadically (i.e., only when we are specifically retained on a case). To alleviate these concerns, I might be supportive of the BOG's proposal IF: (1) the SBN defrays some or all of the costs associated with the audit (perhaps by having the audited attorney submit documentation to the SBN for examination in lieu of requiring the attorney to pay \$\$\$ for a compelled audit if the attorney so chooses); and (2) any audits that turn up potential problems would result in constructive feedback/guidance to the attorney in a report that outlines the problematic issue(s) and enables the attorneys to take corrective measures to remedy their trust account problems instead of automatic referral to bar counsel to initiate disciplinary proceedings. In short: the primary function of an audit should be to educate the attorney at no additional cost to the attorney to prevent any problems and provide a "safe harbor" against any disciplinary proceedings by bar counsel stemming solely from any red flags that arise from the audit of that attorney's trust account, even if the "safe harbor" is limited to a specified time period (perhaps 60 days from the date that the SBN informs the attorney of any problems with their trust account).
20. I think this would be a good policy and practice and would educate deter and prevent some issues. I think it should be done on site. Many bar members have trust account problems when also engaged in excessive substance use. A practice starts falling apart during long term active addiction. If on site the office organizational structure would also be somewhat on display and errors caught and addressed as well as allowing a duty to report if there are objective signs of active addiction, along with missing money, office delinquent on handling things, etc.
21. As in house counsel who does not handle client funds, these concerns are more hypothetical and aspirational than personal. I would like to protect the image of the profession, however, by taking steps to detect and correct problems on an early basis.

22. Thank you for looking into this.
23. I believe a random trust account audit program would be good for the practice of law in Nevada.
24. I am Mark Parker and I am exempt from the audit requirement because I do not have an IOLTA account in the State of Nevada. However, I have been part of the MT disciplinary system and have recently been involved with helping numerous solo attorneys sort out horrendously kept trust accounts. In representing attorneys in family law and other matters, some criminal, I have seen over and over again the problems of a solo practitioner and their trust accounts. Commonly, theft, neglect, etc are so far more common than I would have suspected, that I have given some thought to proposing a rule that all trust accounts must have at least two attorney trustees, or proposing a rule doing away with attorney trust accounts all together. I hate to say it, but I would concentrate on solo and small firms. It may seem horribly unfair but it's a reality. I would also not announce an audit. A trust account needs to be ready for an audit any day at any time. I say this as an attorney who has represented many attorneys who have gotten into trust account problems and seen many that are only reconcilable by the passing of various statutes of limitations. I am not talking about drunks, addicts and thieves in all instances, I will necessarily have to take to the grave confidential and privileged knowledge of many acts of malfeasance which were handled in the nick of time. So, I am all for it. I am tired of contributing to MT's Fund for Client Protection. MDP
25. There are too many client trust account problems and they become apparent too late to avoid damages to clients and other innocent victims. This is a good idea.
26. Our managing partner, myself and an accounts receivable manager have access to the IOLTA account. In addition our CPA has a portal to the account and is expected to randomly audit and balance the account. Nevertheless, in light of the recent large defalcation by Mr. Graham to assure the public that the BAR is performing its role in protecting the public's interest a mandatory random audit program is needed. Let us experiment with a two year trial and obtain some data regarding costs to the Bar and individual law firms. We could then make educated choices as to a more permanent program.
27. This is a wonderful idea, given the amount of bad trust account practices and outright theft that has been occurring here in Nevada. I would suggest that 2% is far too low to actually catch problem attorneys, or deter people from stealing. We are talking a 1 in 50 shot that you are audited - that's good enough odds for a crooked attorney to ignore and steal. I would suggest the annual audit encompass 7.5% - 10% of attorneys who would maintain trust accounts. Otherwise, this is well intentioned but will miss the mark.
28. I think this is a phenomenal idea. I run into disgruntled clients of other lawyers regularly, many times it is about money. We are a self-governing profession, and the public in general hates us. Thus, anything that can be done to strengthen public trust of our industry is of the utmost importance. Equally important is that lawyers follow the rules. A less important effect I think this program would have, though, still important, is that lawyers may have a chance at detecting errors earlier, thus reducing the risk to clients of potential financial losses. The bad lawyers misusing money will likely not be deterred much, but anyone thinking of misusing client funds in trust would very likely think twice before making that decision. I also think it would be a wonderful idea if a lawyer or law firm could request a confidential audit by the Bar on their own, so long as the Bar promised to refrain from disciplinary actions when detected errors are innocent and can be easily remedied without harm to a client or clients.
29. This needs to be done. I have sat on discipline panels of lawyers who wrongfully use the trust like a piggy bank. They commingle trust money with their general accounts.
30. While I truly believe that the small % of attorneys who deliberately abuse their trust accounts might not be deterred by ANYTHING, random audits have both a deterrent effect and an educational effect on the majority of attorneys.
31. I am an Iowa licensed lawyer, and practiced many years there. IA Bar has a random audit program, and I had my trust account audited twice by unannounced, in person audits (no issues found either time). I am 100% in support of a similar program in every state! I believe the possibility of an unannounced audit drives

	<p>compliance. I also hold a BA in accounting, and have some background in auditing. On site, unannounced audits are the best for finding problems, avoiding misrepresentations to the auditor, and provide the most incentive to comply with trust account standards. This would be a program that will improve the practice of law and reduce trust account errors and thefts.</p>
32.	<p>I handle no client money, and so presumably I would not be subject to audit, but I think the idea is a good one to encourage compliance with requirements relating to trust accounts and deter potential misconduct.</p>
33.	<p>As a general proposition, I think that random audits are probably a good idea. My concerns primarily relate to how it would be conducted, e.g., how far back would it go, would we get a checklist in advance, is this an audit in the sense of GAAP, who conducts the audit and do they have any experience with law firms, etc. These issues all go to how much time it will take and the burden on smaller firms. I am also concerned about what is done with the results. Certainly misappropriation or intentional bad acts would have to be reported. I do not know that random audits would deter bad acts because my sense is that attorneys who want to commit them will do it anyway, meaning, if they are in a situation where they would intentionally loot an account, a random audit will not stop that. Beyond that, what would be the standard of reporting? I do not think that minor infractions or at worst some degree of sloppy bookkeeping is necessarily worthy of a referral to the Bar. My point here is not that these should be overlooked, but we should have some criteria for determining what is to be reported.</p>
34.	<p>The program may or may not deter misappropriation but I believe having it may alleviate public concern about it in light of recent events, and it sends a signal that that we take self-regulation seriously.</p>
35.	<p>I do think the audits are needed to some degree in every state in the US. It is somewhat a deterrence and I do not believe it is beneficial to alert the attorney/firm of what will be audited or reviewed. If they get the alert then they will only fix the problem in the short term because an audit is coming. Select the audit and select the specific area and documents to be reviewed and during and after the audit is when the attorney/firm being audited should be made aware of the issues if any exist. Depending on how egregious and how serious (in accordance with applicable statutes, laws) then and only then should the report be made to the State Bar of Nevada.</p>
36.	<p>I hadn't thought about the subject of random trust account audits before, but appreciate the Bar is taking steps to assist lawyers with compliance and to protect clients.</p>
37.	<p>Unannounced random audits will spur lawyers to keep an eye on their trust account. Using the program to inflict bar punishment if no funds are missing will be counter productive at least for the first audit and follow up on how to keep your trust account in proper form. These audits should be done at least once a year.</p>
38.	<p>I think it is a good idea, and I appreciate SBN being proactive on this point.</p>
39.	<p>Avoiding the miss use of trust funds is the most important obligation an attorney has and random audits would be a big help and deterrence.</p>
40.	<p>Overall, great idea in the step of self regulating our profession.</p>
41.	<p>I am semi-retired. I do pro bono work for Neglect and Abuse cases. I accept appointments for the Mandatory Arbitration Program in Clark County. I keep an IOLTA account for the arbitration cases. I have no employees. Therefore, it is extremely important to me to know that my accounting practices are acceptable. My answers to this survey are based on my limited practice. Having said that, I believe there is abuse in client trust accounting resulting in loss of money for the law firms and the clients. Therefore, I think this a very important issue. For all the reasons I mention, however, I think the program is too ambitious. You won't identify deliberate wrongdoing. You may, however, correct inadvertent errors, which is equally important. Glad it's your job, not mine, to resolve the legitimate concerns raised.</p>
42.	<p>I like the idea in general. On the issue of payment, I presume the bar will pay for the audit (and that the bar's auditor will be paid by our dues rather than forcing the attorney to pay for the bar's auditor as well as any professional help retained by the audited attorney. That strikes me as fair.</p>
43.	<p>On the whole, probably a good idea</p>

44. I have 1 client only so I'm an open book I'm fine with being audited. What I don't like are lawyers who steal from clients if the audits reduce this I'm all for it. Bad lawyers need to be weeded out. I don't have sympathy for addictions as an excuse to steal. NEVER steal from clients.
45. As a lawyer, I would want to have advance notice and time to get ready, but unfortunately, if the point is to deter misconduct, the most effective protocol would be to NOT provide advance notice and time to get ready. The same delusion that pushes lawyers to "borrow" money from their trust fund will tell them that "if I am ever audited, I can always straighten the trust fund out before the auditor gets here". Rather than advance notice, there should be an opportunity to straighten out honest mistakes AFTER the audit begins. Good, honest lawyers shouldn't get into trouble because they have done something sloppy. The point should be to penalize bad actors, not to penalize less than perfect accounting. I would hate to see this turn into some kind of tax on lawyers and a windfall for accountants/trust fund service providers.
46. Random audits of trust accounts is important for the integrity of the profession. The legal profession is self regulating to protect the public and a very important aspect of protecting the public is to assure safe keeping of funds. The stories that hurt the legal profession are the one's heard often that an attorney used his clients funds. Several states already audit trust accounts so there is no reason why Nevada should not adopt random audits. It seems those attorneys who are against random audits should be the first one's investigated because why should any attorney that operates properly be fearful of a random audit. All attorney in Nevada should welcome the adoption of random audit.
47. I like the idea-- more for attorneys to make sure there Trust is balanced. We hired a staff member from our CPA firm to reconcile our trust a few years back and it was a good thing to do. I think this will make more attorneys pay attention to their trust account.
48. A random trust account audit program is an excellent idea and should be adopted immediately.
49. I think it is a good idea.

OPPOSITION COMMENTS

1. I'm adamantly opposed to random audits. We don't need to turn the state bar into another IRS. We have enough meddling into our law practice as is.
2. I think having the specter of an audit might help deter some bad practices. In the end, though, just like any law, rule, or regulation, an audit like this burdens everyone else to address the few who do wrong. In my view, the Bar and other CLE sources provide ample educational opportunities about trust accounts. Having an audit might deter some, but it's not going to deter the most egregious offenders who will simply hope they're not in the 2%. As a solo practitioner, having to do an audit like this could significantly impact my business because my time is limited. I think rather than do an audit the Bar could provide ongoing education and opportunity for a consultation or volunteer audit to make sure we're doing things correctly. We already have so many rules to try to comply with and money to spend on doing so that this would be a great additional burden for those of us who are following the rules, even if it only happened every 5 years.
3. I would strongly oppose random audits. If a lawyer is going to steal funds from his/her trust account, then the lawyer is a crook and it does not matter if there is an audit program in place or not. The majority of attorneys who are honest will now have to suffer through the wasted time and expense of an audit because of a few dishonest attorneys. Rather, I would like to see offering CLE programs to help attorneys if they needed the help. Also, how about having a contact person that attorneys that need help could go to for assistance and advice in setting up and/or maintaining their trust account. I also see that this will cause bar dues to increase to cover the cost of this new program. Finally, it seems that when I read the punishment for attorneys in the discipline section of Nevada Lawyer, the punishments seems to be light compared with the conduct. Harsher penalties for what amounts to criminal actions, such as disbarment, might be a better deterrent than the threat of a random audit. Lets not make the majority of attorneys who are working hard

to have a law practice suffer for the actions of a few bad attorneys. Thank you for considering my comments.

4. If the Bar is looking to prevent misappropriation, it may want to consider a larger sample size. Those intent on bad acts may choose to play the odds. The idea of random audits may get more traction if lawyers know that only egregious errors will be reported and/or disciplined. If the idea is to catch and correct minor errors before they become bigger problems, it seems prudent to have clear guidelines in place of what must be reported (maybe everything), what must be disciplined, and what can be corrected without discipline, and to let attorneys know what those guidelines are from the start.
5. Audits should only be conducted on practices which have had specific bar complaints about misappropriation of client funds and when the attorney or firm has had drug, alcohol, bankruptcy, bad check or other red flag events
6. I don't think all practitioners/firms with Trust Account should be subject to audit. I think there should be a minimum number of transactions involving the practitioners Trust Account during the preceding twelve months, say ten or more transactions AND the amount of funds involved be over \$50,000; getting bogged down with accounts that either have not been active the previous year or there have been only 2 or 3 transactions of less than \$50,000 is a waste of time and money. I also think it is very disruptive, just like an IRS audit to the lawyer or firm being audited; if no significant wrongs are discovered, there should be no charge. Personally I don't think we need a random audit, clients can make a complaint if they have some kind of proof that the lawyer or someone who works for a lawyer, has taken money out of the trust account that is not earned in fees.
7. While a random audit can help deter and assist in disclosing trust account violations, which would not be revealed under current practice of IOLTA bank reporting on overdrafts and client grievances, the number and proportion of audit errors, misuse of client funds and disciplinary complaints over attorney trust accounting must be taken into account for cost efficiency. Also consider the impact on firm operations - how disruptive is the process, especially for small or solo firms. May also want to consider increased punishment for trust accounting misappropriations. For example, in New Jersey, where I am also admitted, intentional trust account violations result in disbarment. Increased punishment may serve the same purpose without added cost or process. Who pays for the audit? - cost to the audited attorney/firm or added SBA dues?
8. I worry that the fear of an audit, with whatever time and financial costs come with it, would deter qualified attorneys, especially young lawyers, from opening their own firms and providing that additional layer of consumer choice that benefits clients and potential clients. Even a moderately chilling effect on new law practices starting up could have a significant effect on lawyers getting priced out of the market for low and middle income people, which would serve as a disservice to the public at large more significant than the benefit realized from whatever decrease in trust account misappropriation is deterred by the audit program.
9. I belong to a national firm with multiple layers of accounting procedures and protections in place, with both in-house and outside accountants. There is no need for an audit of a firm like mine—we perform our own audits. Audits should be limited, if at all, to those firms without such protections, firms in which local control of funds is a concern.
10. It seems to punish all for the acts of a few. Moreover, our bar dues are some of the highest already. The Bar gets notices from banks when checks bounce, which is good enough.
11. Stupid idea - but not as stupid as the effort to adopt Rule 8.4[g]. Just another device for OBC to harass lawyers.
12. A random audit is the same as a random road side stop of a car, unless a problem or exigent circumstances exists it should not be done except in extreme emergencies.
13. I think it is each attorney's responsibility who maintains a trust account to have knowledge about what they need to do to be in compliance with ethical and legal standards. I believe if someone is going to steal or harm their clients they will do so regardless of the slight potential for an audit. Furthermore, I think the type of practice, the amount of money held on behalf of clients, and past disciplinary history would be a better

barometer for people with the highest risk of misappropriation. I think mandatory educational requirements would go farther than the audit program, so that people have the tools and knowledge to run their accounts correctly.

14. It is another harassment tool from State Bar of Nevada who is already very intrusive in many matters. Most of the disciplinary/IOLTA issues are directed against small firms/solo practitioners while the large firms are not even touched. Why state bar arbitrarily subpoenas IOLTA record without even informing the concerned attorneys? This is contrary to all legal practices otherwise employed in the State of Nevada. A subpoena has to be communicated to all the parties concerned.
15. I would consider this idea to force an egregious breach of attorney client privilege. My practice is self-regulating in that Trust account information for a given client is provided, to that client with account records and client-specific banking documentation on a monthly basis.
16. Another burden on an otherwise burdened profession
17. Unless you get complaints, what is the point.
18. It is my humble opinion that the persons auditing a trust account have inadequate training and or experience to conduct an audit. I have chosen in the past to audit my practice. I even chose to refund money and they characterized it as comingling funds. It was instead a refund. They put me through an extensive audit for no reason. They did not have an appropriate level of expertise or experience to know the difference. It was not an appropriate use of resources. I refunded a total of \$5000.00 dollars and was put through an extensive review of my trust account for refunding \$5000.00. How in the world can refunding \$5000.00 be considered in ethical. What can be considered unethical is keeping the \$5000.00. It only happened once but I was forced to submit 6 months of trust account records for no reason primarily because the people performing the audit were not qualified to perform an audit. Thank you for your consideration.
19. such a waste of time and resources to give some auditor work. Spend our dues on useful actions please
20. If you only do 2% and do not confine it to the most likely problem practitioners like those who handle estate planning and probate especially in smaller firms, then it's a joke and waste of time. If you audit me when I am not in active attorney practice and only have a few bucks in trust acct from Arbitration deposits, that would be ludicrous.
21. Seems like an unnecessary invasion of client privacy and creating an unnecessary burden on law firms, especially smaller sized ones.
22. The current culture of fear created by the OBC would only be heightened by this program. I believe a requirement to post a bond if you hold client funds would do much more to protect the public.
23. There is absolutely no discussion of how the audits will be paid for-higher dues? the audited firm? It feels as if this is a way for the State Bar to identify and prosecute attorneys for technical/harmless accounting errors, while doing nothing to deter intentional bad acts.
24. Seems like Rob Graham and a small number of bad actors creating disproportionate obligations of time, resources and ultimately, money, upon the rest of the Bar.
25. In my view, those who would intentionally misuse their trust account will not be deterred by a two percent chance of being audited. Their intentional misuse of client trust accounts shows they are not risk averse. Further, I'm concerned that the program will evolve--as these things often do--into something that punishes people for minor oversights and honest mistakes, while the more devious are able to avoid detection via loopholes and technicalities.
26. Every member of the bar is an officer of the court and it is their independent duty to meet their obligations to their clients, courts and fellow attorneys. There is no need to conduct babysitting in the form of an audit, those that fail to meet their duties live with the consequences. Moreover, audit are subjective and if one attorney/firm is wrongly accused by such an audit that is unacceptable.
27. Part time practice. I don't have or need a trust account

28. Although in theory the audit seems like a good idea, I think that the primary concern is for attorneys who are intentionally misoperating or misappropriating funds, and they may be fraudulent enough to cover up their activity. On the otherhand, those of us who have banking apps, such as lawpay that allow us to deposit funds appropriately and law practice management software to keep track of each clients individual software will be able to show that we have good practices, but how much of a disruption to our time will be involved. I already work seventy plus hours a week as a sole practitioner, and am concerned how an audit may affect the business of similar attorneys if the audit takes away from very important time in the attorneys' schedules. I do love the idea of guidelines for establishing and maintaining a trust account and CLE seminars. I have taken many on this subject, and I think full knowledge for anyone with access to a trust account is very important.
29. The State Bar needs to focus on making life easier for bar members, not harder. Just like the increase to CLE requirements, random audits are being considered without any proof of effectiveness or consideration of expense to the bar member.
30. Properly maintaining a trust account is an ethical duty just like the other ethical duties under the Rules of Professional Conduct. Unless Nevada attorneys are routinely violating their duties in connection with their trust accounts there is no need to go to the express of creating an auditing program for this one ethical duty. And if Nevada attorneys are in fact routinely violating this duty I would suggest the bar has a much bigger issue to address regarding the selection of its membership. If the bar chooses to audit this one attorney function then it seems reasonable for it to do a full audit of an attorney's entire practice, including a review of all work performed for a client, to assure compliance with all ethical obligations. After all, an attorney's other ethical obligations are no less important than the obligation to properly maintain a trust account. The bar has rules and practices in place to deter the misappropriation of client funds. An additional audit program is an unnecessary expenditure of bar funds.
31. Bad and poorly conceived idea. If goal is to protect public from theft by counsel, trust accounts should be bonded or funds escrowed. In private practice, where I handle cash for insured institutional clients, this is common practice. Audits will not deter criminal conduct.
32. I think this proposed audit program is a waste of time. One either complies or doesn't. This is just another layer of hassle and regulation from an ever-expanding State Bar. I think licensing fees are just another way to take our money. The practice of my profession is a right, not a privilege. My clients are extremely satisfied with my performance. I've always safeguarded their monies. It is irritating to have the State Bar constantly looking over my shoulder. There will always be "bad" or "dishonest" attorneys. Caveat Emptor.
33. I am concerned with the time and losses associated with dealing with a random audit. The Bar already governs the trust accounts and is made aware of any overdraw on the accounts. Any trust account problems should already be on the Bar radar whether it is via an overdraw notice or in the alternative a client grievance. I don't think the random audit would change any of those issues with those that have problems. The Bar should not spend money trying to find ways to make the practice of law more difficult and time consuming. If you are looking for ways to help with trust accounts then lets spend the money educating on trust account practices.
34. Not needed. Total extra burden
35. I don't think that this will have any deterrent effect on those who are mishandling client funds. If the potential of disbarment and criminal charges doesn't stop people, a 2% chance of getting audited definitely won't. Instead it will cause unnecessary time, effort and expense on those firms who are already following the rules. I think it is also an invasion of client privacy and may violate confidentiality agreements that are often signed as part of settlements.
36. I think this is a waste of time. Those who are going to purposely perform bad acts will continue to do so, as the risk of audit is low and bad acts are often driven by outside forces/problems (gambling, substance abuse). Better that the State Bar focuses on attorneys who appear to be struggling (as evidenced in their

representation of clients, interactions with peers, and interactions with the courts and administrative agencies) as those are the ones most likely to have trust account problems.

37. The selection of "random" attorneys would be my greatest concern. I would anticipate that the attorneys who have "friends" in the bar will make accommodation that others would not receive.
38. I strongly oppose this kind of unnecessary action. I believe that it opens the State Bar and its attorneys to litigation and possible liability issues, especially with regards to client confidentiality. This is a complete breach of privacy, and the purposes presented seem to be a front for snooping into lawyers' trust accounts. Where will the line be drawn? Will the the State Bar then decide that they need to audit lawyers' personal bank accounts? Why should everyone else suffer due to some people mishandling funds. Lawyers did not sign up for this when they taking their oath. We have a code of ethics and if some people choose to break those ethics, we should those who do not be forced to be under scrutiny. Private businesses do not receive grant funds and should not be subject to such audits. You're already mistrusting those who have given no reason to be mistrusted. Focus on the bad attorneys without subjecting the good ones to unnecessary, stressful, time-occupying implementation of new procedures.
39. We should only be hassled with an audit if there is a reasonable belief that we have done something improper. Everyone else should be left alone and not subject to the unwarranted hassle of an audit.
40. I think if the point of random audits is to educate attorneys, then there are much better methods to do so than by utilizing random audits. Also, the Nevada Bar is NOTORIOUS for nickel and diming attorneys. I seriously hope that a random audit would not cost the attorney anything! If you're going to charge attorneys a fee to be audited, I believe that will be very burdensome. Ugh!
41. Without substantial guidance ahead of time from the Bar regarding audit requirements and "best practices" it would seem to be possible for there to be significant differences between successful audits between auditors and firms. Additionally, the scope of the records requested should be limited in time period. If 3-4 years have passed since that client's matter has been closed and distributed, then there should be no need to audit that particular account/client.
42. ensuring the confidentiality of personal identifying information. advance notice, my industry gets a LOT of client audits and having the bar looking at our trust account at the same time a client is on site would be awkward.
43. Trust accounts are ever changing accounts, so it seem a little intrusive to do random audits, unless any minor discrepancies or minor bookkeeping errors and really considered just that and they are kept confidential and not reportable, especially if they are easily fixable or explainable, since these are not really conditions that put clients at risk. Also, there is a concern that if the auditor does not understand the nature of the particular law practice, i.e, criminal, IP, personal injury, transactional law, family law, etc., he/she will not understand the particulars of that practice and what may be an acceptable bookkeeping practice, may be considered a major issue by this inexperienced auditor. If the Bar really suspects there is an issue with trust account, then by all means, an audit may be appropriate, but I do not feel random audits are appropriate. A person doing the best they can with the resources they can afford should not have the chilling effect on his/her practice and worrying nights whether or not the I's are dotted or the T's are crossed, and then to add insult, be required to pay for the audit. Are we holding Law Firms to CPA standards. If so, then firm have to take on that additional expenses and burdens as preventative to satisfy the Bar. I am more than happy to comply and put safeguards in place that are acceptable to the Bar, but the Bar needs to provided those acceptable practices. It appears the Bar may be amenable to such and CLE on the issue based on some of the earlier survey question.
44. PRACTICES that make an audit reasonable and manageable, such as advance notice, extensions and other practices are unlikely to catch theft from trust accounts. Excluding these practices constitutes an undue burden, and even if surprise audits were permitted they would be unlikely to catch bad actors. Likely these audits are going to catch small errors from overburdened lawyers. Without a correction practice which doesn't mandate reporting to OBC for minor errors there is likely to be a substantial risk of harm and

- expense. Overall I think this is a bad idea. There are better ways to manage client security, and trust account management.
45. The biggest problem would be the involvement of an entire firm's accounting if only one lawyer from that firm is selected. For large volume firms, an audit would be EXTREMELY difficult and onerous. A lot depends on the scope of the audit, but even in civil discovery (for a legal malpractice suit, for example) I would object to an audit of the entire firm as overly broad and unduly burdensome. That part just simply doesn't make sense - an entire office can be on the hook if one attorney is randomly selected? That's also a huge incentive to limit hiring of new attorneys. Any audit program should be limited to the previous 6 months of records, which is very reasonable in scope and also ample time to detect any trust account errors or problematic practices.
46. This is a terrible idea. Terrible.
47. For a criminal law practice in semi retirement, this would simply be a waste of time.
48. State bar has a recent history of bad ideas but this is the worst by far. What a terrible, intrusive and wasteful idea. Do not implement this idea. I just read a disciplinary decision in the bar magazine about a lawyer who had like a \$29 error in his trust account. Preventing such minor issues (which, PS, were automatically reported by the bank anyway) does nothing to protect the public from the kind of multi-million dollar disasters that the bar should be focused on.
49. This audit is completely absurd and would be fought on every ground possible. For a firm that conducts business above board and balances its trust account each and every year after review by a Certified Public Accountant and Tax Consultant, this is just another example of overreach by the Government and a Governing Body that intrudes upon the Constitutional Rights of attorneys and the firm's clients. This is a horrible idea. Period.
50. The money spent on this program would be better spent promptly responding to bar complaints regarding attorney misconduct. For example, in the Rob Graham case one of his clients contacted me months before the bar shut Graham down complaining about him not remitting funds they were due. They said they had contacted the bar counsel with their concerns. Bar counsel would not tell them if Graham responded to their inquiries or if anything was being done. I offered to represent the client and file a petition with the court to get the funds released. The potential client wanted to wait to see if the bar would do anything. The facts given to me by the client evidenced an obvious problem with Graham. In short, the bar should spend its resources and our dues actively pursuing known wrongdoing rather than going on a with hunt against attorneys who have no complaints against them. I served on the bar disciplinary panel for 10 years. There are plenty of known offenders who are not dealt with promptly. Focus on those people before spending time on attorneys who haven't harmed anyone.
51. I have been a diligent, honest, trustworthy lawyer for over 40 years. Although I completely understand the desire to monitor randomly selected trust accounts to supposedly deter criminals such as Robert Graham from stealing client funds, this puts a huge burden on the vast majority of ethical, law-abiding lawyers in our legal community. I also think it violates the rights of my clients to privacy & confidentiality, plus infringes on my right to privacy. This random audit WILL NOT deter the corrupt lawyers who intend to steal client trust funds in any event. My sad experience is those types of corrupt, dishonest lawyers are not concerned about complying with State Bar Rules or ethical obligations to the Bar or clients. They are going to steal those funds regardless of random audits. Robert Graham is a classic example. He was just a thief at the bottom of his rotten soul. No random audits would have deterred his thefts nor the many others in Bar discipline regularly reported in the Advance Sheets.
52. Just concerned about one lawyer at a firm being punished for other lawyers errors if the one lawyer doesn't control that aspect of the firm or have access (or knowledge of how to access) the account
53. This comes across as a witch hunt. With only 2% of attorneys being selected at random, it seems that there is very little chance of catching the attorneys who are actually violating their client trust accounts. The burden

on the rest of us does not seem to match whatever benefits may come from this program. There is also no information regarding the cost of the program or if the attorney being audited will incur any expenses. I am also not comfortable disclosing confidential client information.

54. I do not maintain a trust account because I do not handle client funds. However I have been a NV atty for a long time and have worked at firms with trust accounts. I am apposed to adding additional layers of rules and supervision over attorneys that will only add to the cost of practicing law. Lawyers are officers of the court. We all have a responsibility to act in the best interests of our clients. All lawyers know they cannot use client funds. NV lawyers know about the trust account requirements of this bar and if they don't, they have a duty to find out. There is ample explanation of trust account rules. These audits are insulting to attorneys, costly and inconvenient. You cannot "fix" an attorney so unethical as to steal client funds by a random audit. There are procedures in place for people to report theft of their money by an attorney. Not all attorneys are unethical, and the vast majority understand their responsibilities. It is unfair to randomly punish all attorneys with random audits. And random audits will not turn a corrupt attorney into a good one. Please give officers of the court the respect they are do. These are the kinds of red tapes and indignities that take the joy out of practicing law. Let's use the money this would cost to sponsor activities and/or classes at Boyd law school about what it means to be a good lawyer- Maybe some play acting situations like where the student pretends he's the client and that his lawyer stole his money so he can't pay his rent, etc.
55. Granting an auditor access to my billing platform is a huge issue. In order to do an audit, the auditor would have access to my billing software. This would allow him/her to modify trust account information, client information or input. If the auditor is not trained in my specific billing software (1) he/she will not be able to accurately conduct an audit and (2) the auditor could easily screw something up by accidentally misclicking on a setting, function or input that I wouldn't know has been tampered with. There is no way I would feel remotely comfortable giving someone access to my billing software who isn't trained in how to use the program. It took us probably 20 hours to get trained in the software. How is the bar going to deal with that? I strongly recommend not doing audits of trust accounts for all the headaches and issues it will cause.
56. Another unwarranted interference by the Bar in the practice. The Bar has not demonstrated a real need for this interference.
57. This is a burdensome and unnecessary idea. Those who are going to commit fraud with their trust accounts will do it anyway, as they are in a desperate situation and are willing to place their careers and licenses on the line. This causes only stress and more requirements for those running their own business. Please do not implement this practice.
58. I have concerns about how intrusive and time consuming the process would be. Auditors by their nature are anal retentive and want documents for everything. The problem arises when large amounts of time are going to have to be spent dredging up old documents. If an auditor merely wants to see bank records and statements of account, that would not be very intrusive. If they want anything more, and they always do, then it would be a very expensive process and very objectionable.
59. Given the announced very small sampling of IOLTA accounts, this seems to be addressing a problem that doesn't exist, or in the alternative, to be a rather ineffective curb to dishonest activities by a very small minority of attorneys.
60. This seems like something that the bar will be punishing attorneys for small errors. We are attorneys, not accountants. Audits should be done only when an attorney bounces a trust check or a client reports that their money has not been turned over and there is not a valid reason by the attorney for the hold up in turning over trust funds. Attorneys should have some rights too.
61. Misuse of the trust account is one of the most common form of attorney misconduct. High volume personal injury practices (processing settlement checks) and criminal defense attorneys (collecting client monies to hold) are the primary situations where mistakes occur. Misuse of trust funds usually is because of a non-legal reason, like a divorce, substance abuse, shortage of operating capital, etc. Audits will cost money and time and will have little influence on the misusers of funds as the events occur usually as a last resort. A better

practice is to self report amounts received and disbursed out of trust annually -which is also required for tax return purposes. A person trained in trust fund management can then randomly audit the filings or use a threshold amount to trigger further inquiry. A letter then could be sent advising of the concerns and requesting an explanation before an audit is required. This is more cost effective and professional.

62. Not in favor of random audits
63. I am not in favor of any random audit program of trust accounts. Only if a client complaint is filed should a lawyer or firm then be given the option to straighten their account before and during the audit with the help of the auditor prior to any discipline of any kind.
64. The NV Bar already requires firms and attorneys to jump through enough hoops to remain active. Unless there is some compelling reason for this which he haven't yet seen, I would suggest such measures not be implemented.
65. Needless and unnecessary.
66. Firms I've been associated with in the past 30 plus years have maintained trust accounts without any any incident or trust account problem. I believe that imposition of a mandatory random trust account audit program would be a major intrusion and imposition on the vast majority of attorneys and firms who are already taking proactive steps to maintain their trust accounts in full compliance with established guidelines. My observations over the years suggest that serious trust account problems stem primarily from ethical and moral lapses. A random trust account audit program will not remedy moral or ethical lapses; but, it will impose a material additional burden on the vast majority of attorneys and firms who take their ethical and moral obligations seriously, and work conscientiously to maintain their trust accounts (and reputations) appropriately.
66. This is a horrible idea and will do nothing but cause problems for well meaning practitioners, especially if Mr. hunterton is really doing this kind of thing just to make an example of others. You overlook an important aspect of this which is educating the public about trusts—not just attorneys. If you are thinking about wasting money on this you might want to take a look at where the bar is spending its budget. Seems far more egregious than most of what you will find in trust accounts. Legally, I think it would be an ethical violation to be having the bar poke around in client files and accounts.
67. This is another unnecessary imposition on attorneys for no good reason.
68. The State Bar does not have the expertise to investigate or prosecute bad lawyers. How do they have the resources to audit accounts? The State Bar is totally political with an executive director that is not a lawyer. If the audits are random they will be a waist of time as most lawyers are accurate in their accounting. Instead target those that have had problems with their trust accounts.
69. This appears to be waste of my time and will cost me money having to deal with it. Trust account best practice: keep track of the funds. Done. Someone who is going to steal could easily change around the books in order to steal. Unless you are going to give classes on every accounting platform such as quickbooks I don't understand what a class on best practices would cover. It would be 30 seconds long. An attorney who owns a law firm should know better without all of these extra rules and regulations.
70. Random trust audits is nothing more than a "feel good" and "knee jerk response" to the Robert Graham situation. It would not have prevented Robert Graham. It will only tie State Bar resources. The State Bar received information on Robert Graham but did not act or acted very slowly. Complaints should be investigated instead of random audits.
71. This is an extreme hardship on every attorney. It will substantially impact our business if audited, and there is already a way to address trust account issues if the client believes there is an issue by contacting the state bar.
72. Complete waste of time and money.

73. I think it is sad that a few bad apples have spoiled the batch, as they say. Trust accounts should be just that--trusted. Lawyers having to deal with an "audit" seems to me to be a huge burden and unfair distraction from their focus on revenue sources ...ie. helping clients.
74. This issue greatly concerns me because the Bar is already well known for being draconian in punishing attorneys for even minor accounting infractions to the point where attorneys are reportedly scared to report to the bar if they make a mistake. Doing a random audit of trust accounts would 1) create a huge burden on the attorney being randomly audited due the time it would take to respond and comply, 2) create an unnecessary financial burden for the attorney because it is assumed that the cost would be born by the attorney being audited, 3) give the Bar an even bigger stick to impose unfair punishments on attorneys for what are probably minor infractions. I think the benefits would severely outweigh the burdens.
75. I get that we are all concerned/embarassed about what happened with Mr. Graham, but it's not really fair to force all of us to take time away from our practices and client matters to deal with an audit. What's next random drug tests? Mental evaluations?
78. Strongly opposed for privacy reasons and hope the Bd does not ram this through if the consensus is that we don't want this.
79. I am concerned audits would be used to target specific firms due to relationships between State Bar employees and law firms.
80. Intentional acts are not stopped by audits because once someone makes the decision to violate the trust account they already accept the possibility of being caught. The real danger is someone who has an accounting or booking error being targeted under the rules as someone who intentionally miss-handled funds.
81. My trust account is administered by a professional and is checked by my CPA several times a year. I have no need for additional education or audits or so forth. There may be some lawyers who would benefit. Any new program should be tailored for those who need it. Also, my trust account is limited to clients in California. I do not handle client money in Nevada.
82. I think attorneys who are going to misappropriate client funds will do so regardless of a random audit program.
83. A random audit should be justified and required of lawyers already disciplined for trust fund or other serious financial, violations but not implemented wholesale across the board. To subject someone who has never been disciplined to a random audit and to make the audited person pay for the expense is not only unfair, it is unwarranted. It is symptomatic of a gross overreaction to place the burden on all for sake of a public relations ploy, i.e., appearing to respond to the egregious sins of lawyers disciplined for trust account problems that have recently made the news in Clark County. The bar already has a mechanism in place for trust account irregularities, e.g., an overdrawn account, returned check from the trust account. The IOLTA Institution is mandated to report the Irregularity to the bar. This at the very minimum should be a possible trigger for a 'random audit.' Otherwise, what is to keep the bar from going after less favored lawyers and non-bar insiders? And what is the anticipated cost of this that will be borne by lawyers? Clearly, the Nevada Bar has become more and more adversarial to its members -- without justification.
84. There is a mistrust undercurrent of bar counsel and staff among bar members. For example, some feel the bar is more concerned with prosecuting bar members than assisting bar members in their practice. Some opine that bar members are looked at with distrust by bar counsel and staff instead of as officers of the court. Others feel that public/client complaints are given more weight than bar members' explanation. Possibly causing some to conclude that random trust account audits could be seen as a way to punish or harass bar members.
85. limited Bar resources should be devoted to existing claims and investigations. Active attorneys with full case loads and no existing bar issues don't need added stress of having to deal with random audits and should not have to spend the time required to respond.

86. This proposal is a direct result of the Rob Graham situation and is a classic knee-jerk reaction to try and solve an issue and for good PR. While the Rob Graham case is egregious due to the amounts stolen it does not require the entire practice of law to be turned on its head. To impose an audit burden on lawyers (especially solos) in the hope of catching or preventing the next Rob Graham is absurd. The idea that a random audit is going to deter intentional theft of client funds is akin to the notion that the death penalty versus life imprisonment somehow prevents people from committing murder. A solo attorneys practice will be disrupted to an extreme degree while an audit is undergoing as an attorney will have to focus on that to ensure it is done correctly. Such a burden will not impact a large firm as they can simply dedicate a person to such an endeavor. If bar counsel's recent speech that the increase in ethical violations (especially trust issues) is due to too many lawyers in the practice and the bad economy (i.e. greed), then perhaps a revision of lowering the bar standards is a better approach.
87. Random audits presupposes that all lawyers need to be monitored. Attorneys who have not had any financial complaints would be subjected to an audit, disrupting business for no reason. I would be subjected to an investigation for no reason, treated as a criminal with no basis or justification. Random audits would violate attorney client privilege. There are 4th amendment considerations where a private business's records would be searched possibly resulting in criminal or professional sanctions with no probable cause.
88. It seems it would be a lot of work and disruptive for any practice but a small practice in particular where the attorneys are more hands on with respect to running the office and would have to take the time to facilitate the audit. While I can't gauge the importance of audits because I don't see the issues that may come before the bar in relation thereto, I feel that unless there is a reason to audit an account an audit should not be taken. It's not only disruptive but intrusive and as professionals we should be regarded as being able to manage our trust accounts without the possibility of being randomly audited. I believe it takes bar oversight a little too far.
89. Currently the State Bar does not enjoy a reputation for objectively handling allegations of misconduct. I would be concerned about the bias, prejudice and nepotism in the Bar Office as I have seen it demonstrated over the past decade. Thus, I do not want the Bar to have the ability to "randomly" select a firm and have the authority to audit trust accounts where the goal is not to address a known problem but to conduct a fishing expedition.
90. This is an awful idea
91. As designed this program is an absolute *CATASTROPHE*. You're going to tell lawyers that for 5 years they won't be audited? Do you think that will have an impact on the decision-making process of those inclined to cheat? On its face, a random selection audit isn't a bad idea, it's probably even a good idea, but the implementation you're discussing is absolutely unhelpful, perhaps even detrimental. If you give people a notice period, then how is it going to serve a deterrent function? It'll just cause people to get their house in order before the audit happens! At a very basic level, this isn't a bad idea, but you should get input from auditors about how to effectively audit. How effective is drug testing if you warn people 6 weeks out you're going to test them?
92. I believe a random audit program is unnecessary and a waste of bar do funds. I also think it is an overage by the bar to try to access Financial records absent a complaint or some reason to think there is an issue. I am strongly opposed to this kind of interruption to my practice. I feel very strongly that is unnecessary and would be a waste of both of my time and my bar dues.
93. The very idea that you are attempting to subject attorney's to a search without justification is offensive. The level of trust account malfeasance is so infinitesimally small that it does not justify the actions you are attempting to introduce. I cannot believe these are the things the Board of Governors comes up with.
94. This idea is punitive against all the attorneys who are honest and do our best to follow the law. I am strongly against punishing us all just because a few don't follow the law. A little trust goes a long way, but this idea shows how distrustful the Bar is of attorneys. Treat us like children, get more of us acting like children. Offer classes and be respectful of our profession.

95. This is absolutely ridiculous. Don't punish the rest of us because the state bar permitted obvious fraud to continue for decades. RESPOND TO COMPLAINTS in a timely manner and you would have no public perception problem.
96. random audits WILL NOT HELP and will only ANNOY AND ANGER fellow attorneys
97. We don't need big brother. In addition to disbarment, the DA needs to prosecute those attorneys who steal money from their clients.
98. I do not believe an audit is necessary. If there is a problem with an attorneys trust account, it will become known.
99. I don't think that a random audit will deter attorneys from bad behavior. I think an attorney who has decided to misuse trust funds has already made a decision despite possible ramifications.
100. Given the current bad reputation of the Office of Bar Counsel, including serious discipline for minor issues, while being asleep at the switch for issues such as the Robert Graham fiasco, I do not trust the State Bar to implement or oversee such a program.
101. Random audits are a bad idea. We are busy and stressed enough without this.
102. This is soft tyranny of the sort Mark Levin ralls against. Several of us have kept the accounts with small amounts of our own money in them just to keep you off our backs. NOW, you're going to audit them and tell us that's wrong. We rarely get client funds and when we do, they are usually for small amounts and short periods of time. We don't cheat ANYONE! We just want you to go away and let us practice good law. When you catch someone doing something majorly wrong, then punish her or him as a deterrent. That is enough. Stop drifting towards George Orwell's 1984 one regulation at a time. Stop increasing the number of watchdogs and consequent cost of practicing through increased dues and regulation. Trump was elected for a reason, ladies and gentlemen: we want government out of our lives. Enough already!
103. We are professionals and already deal with more regulation than almost all businesses. No amount of regulation will deter all bad actors and punishing the honest for the sins of the few is over reaction.
104. This would be a highly intrusive and lead to other ethical concerns.
105. An audit sounds stupid. The magnitude of the current thefts prob could not have been detected. This appears to be a fishing expedition by the bar trolling to cause attorneys problems.
106. I believe that it would be a needless duplication of efforts. The State Bar already has access to whatever it needs and banks are mandatory reporters if there are issues. Someone who is going to mess with their trust account won't be deterred as the Bar can see it anyway. Spend our money protecting us better from frivolous client claims, instead.
107. Keep your hands out of our business. Just like the mandatory Pro-Bono reporting bullsh-t...more creeping control and interference that is/would not be needed nor welcomed. Neither serve or would serve any purpose but to give someone, somewhere more power and control, etc., etc.
108. This has never been done and the practice is intrusive and disruptive to attorney client privilege and creates an undue burden on the attorney.
109. I never had any problem with mine, other than realizing I needed to put retainers paid with a credit card into general account first and move to trust. Since I'm retired, I don't need any assistance now. thanks.
110. This is one of the most foolish and ridiculous ideas I've heard in a long time—but such is the state of the OBC under Stan Hunterton. The office is draconian and a complete joke.
111. This proposed addition to oversight is unnecessary and excessive control of the private practice of law which will add to the overhead expenses of practitioners without providing an adequate benefit. Those who abuse trust funds will continue to be appropriately sanctioned without this unnecessary and excessive regulation of our practice. Don't do it. You are making the practice of law unduly costly and burdensome. Let us practice.
112. I don't believe this will necessarily deter individual lawyers with issues (i.e. substance, debt, etc.) from engaging in small or even significant defalcations. I do, however, believe this is an excellent way to encourage firms of all sizes

to tighten and maintain better controls; and more importantly, it will lead to attorneys who would not commit a defalcation to recognize where their accounts are subject to embezzlement because of loose internal controls over access. This would protect attorneys from themselves, as they are personally responsible for the account (the theft be their own or perpetrated by others notwithstanding) and would inspire more public confidence in the profession based on the knowledge of monitoring practices and lessening of publicised thefts.

113. A random audit program is the wrong way to go. There are significant confidentiality issues with client records and client finances. These resources should instead be allocated to thoroughly investigating and enforcing bar complaints against lawyers for misappropriation of trust funds. Clients and interested 3rd parties (i.e. medical providers or other 3rd parties who may have a claim to trust funds) continue to complain to the State Bar about improper trust practices, via bar complaints. The perception among the bar (at least among smaller firms), is that the State Bar will do little to investigate a trust fund complaint unless there are 3-4+ bar complaints from multiple sources, such as clients and interested 3rd parties. More resources need to be focused on investigating these complaints - Instead of wasting resources on random, untargeted audits that will burden smaller firms and create a wide variety of confidentiality issues.
114. This could be the first step to make every firm be required to be audited. Those of us who correctly maintain our trust accounts fear more regulations coming. We don't need any more costs or aggravation.
115. Stop over regulating lawyers and start supporting them.
116. I am at a large regional firm that has no presence in Nevada, and I am the only attorney who is licensed in Nevada. I am licensed in two other states as well. If these random audits are implemented, particularly if the scope of the audit was extended to the entire firm, the mere potential for this sort of disruption would likely cause my firm's management to force me to forfeit my Nevada bar license.
117. The interruption of business practices, NV bar expenses of audits (paid by me) and predatory selection are my biggest concerns. We should be able to find more productive programs that involves and improves our community.
118. I have been working in law offices since 1975 and now semi-retired, I've seen it all, this is a real tough business to coordinate. I am quite shocked that the Bar would think that this random audit would not violate the confidentiality of the clients account, defenses and information; I cannot see a Federal Court allowing this audit, because it would clearly violate the attorney's and possibly, multiple clients 4th Am, 5th Am, 6th Am and 14th Am rights. The Bar is an "Arm" of the NV Sup. Ct., and cannot under the guise of public protection, simply seize and analyze an attorneys financial records, then use them against the attorney and maybe his clients in quasi-criminal, civil or criminal proceedings. Aside from a few sick attorney's like Barry Levinson, what evidence could you argue in Federal Ct. to justify these seizures that would prevail in the balance over the attorney's and his clients constitutionally protected property and liberty rights and rights against self-incrimination. Can you imagine if the States other professional license Boards suggested such audits, especially physicians, what would happen. I do not think this random audit was well thought out. It would require attorneys to warn their clients in writing, that nothing is confidential. The whole thing on its face violates the clients rights. Please get an opinion on this and go easy.
119. A random audit will not deter lawyers determined to take client money from the trust account. Instead it catches honest lawyers who may have some minors errors and reports them to the Nevada State Bar.
120. Horrible idea
121. I am very concerned about attorneys handling client funds. I read about client embezzelment too frequently. I find it disgusting and the worst reflection on the profession. I do not think the real problem is accounting but outright criminal activity. Audits are not going to help on this unless the auditor gets lucky. The embezzelers need to be disbarred and put in prison. I have no tolerance for this.
122. Based upon the OBC's record in the past couple of years, I'm very concerned that they will use this new tool to intimidate, harass and publicly humiliate good lawyers who make innocent and trivial mistakes, while the Rob Grahams of the world go unnoticed.

123. This is a clear knee-jerk reaction to the Bob Graham case. Please stop trying to make rules to make the Bar look like it's doing something. Let us lawyers practice law, without the threat of our offices grinding to a halt in order to comply with an audit. If you want to be proactive, track the number of complaints made upon attorneys and reach out to those practitioners who have a pattern of complaints against them.
124. Although I have known some attorneys who have had problems with their trust accounts I think this is a horrible idea.
125. This is just another attempt by the bar to intimidate solo-practitioners. The large firms would be exempt and small firms would be penalized by the bar. (Petty and vindictive)
126. Random audits have not worked worked in other industries and have not been effective in other jurisdictions. I think we need to give a serious look to when we see attorneys with substance or gambling abuse problems.
127. I have doubts that this will be used as an "educational tool" but will instead be used to punish attorneys for minor errors. I also worry about the cost of these audits. The costs should not be foisted upon the audited attorney simply because they had the misfortune to be randomly selected. At the same time, it is inappropriate to force the other members of the bar, through our already high dues, to cover that expense.
128. I've practiced over 40 years with absolutely no problems. This appears to be the backlash from a singular attorney engaging in criminal misconduct. The balance of the bar should not be burdened as a result of his misconduct. A reasonable alternative would be to allow audits upon reasonable cause to believe an impropriety has occurred.
129. It seems that the criminally-inclined will not be deterred, and those are the ones that are most egregious. For others, best practices is always good to know. Otherwise, it seems a waste of limited resources to conduct audits that may not directly affect or prevent someone absconding with client funds.
130. Let's don't carried away with this idea just because someone thinks it's trendy, or someone thinks something has to be done. For example, where did the figure 2% come from? A lesser percentage like 1/2% or even 1% could be far less intrusive, costly and wasteful of resources. Keep in mind too that our State Bar has not been a model of efficiency (think computer privacy breach as a historical example), and this does not seem like a good reason to raise bar dues unless there is too much outside pressure requiring more internal regulation. Watching out for people like Mr. Graham who act like they know everything could do a lot more to protect clients than requiring hundreds of attorneys every year to go through expensive, minimally productive audits. Another better possibility could be to require random reporting of the size of trust accounts and have larger trust accounts be more likely to be audited, or use a size of trust account ratio to number of attorneys, so that a small firm with a large trust account like Mr. Graham's would more likely draw an audit than either a small firm with a small trust account or a large firm with a trust account that is not disproportionately large. While some might not agree, also recognize realities that business client oriented firms (unless the trust accounts are disproportionately large for the number of attorneys) are less likely able to take advantage of their clients than probate and guardianship firms. Not to pick on them, but recognize that Mr. Graham might have been detected if the vulnerability of his predominant type of client were watched more closely in auditing than if some largely irrelevant focus on every individual attorney were set as the burden for required auditing percentages. Do a little bit of following the money in the size of the lawyers' trust accounts, more than following the randomness of attorneys regardless of how little money they may handle in their trust accounts. If auditing does become a requirement, please consider using a very small percentage for totally random audits (because every violation can be important and every client is important) and try to use the resources more productively on auditing larger amounts of money at risk for possible trust account problems. Don't let a Graham probate attorney persuade you that every solo and small firm lawyer is as big a risk to the profession's image as Graham's was in handling large amounts of trust funds for highly vulnerable, unsophisticated clients.
131. I really think this is unnecessary and a waste of NV State Bar resources
132. I have little faith in the confidentiality of records as the NV Bar lost a large number of Bar application records opening up an entire class of lawyers to identity theft. The loss of such client information would destroy a law firm.

133. I oppose the concept of random audit. If a trust account is overdrawn or other per se event occurs then do the audit. Until then please do not randomly consume the time of our offices. It is also likely the smallest error will result in a referral to the bar. STRONGLY OPPOSE!
134. This is a terrible and intrusive idea. Lawyers are expected to be professional. They need to act like it. Punishing all lawyers for a few bad is not the answer. Find other solutions which do not involve going through my clients information and disrupting my business. Another idea, disbar people that mess with client funds. Recently in Northern Nevada, an attorney was allowing his wife to receive gifts from his client's wills. A clear violation. Yet he only got a 1 year suspension. The problem is the Bar not going after these people, not audits. I note in private business, audits occur regularly and rarely solve anything.
135. I think the random audit program is unnecessary, an expense, and a distraction from the practice of law and will benefit no one but the accounting firms conducting the audits.
136. I am concern the indirect impact of this effort on the public will be quite negative about lawyers in general ;
137. This process seems very invasive and threatens client confidentiality. While there are unscrupolous attorneys, this would seem to be a time wasting and harassing experiecne to the 98%+ of actively attorneys who are dilligent with respect to their trust accounts. Also concerned about possible nit-picking and form over substance - just a lot of concerns about potential abuse here.
138. I am very concerned about and strongly oppose the implementation of a new auditing program. The expense and disruption to a small law firm can be significant. If an attorney is going to engage in bad acts, he or she is probably going to take the risk anyway as 2% is a very small probability that the attorney would be selected, therefore there is no deterrence. If the BOG is concerned about mismanagement of trust accounts or that attorneys do not know how to manage their IOLTA accounts, then they should require a CLE on it instead. It seems as though the auditing program while meant to educate attorneys and attempt to protect the public, in actuality serves to punish the law firm who gets randomly selected. Educating attorneys can be accomplished by mandating a CLE and the public is already protected by the Nevada State Bar which can investigate claims for mismanagement of monies.
139. I strongly disagree with the idea of implementing these audits.
140. This is simply overreach. If the bar provided a meaningful number of complaints or some other verifiable measure of need maybe it would be worthwhile but complaints are almost non existent. So I think this is simply another thing the bar staff is doing to increase their budget. It is useless and simply unnecessary and unwanted and unneeded. Government governs best when government governs least.
141. The bar should concentrate on the unethical practices of lawyers and go after those that steal from their clients, not 2 cent inconsistencies. Random Audits will do nothing for those that willfully steal from their clients.
142. Unless the bar is prepared to audit everyone every 5 years or so this program is a waste of resources. Random audits will not deter those who are going to steal just like random drug tests so not deter addicts from indulging. It might make sense to supply attorneys with best practices in written form so people can be kept current.
143. This type of audit is completely improper and requires attorney's to potentially divulge client information protected by attorney client privilege. This is a complete over reaction to a few bad apples... which were caught.
144. Is this really an issue of such magnitude that new regulations should be promulgated and bar resources dedicated? I read in the newspaper about one significant bad actor. If this proposal is mostly driven by that situation, it seems very reactive and unnecessary.
145. I know for myself that trust maintenance is of utmost importance. What concerns me about random audits is the fear it may place in lawyers that any minor and unintentional error may place their practice in peril. We are already aware that the bar can request trust information at any time, but a mandatory audit seems excessive. I am aware that there are firms/lawyers who are engaging in bad acts. But, I would hope that this is a very small percentage of the attorney population.
146. These seems like a solution in search of a problem. I also practice in a much larger state with no audits, and I don't perceive an epidemic of trust account problems in EITHER state.

147.	One bad egg is not evidence of a rampant problem....the bar should have data on how much of a problem this truly is and disclose the same to its membership.
148.	Please do not place more costs on running a law firm, which includes the costs of staffing employees to deal with an auditor.
149.	our firm is a large regional firm with a fully staffed accounting department and in-house ethics counsel. We have strict procedures on handling of trust accounts and attorneys cannot direct the transfer or removal of funds from trust accounts without extensive documentation/verification. Attorneys never handle/access trust funds (or any firm bank account for that matter) directly. Only the COO and CFO/Accounting Director have access to the firm's accounts. This more of a small firm/solo practitioner problem in my experience.
150.	In the absence of any evidence of wrongdoing, or simple accounting errors, subjecting financial records that include highly confidential client information to the inspection of a third party is very problematic.
151.	This has been a nightmare in other states and generated a lot of ill will for the State Bar. The people who get into trust account trouble will not be motivated, deterred or affected unless you randomly happen to hit one of these one-percenters. The other 99 percent of us would prefer not to be subjected to this without probable cause.
152.	My firm does not have a trust account, as it is not necessary. However, I am against this proposal. Who will pay for auditor's time? There is no need for an oversight program unless a particular firm is having issues. The chance that the auditor actually selects a firm that is having problems is slight, and it is overly burdensome for the other firms chosen.
153.	Lawyers who are going to steal, are going to steal no matter what. By having to do this, you are penalizing the "law abiding" for the acts of a few. I would assume that most Trust Account issues have other ethical violations before the Trust issues are brought to light. I could see all bar complaints re no response and the like having to undergo audits. But the time and cost of having to undergo this penalizes small firms.
154.	I think it is offensive to go into a professional office and do an audit when they have not had prior problems. In my case I do very little work on an hourly basis and have a small trust account so my audit should be short but even so I would expect to have to devote an entire day to an audit. Not the best use of my time. In other firms, they should be given the opportunity to correct errors. If there are no reported problems allow the business to work productively. It appears that you are on a witch hunt even where there are no business with reported witch issues
155.	Attorneys that raid their trust accounts will do it no matter whether there is an audit or not. If you think the threat of an audit is going to deter them, you don't understand the mindset of the person that raids their trust accounts. I worked for an attorney that got disbarred for doing it and I can guarantee that the threat of an audit would not have deterred her. It's just more needless regulation for everyone else to MAYBE "catch" a person or two.
156.	My cpa reconciles all of my accounts monthly. I feel that I use best practices but worry about confidentiality and the time wasted proving that I don't steal my clients money. I only take retainers and put them there but might consider not taking retainers or clients unknown and closing trust account (I do not get PI settlements or client funds) just to avoid the hassle factor. As a small firm, I spend too much time already on administrative tasks.
157.	Do NOT do this!
158.	The cost, time, and intrusion; plus, if only 2% of firms are audited per year, those inclined to cook the books risk not being caught in any event.
159.	I think this is a terrible idea and a gross violation of my client's rights to privilege and confidentiality.
160.	I pondered even taking this survey for the last couple of days. My concern is that there is already a lack of trust that the bar is available to help attorneys with real issues that arise on a day to day basis. This last week I had an issue that I felt a compunction to contact the bar about. However, prior to reaching out to the bar to discuss my concerns I reached out to three other attorneys and asked their opinion about the issue and about my duty to reach out to the bar. To a one, each said to avoid contacting the bar, even though each attorney had similar concerns. We practitioners do not trust that bar has our best interests or that the bar is there to answers

questions we have. To impose audits of trust accounts simply compounds the "fear" of the bar. Those individuals who are going to "embezzle" from their clients will find other means if there are "random" audits of trust accounts. Random audits will have a chilling effect on maintaining trust accounts, rather than protecting the client. There will be a greater incident of "flat fee" charges and creative bookkeeping. I truly feel the bar needs to find a way to build trust with its members rather than creating a greater rift between the bar and its members.

161. SCR 78.5 already requires the maintenance and production upon request to the State Bar all records relating to client trust accounts. Instituting a random audit program is unlikely to change the deterrent effect of the existing Rule on misappropriation. Furthermore, randomly selecting a lawyer but then auditing the entire firm could disproportionately affect larger multistate firms - because you would be looking at trust account records from more than one state. Finally, a random audit has the potential to be incredibly burdensome (both financially and as a percentage of time required) on smaller 1-2 lawyer firms.
162. The Bar does a good job of disciplining attorney's for violations of trust account, we do not need more rules or concerns about audits for trust accounts.
163. I am concerned that (1) this would result in additional unnecessary expenses incurred by the firm, and (2) would be used as a fishing expedition to look for bar complaints.
164. A random audit only creates problems. I adamantly oppose any random audit. Don't waste bar dues trying to create or find problems.
165. I would strongly oppose random audits. If a lawyer is going to steal funds from his/her trust account, then the lawyer is a crook and it does not matter if there is an audit program in place or not. The majority of attorneys who are honest will now have to suffer through the wasted time and expense of an audit because of a few dishonest attorneys. Rather, I would like to see offering CLE programs to help attorneys if they needed the help. Also, how about having a contact person that attorneys that need help could go to for assistance and advice in setting up and/or maintaining their trust account. I also see that this will cause bar dues to increase to cover the cost of this new program. Finally, it seems that when I read the punishment for attorneys in the discipline section of Nevada Lawyer, the punishments seems to be light compared with the conduct. Harsher penalties for what amounts to criminal actions, such as disbarment, might be a better deterrent than the threat of a random audit. Lets not make the majority of attorneys who are working hard to have a law practice suffer for the actions of a few bad attorneys. Thank you for considering my comments.
166. I'm adamantly opposed to random audits. We don't need to turn the state bar into another IRS. We have enough meddling into our law practice as is.
167. I think it's important to allow for the small firms to be able to correct mistakes without disciplinary action. However, I question whether this program will truly be useful

COST CONCERNS

1. Who would be paying the cost for the audit? Having had clients who have undergone audits in the past, this is a large expense. If it is put on the individual firm, that could be very prohibitive. If it is spread across the bar, that would require a large influx of money to the bar to accomplish this. I understand the concern about trust accounts given the recent issues, but this does not seem to be the way to fix that. I also believe more clients would have issues with third parties reviewing their files than clients who would gain comfort from the process. This, to me, seems like a reaction to a big issue in one instance, and places a large burden on everyone because of the actions of one firm. If this is a larger, issue, then it is probably a larger issue for certain areas of practice. A better idea might be to require education for attorneys in certain practice issues where trust account violations are a larger problem. Our clients rely on our confidentiality. We have clients who have placed that trust in us for specific reasons. An audit of the accounts and files would greatly undermine that trust. This, to me, does not seem like the right solution to the problem.
2. The burdens of the audit's costs scare me. Audits are notoriously expensive and no firm, assuming the audit costs would scale with the size of the firm's practice. A small firm/solo could be wiped out. A large firm could

see huge expense. Instead of an audit program, I believe the Bar should quit sweeping discipline issues under the rug and use those complaints as a trigger for trust account reviews. Additionally, the banks should be more involved... the IOLTA banker should tell the Bar if a lawyer has set up an individual trust account. Then, there should be more investigation and control over the individual trust account. If the rumors about Lawyers West have any basis in fact and my speculation based upon those rumors are true, then it was those types of individual trust accounts that are more vulnerable to misconduct.

3. Who's going to pay for the costs of the audit? Certainly not the law firm. The bar ought to be fully responsible for the costs, as it is choosing to conduct random audits.
4. What is the anticipated annual cost for this audit program? Will the audit program result in an increase in annual bar dues?
5. This is a good idea but cost of the audits is a major concern. The audited attorneys should not have to bear the cost. Perhaps the IOLTA program should pay the cost in anticipation that greater trust account compliance will result in more interest being paid into the IOLTA program? My guess is that the IOLTA program would be far ahead in the long run.
6. This program would add additional expense and time burden on all firms. Unless there is a problem that requires such involvement by the Bar it is not a good use of time of attorneys.
7. Who is going to pay for this? Don't raise my bar dues!!! Especially since I am not even required to maintain a trust account as a lawyer for a public agency.
8. Is this going to increase my financial burden as a member of the Nevada State Bar? In theory, I like the idea of audits (not necessarily at random, though; and the five-year "exempt period" after an audit makes me think some attorneys will use it as a carte blanche), but it might not serve the purposes for which it is intended, and if I'm going to have to pay for it whether it works or not, I'd rather stick to the status quo. I'm pinched enough already and I would be against this even if it only results in a marginal increase in my financial burden. We attorneys don't have it as good as we used to. The market has been bad since 2009, and I graduated in 2010, so I actually never had it good.
9. I'm not interested in paying for an audit of my own records conducted by arguably unqualified OBC personnel.
10. I am a public lawyer so this does not affect me; however, I would be concerned about the potential financial impact an audit could have on a firm as it pertains to both time and money. Trust account misuse seems to be the largest reason for attorney discipline in the state and should be taken very seriously, but such a random audit program should not become a significant burden to practice.
11. The cost of an audit could be too much for a firm to bear - whether the firm is large or small.
12. 1. Who is going to pay for these audits? I don't want to pay for them with my Bar dues, and neither would it be fair to have the audited attorneys/firms pay for them if they've done nothing wrong. 2. Why do random audits, instead of focusing resources on attorneys/firms with allegations/suspicious against them? This seems like a waste.
13. The expense to our bar.
14. Audits can be costly and if they are random, then State bar should pay for them through increased dues as part of its business practice .
15. Who is paying for this?
16. I think this is unnecessary. It will increase our expenses as a law firm, and it will increase our expenses as a statewide bar. Failure to monitor offenders and likely offenders has led to this overprotective reaction, which is unwelcome from firms with little to no trust account usage and activity.
17. An audit of my solo firm would be easy; but, how do you propose to audit a multi jurisdictional law firm with hundreds of lawyers? The cost of such an audit would be very high, in the six figures, at least. What is the

- anticipated annual budget? A year or two of "exemptions" for large firms might work, but at some point larger firms would have to get "equal" audit treatment as the smaller firms.
18. I would rather see bar resources go somewhere else. These audits are going to be expensive and I don't think the cost will be commensurate with the benefit.
 19. Who will bear the cost? The number of audits will be so small, it will not improve the handling of trust accounts or prevent the misuse of client funds. This is a horrible idea.
 20. What would be the added cost to the Bar would be incurred annually and how would these costs be paid?
 21. The cost to the attorney of the audit is of serious concern.
 22. I do not like this idea. It is very intrusive and will add stress to the business. Also who is paying for it?
 23. I agree with the concept. However, the attorneys who abuse client funds usually have either a substance abuse issue and/or a perceived desperation for funds. Thus I question the cost/benefit of the random audit.
 24. We are a small firm and reconcile our trust account statement every month. We have a fairly small balance. If this becomes the policy, our audit will be inexpensive and quick. I don't want to have to pay for audits for other types of practices with large accounts and for those who do not manage their trust accounts properly. That would be very unfair. The firm being audited should pay the cost of the audit, and that would encourage and motivate lawyers to manage properly their trust accounts.
 25. The cost of this initiative, both to the bar and responding attorneys, would far out weigh the deterrent effect. Misappropriation is a purposeful crime, and the 2% chance of selection for random audit would not be effective in discouraging such conduct. Unscrupulous attorneys would still steal from their trust account and honest attorneys would bear the cost of this ineffective enforcement measure.
 26. Our Firm has over 60 attorneys in the Las Vegas offices alone. It appears the probability of an attorney from our law firm being randomly selected is vastly more probable than for a sole or small office practitioner. And to ask the law firm to shoulder the costs of an involuntarily, randomly selected audit appears ill-conceived.
 27. I actually think this is a really good idea, but the only concern I have is that the costs of the random audits. If the cost is the firm's responsibility I have friends and colleagues whom are solo practitioners or even in smaller firms that operate on a razor line margin as start ups in terms of Gross Income minus costs. If the costs of this thing run super high I think you will be unfairly impacting smaller firms and solo practitioners and that is not fair. I think best practices here would be that if a firm passes an audit they should not have to pay for the audit and the cost should be paid by the Nevada State Bar. As far as not reporting audit results to the State Bar that is silly. If a Trust Account has an issue, yes it should 100% be reported to the State Bar. Also I have marginal concerns about supporting documentation for some of the IOLTA audits as for example many firms handle sensitive personal information and even documents that are protect under Federal Law on behalf of our clients (I represent personally a large number of banks). I don't want to see a scenario were we get an audit pass from the Nevada State Bar but then an audit fail from one of our clients because we did not maintain appropriate protections for personal information under Federal law.
 28. Intentional misconduct is unlikely to be impacted by this because, as is true of any crime, deterrence is accomplished through the certitude of getting caught, not the punishment. Because the likelihood of getting audited is low, it is unlikely to deter embezzlement of client funds. I am concerned about how the cost for this will be paid.
 29. The fact that the State Bar is not being up front in this survey about the expected costs of such a program is very troubling. The omission of that critical item will skew results of this survey. The cost of the audit program should not be borne by members who have no findings or trivial findings. Additionally, randomly auditing all attorneys with trust accounts is a tremendous waste of resources, no matter who pays, when viewed against other more important factors that are likely signals that a particular attorney should be flagged for an audit, such as not responding to client requests for an accounting, delayed payments to clients, other ethical problems, etc. The entire profession should not be penalized (for lack of a better term) because the State Bar

was asleep at the switch in responding to client grievances while one attorney was bilking millions from his clients.

SOLO/SMALL PRACTICE CONCERNS

1. I think it's important to allow for the small firms to be able to correct mistakes without disciplinary action. However, I question whether this program will truly be useful
2. I am concerned about smaller or solos being able to comply with requirements, about non-lawyer auditors who don't understand lawyer trust accounts, and don't think an auditor should be allowed on-site at a law firm given the highly confidential nature of what we do. The auditor should be off-site with records produced by the law firm unless there is a problem.
3. this is a tremendous burden on small law firms and unlikely to deter intentional bad actors. If you are really trying to educate make trust practices a cle but dont add more regulation and expense for solo practitioners
4. Attorneys are already one of the most highly regulated service industries. In many cases, the State Bar has not considered the burden of its many requirements on solo practitioners or small firms . Continuing education is great, and outright fraud is, of course , awful (but note the response of the bar and the incredibly unusual circumstances of the Graham case) but please don't put more burdens on the little guys. The big firms who already have full-time trust account specialists seem to drive the bus... and the ABA policies are big-firm oriented. That is not fair to us solos. Let's focus our efforts on education and avoid taking time away from our clients....and to allow time for pro bono services. .
5. I am deeply concerned that this is being proposed because attorneys, especially in smaller firms, have misappropriated client money. As a result, the audits will unfairly target small firms. Nature of practice should be considered and audits should be based on more than random selection. That will never address the problem. It will only subject those who don't need audits to audits.
6. I understand that this is coming from a place of protecting the public after recent events, but I fear it is one more hurdle for a small firm that the bad apples will still find a way around. Addressing the reasons theft happens like gambling, drugs, cash flow, etc. seems like a better place to start.
7. I guess after being a solo for 35 years with 5 to go before I hang it up, it would be good to know if I have been doing it wrong all these years. I do have the account reviewed by an independent book keeper on a monthly basis.
8. This is a well-intentioned idea that would disproportionately harm small firms in terms of the economic impact and disruption of the audit to the practice's normal operations (as well as any potential liability for audit costs). More CLE's about trust accounting would be welcome. Even make it a required credit as the State Bar has done with the topic of substance abuse. Random spot-checks of trust accounts, however, do not seem likely to catch large-scale, sophisticated embezzlers, and will cause enmity between the State Bar and its members.
9. I believe that there are some attorneys that improperly handle their trust account. That is why we see so much discipline in the bar journal each month. But to have random audits is very difficult for a smaller firm. We are busy practicing law. My firm has measures in place to ensure nothing is mishandled (I am the only signatory on the trust accounts, I personally review the trust account bank statements each month, I do not allow electronic transfers from the trust account unless I personally go to the bank, sign a transfer request, and sit there with the teller to ensure that the transfer was handled properly. I do everything right, have never had an issue with my trust account, and do not think it is fair to burden the vast majority of attorneys who are compliant because of the few minority who are not ethical or do not properly handle their trust account. Those who act improperly with trust funds seem to always get caught and I think the system that is currently in place is sufficient to properly protect the public and deal with attorneys who are not ethical or do not properly handle trust funds.

10. **Bad idea. Small firm lawyers such as myself, who follow the rules, and still have to practice, manage cases and employees, do not need more interference or compliance complications. Strongly discourage this policy.**
11. **I'm a solo practitioner. I am very, very, very concerned about how this could disrupt my practice. I am too busy to have my firm put on hold or to have my business disrupted. This seems like a knee jerk reaction to recent headlines. Audits are not going to deter bad actors. The vast majority of us guard our clients' money and do our jobs the right way. This audit idea seems like punishing all of us for the sins of 1 or 2 bad apples.**
12. **As a solo practitioner I keep a close eye on all IOLTA funds and it is a fairly straight forward set of accounts. However, if I had to respond to an audit it would potentially put me behind for everything else and risk malpractice. Thus, I would want a lot of lead time so I can schedule around something like an audit. I think audits are fine for bigger firms because they have redundancy and can afford it, but smaller firms will have a lot of problems doing both their jobs and responding to the audit without some additional help.**
13. **I do not maintain a trust account in Nevada and seldom have cases in Nevada that involve our firm's trust account. So, I would likely be exempt from the audits. However, I feel that a random audit system would be counter productive and place a burden on small firms. A random audit program places an undue and inefficient burden on an the small law firm that is properly maintaining its books and trust account. We regularly maintain our office operating account and trust account and my office pays for the cost of that effort. This added level of oversight and expense places a significant burden on my staff that is already challenged to comply with other governmental mandates. For example, our office was randomly audited by the California state franchise board related to internet purchases to determine if our office was paying sales tax on internet purchases from out of the state of California. This audit required 30 to 40 hours by my part time staff to research and respond to the auditor's requests for documents and information. After the audit was completed, it was determined that we had failed to pay sales tax on an Internet purchase valued at about \$20. This resulted in a payment of \$3 in sales tax. So, after hours of research and work by my office, the government received \$3 in tax. My office expended hundreds of dollars of time. We had no recourse and no alternative but to comply with the random audit despite clear preliminary indications that our office consistently paid sales tax on all purchases on the internet. I fear that such random audit would result in an bureaucratic necessity produce results. In other words, like in this example, despite preliminary indications of tax compliance, the auditor kept pushing until she found "something" like the "result" in our case, \$3 of unpaid taxes. California does not have a random audit program but enforces violations when they are discovered.**
14. **I expect that everyone makes occasional errors in accounting, and most of us find our errors and correct them. A random audit, besides taking time from practice which would likely be more of a financial burden on small firms, partnerships and sole practitioners, is unlikely to address the problem attorneys who wrongfully take client funds. If a client has a financial problem with an attorney, the better focus of State Bar efforts would be to make the reporting easier and enforcement better for those found to have actually taken client funds. If the concern is alerting attorneys to good trust account practices, make it another mandatory subject for CLEs. The additional cost of such an audit would just be more of a cost to participate in this State Bar without likely positive returns.**
15. **I would be concerned that small firms/solo or minority/women would be heavily targeted for audit; whereas the recent publicity of attorney transgressions have shown the problem lies elsewhere. Plus a sole practitioner, an audit would eat into my time which is already stretched in complying with CLE, pro-bono, administrative duties such as State Tax compliance and reporting, etc. in running a lawfirm properly. Random audits is not the solution to deter those who want to defraud the public.**
16. **just don't pick on sole practitioners**
17. **This would just place an additional administrative hardship on smaller firms who already have to comply with numerous CLE, IRS, Nev Dept Taxation, Nev Unemployment, Bond and Commerce tax, US census, and other regulatory requirements that distract from actually practicing law and helping people which is the reason for going into this profession to begin with.**

18. I am concerned about the burden placed on private practice attorneys.
19. The proposal creates more wasted time for solos and increased expenses. I suspect that it will increase costs....
20. I own and run a solo practice. The time expended on a random audit would be billable time lost, and there are periods when I am already working as hard as I can. The fees I expect will be charged to the firm to pay for the audit would be entirely wasted money in my opinion. To the extent there is some reason for concern about a law firm's trust account, I can see the purpose of having an audit, but having random audits would cause significant lost billable time and pointless expenditures. 75% of my business comes from a handful of institutional clients, none of whom are involved in any trust funds at all. I have a small handful of clients with very modest retainer deposits that are made at the start of a case, and returned or applied before I close the file. I am entirely against any random audit program.
21. The likelihood of one attorney in a large firm being randomly selected for an audit, thereby triggering an entire firm audit, seems to be much higher than small & solo firms, therefore larger law firms would be audited more often statistically, even with the 5 year minimum period between audits. Would it make more sense to randomly select firms and solo practitioners instead of individual attorneys?
22. This could potentially be extremely disruptive to smaller firms. I would think that clients contacting the bar should be the triggering factor for audits. I feel that perhaps that is the best avenue, as to do random audits may be unnecessary and take focus off the ones that truly do need auditing.
23. I think the biggest issue for smaller firms is the disruption an audit can cause. This depends on how strict the deadlines are and whether the audit would be reported to the state bar. If the audit can be reported, I believe most firms would be forced to hire an outside CPA and an attorney specializing in trust accounts in order to protect their rights. For smaller firms, that can be a giant expense. Plus, those firms may neglect current clients to prioritize for the audit. On the other hand, if there is currently a major problem with trust accounts and errors in accounting and/or fraudulent behavior that's not being noticed by the client, then it might be necessary to protect the client. I'd be interested in knowing what other state bars are doing and whether a problem actually exists. If not, the money and resources might be better served with voluntary programs that help attorneys with their trust accounts. Not to ping-pong on the issue, but if the findings and deadlines aren't too strict (allowing a firm to not shut down during an audit and the findings aren't reported unless maybe intentional violations) then the program might be a good way to offer assistance to firms. Finally, associates of law firms that have no control over the firm's trust account should not have to worry about being audited. It would be unfair for an attorney to be disciplined over something that they have no control over.
24. As an owner of a small law firm for over 14 years without a single trust account issue, this seems like a great way to punish those responsible attorneys with paying for an audit they do not need nor want. I already pay a full time staff member and an accounting firm a lot of money to review all of my books every year. Perhaps we can have a random interview to ask attorneys if they are having any issues with substance abuse or depression that would lead them to violate their oath to their clients by stealing money that is not earned.
25. Please don't make the audit too cumbersome and time consuming for the sole practitioner. Especially those who very small trust accounts.
26. I run a solo practice. I believe that abuse of trust account funds occur for a variety of reasons, but more often than not it is an authority in the firm who abuses the funds or there is an embezzlement issue with a lower ranking accountant or bookkeeper who is trusted by counsel in charge. My fear is that these audits will take away time and resources from law firms and keep smaller firms from focusing on their clients' needs. Is there a way the cost and time and can be mitigated from any extensive auditing. I would rather have mandatory malpractice insurance than audits year after year. Just my two cents....Thank you!
27. as a solo practitioner, an audit could impact compete with legal services that I need to provide my clients at the time, and could be very disruptive, as opposed to a large firm that has an on-site bookkeeper.

- | | |
|-----|--|
| 28. | as a sole practitioner this is an unnecessary intrusion into what limited time is available to spend on the practice of law. The added expense places a further burden on the practice. |
| 29. | More economic impact for small practices to respond to requests than larger firms with more staff and resources |
| 30. | I am concerned that there would be an unintentional bias towards auditing small or solo practices. I am concerned that this will be like the general topic of gun control, which I favor, but which would not have prevented the October 1 Las Vegas shooter. I am not sure that this approach will protect against the kind of fraud that Rob Graham perpetrated. |
| 31. | Solo firm that rarely uses the client trust account and for relatively small amounts of money for fees and client expenses, Seems like it would be a waste of Bar money to have such a program for similar firms. |

EDUCATION ALTERNATIVE

- | | |
|----|--|
| 1. | When I had my own firm, I found it surprising that there were no regulations and/or guidance on trust accounts. I think there should be a requirement for attorneys who will be handling client money to participate in a CLE regarding trust accounts. The requirement should have to be required to be filled within 12 months of opening a practice or being given access to trust accounts. |
| 2. | The proposal has many negative connotations and a number of degrees of significant concerns. I would much rather see CLE requirements on trust account management and best practices than an audit program. The proposed audit program takes away a great degree of self-regulation from a self-regulating profession. |
| 3. | I believe the bar should have a system in place such as a three pronged or other approach. This would help attorneys with the management of their IOLTA. |
| 4. | A CLE would be a good idea. Education before detection and punishment would be the most efficient path. |
| 5. | I think mandatory CLE in trust account issues and general accepted accounting principals that is required to be taken periodically is a better approach. |
| 6. | I believe that the purpose of audits should be educational and informative, rather than to provide oversight of attorney practices. Therefore, the audits should not result in discipline unless the auditor reports intentional misappropriation or falsification of records or responses. Informal referral of attorneys to information or CLE programming should be the result of the majority of audits that reveal failures to use best practices. |
| 7. | We are extremely careful with our trust account. I believe that people that don't understand client trust accounts need education and clear guidelines. Some minor discrepancies may be due to lack of clarity, this is different then attorneys that intermingle funds and "borrow " from clients |
| 8. | I am a member of the executive committee of the solo/small practice section of the State Bar, and we discussed these issues with one of the members of the Board of Governors, advising that before random auditing is EVEN a thought, WHY DON'T WE INSTEAD FIRST REQUIRE EDUCATION ON TRUST BEST PRACTICES FOR TWO YEARS AND THEN DECIDE WHETHER RANDOM AUDITING WOULD BE APPROPRIATE. Many solo and small practice firms had a huge change in practices after the 2008 foreclosure crisis which changed those and other practices from insurance defense to plaintiff work or contract work. Most CLEs which I have seen do NOT discuss in detail what trust account best practices are. Attorneys are not accountants. However, there should be CLES for some of the major areas of practice which involve trust accounts such as PI, family law, bankruptcy and criminal law. I know many attorneys who have trust accounts and are sure they are doing the right thing according to the rules, keeping track of the funds, ensuring the client has access, proper billing and then accounting prepared. It is those who have "issues" with gambling, domestic or substance abuse or simply do not know the "right" thing who may require the rest of us to be under the gun. I am an ethical attorney, but just worrying about an audit and thinking, "have I dotted all my i's and crossed all my t's" is taking time away from the practice, costing time away from other work for my clients, deadlines, etc. AGAIN, INSTEAD OF RANDOM AUDITING, FIRST REQUIRE EDUCATION ON TRUST BEST PRACTICES FIRST FOR TWO YEARS AND THEN DECIDE WHETHER RANDOM AUDITING WOULD BE APPROPRIATE. THANK YOU |

9. I strongly believe this is unconstitutional and not something the State Bar should be involved in. While I understand there are trust account problems, these must be resolved by education NOT highly intrusive audits. The bad conduct will continue - with or without the audits. What are the odds of picking a bad lawyer who steals client money out of 2%? While this may sound and feel like a good idea to prevent the unlawful theft and conversion of client funds, this is not the way to do it. This will be extremely expensive, a cost of which we, the members of the bar, will be required to bear, along with punishing the good lawyers who are meticulous trust account managers in an attempt to find (or hopefully deter) the bad few. The public, our clients, will not be protected when their attorney's focus is on a random, intrusive audit of trust account(s) and not their case. Public protection can be provided by education - make the additional CLE credit requirement be in a class focused on trust accounts, not expensive, highly intrusive, practice disrupting and unconstitutional audits. I will assist in teaching the classes!
10. CLE seminars and providing online resources would be a far superior way to accomplish better trust account practices than imposing random audits.
11. The State Bar should develop a package for attorneys (or firms) to show how it ought to be done with: 1. Sample written procedures, with explanations, and paying particular attention to explaining how firms should limit authority and access to trust accounts, how to tell the bank of those limitations, etc; 2. Clearly spelling out lots of examples about exactly what funds should be going into trust, and exactly what documentation must exist for distribution or taking money out of trust. Confusion is being created by the constant exhortation "this is not your money" when the situation often arises that we get a check that has (a) some client money; and (b) some money to be paid to the firm; That check should be deposited into trust because it contains some client money. Distribution of the attys share to the atty should thereafter occur, of course, only upon proper paperwork signed by authorized atty (partner) and written notification to the client of the intended distribution. 3. Sample accounting paperwork done the way an auditor would expect to see at any firm; 4. How to handle bank statements (don't let staff open) and reconciliation; 5. Lots more items to be addressed. There exists confusion about whether electronic transfers out of a trust account are permissible or must an actual check be written? Could there be sufficient auditable paperwork to allow an electronic transfer? How does a firm limit those who can authorize?? ETC.
12. This would place an incredible burden and unnecessary stress on attorneys and firms who are in compliance, that is, the overwhelming majority of practitioners. It also wastes the funds they contribute to the Bar's budget. A better use of resources would be ensuring attorneys (with access to trust accounts) meet a minimum level of trust accounting knowledge and/or take periodic refresher course (similar to a CLE). Access to neutral professionals who can help attorneys who have found themselves struggling with their accounting would encourage voluntary intervention prior to "real" trust accounting problems. Lastly, and I think the Bar does a good job of this generally, looking to solve the underlying problems that lead to trust accounting problems (individual financial distress, alcohol and drug use, gambling, depression, unmanageable workload, etc.) is a more far reaching solution that will better benefit the public and individual attorneys.
13. CLE Seminars regarding trust account best practices are helpful to ensure new and experienced practitioners are up to date with rules/guidelines applicable to trust accounts and or changes to rules/guidelines for trust accounts. Random trust account audit program would be a distraction to a practice and costly. Objectivity and bias would be a major issue, irrespective of rules in place to avoid such issues.
14. I have never had a Trust Account in Nevada for my solo practice, and only briefly established one while practicing solo twenty or so years ago in Florida (and did not use it). I have worked for firms that had Trust Accounts, but my part of the practice did not involve the use of the accounts, while other portions of the firm did, so my knowledge for the survey is limited. I tried to imagine how I would answer if having had and used Trust Accounts. However, I believe that the more any Bar Association can do to educate as to best practices, particularly with client funds (which I've casually observed from reviewing the disciplinary actions in Bar Journals over the years to be violations that carry heavier sanctions, as it should be), the better.
15. A CLE regarding trust account best practices provided at a local bar association meeting would be the most beneficial to me, and I believe it would be the first step and least costly step in helping lawyers and firms in

- my area avoid trust accounting mistakes. The Bar has not provided such a training course in my time of practice.
16. I don't particularly need guidelines or cle's but it doesn't hurt to offer more and impress upon the importance of keeping a balanced trust account to the same degree the bar has pushed substance abuse issues. As a practitioner, you can see which attorneys are more susceptible to poor trust account habits, (i.e. PI attorneys, Trust attorneys). As defense counsel, we don't typically have much surplus cash. So while I think it's important that we pay more attention to trust accounts, more than simply falling below zero type of tests, because often times it starts with taking from peter to pay paul and the cycle continues, I don't think efforts are best done through random audits. If we are trying to avoid the Rob Graham incident in the future, there's really no need to put efforts on the occasional defense attorney whose funds were taken only for the client to find out in 30 days. The latter scenario will work itself out and be detected soon enough. It is those types of attorneys who carry a lot of cash on behalf of their clients that are more susceptible to go unnoticed until the problem is too big to fix.
 17. It seems that most egregious trust violations are intentional and those are already prohibited and so an audit will not deter those actions. In order to minimize trust account errors, training (CLE, etc.) would result in EDUCATION - whereas an audit does not necessarily provide any education and audits are very time consuming and intrusive/burdensome.
 18. We feel that having additional CLE programs educating attorneys on how to best maintain their trust accounts is the best option. We feel that a random audit is unnecessary and onerous.
 19. CLE for Trust account handling should be a 1 hour biannual requirement just like the substance abuse. I am totally against random audits.
 20. Bad idea. Provide education first. If there is a concern, state bar should identify the issue and discuss with membership before it goes off on a hunting expedition. If the state bar is really interested in how attorneys manage their trust accounts, then set guidelines, provide a knowledge base and provide a regularly scheduled instruction. This last item could take form of education preferably with CLE applicable to ethics credit requirement. After these steps are taken, random audits would be acceptable but I have concerns that the State bar would use this sort of program to target members, or a group, it does not like. Very troubling.
 21. I do not believe random audits will deter intentional bad acts, as those who would misappropriate client funds already know they are doing something wrong. If the goal is to educate attorneys/firms about best practices, then do that: educate. While I am loathe to suggest any addition to our ever-increasing CLE requirements, perhaps it would make sense to require a trust accounting/best practices seminar when an attorney first opens an IOLTA account and then periodic refreshers thereafter. Additionally, a voluntary, non-punitive audit program may be useful as a resource for those who suspect or have discovered errors and wish to rectify the issue(s). In sum: I do not think random audits are worth the time and expense, as I suspect the vast majority of audits would reveal either no or minor errors. Better to direct efforts toward education/prevention/voluntary correction and investigating suspected malfeasance.
 22. Make bridging the gap seminars mandatory again and include a trust account expert. That was very effective when I was becoming an attorney. The pitfalls always wakes up a young lawyer. Just my thoughts.
 23. Trust account formation and maintenance is something the bar should teach newly admitted attorneys and refresh every 5 years or so for all others. I've seen too many cases of misappropriation. Training won't stop all but if it stops one case it's worth it. I believe the audits should be used to give instruction and remediate problems more than to punish unless errors are egregious
 24. I don't see a need for this. I would suggest, as a much better alternative, an MCLE requirement that an attorney attend at least one, three-hour course on trust accounts in the first year of the requirement and then at least once every five years. That would then cover 100% of the attorneys, not just 2%.
 25. I do not think the audit is necessary. CLE programs can solve the problem. Those attorneys having financial problems will raid the client accounts anyway and a financial audit would do nothing to prevent this. Also, while it may start out as a free service, there is the likelihood that a fee will be charged in the future and the cost to

prepare for the audit for any size firm could be significant to get copies of the records unless the auditor comes on site.

26. Don't implement the random audits. Make trust account best practices CLEs required for attorneys similar to Substance Abuse CLEs.
27. I have attended a CLE where trust accounts were discussed, but the information provided was not very helpful. Different firms have to deal with different issues, but a nuts and bolts type seminar would be helpful.
28. While I have studied proper trust account practices, many who are responsible for trust accounts have not. Those responsible for trust accounts should be required to attend a 2-hour CLE on proper trust account practices, and then they should be given a period of time to resolve any issues without penalty, so long as all client trust funds are accounted for.
29. The audit idea is not as effective as mandatory CLE every year, like we all agree substance abuse is an issue, ethics is an issue to have mandatory education, maintaining client funds in trust is an ethical and legal concern, so the audit idea will cost money and not serve the goal as well as mandatory education thru CLE
30. I think having the specter of an audit might help deter some bad practices. In the end, though, just like any law, rule, or regulation, an audit like this burdens everyone else to address the few who do wrong. In my view, the Bar and other CLE sources provide ample educational opportunities about trust accounts. Having an audit might deter some, but it's not going to deter the most egregious offenders who will simply hope they're not in the 2%. As a solo practitioner, having to do an audit like this could significantly impact my business because my time is limited. I think rather than do an audit the Bar could provide ongoing education and opportunity for a consultation or volunteer audit to make sure we're doing things correctly. We already have so many rules to try to comply with and money to spend on doing so that this would be a great additional burden for those of us who are following the rules, even if it only happened every 5 years.

OTHER

1. Maintain my trust account only to possibly assist close friends and/or family members in need of pro bono help.
2. You should be exempt if you been in practice for a substantial time without any greciences
3. My wife, who is a lawyer and my partner at the firm, does all of our accounting, so I fear my opinion would not be as good as hers on this issue.
4. This survey presupposes the program will be put in place, but the Board is seeking opinions to shape it. If that is the case, the Board has an ethical obligation to inform its membership of its decision to implement.
5. Audit program should be limited to lawyers who have an average trust account balance in excess of \$10,000.00.
6. I am retired from public service. I work at home and do not maintain a off-premise office. I serve mostly pro bono, veterans, and members of the Native American Community.
7. I initially thought random trust account audits would be a good idea. However, since only 2% of lawyers would be audited in anyone year, I don't think it will be effective in stopping small thefts before they become bigger thefts and it will be a nuisance and invasion of client privacy. I support having the state bar use some of the interest money it gets on trust accounts to be used for the client security fund rather than just for legal aid.
8. Without the informed consent of my clients, I will be unable to provide ANY information to your auditors. So where does that leave us?
9. Would the audit be of the local (NV) trust account or of all jurisdictions in which the law firm provides services and maintains a trust account? If the audit pertains to all offices regardless of jurisdiction, A) what would be the authority authorizing such an expansive program; and B) what requirements would be applicable and enforced (NV or the local jurisdiction)?
10. It should only be for that particular calendar year or less.

11.	There should also be a non-random audit for cases with possible issues.
12.	Another option to creating a bar-funded and bar-supervised random auditing program would be to have each law firm be required to provide a CPA-audited report every two years at the firm's expense. If there are problems, report frequency could be increased and/or bar-designated auditors could intervene.
13.	Regarding advance notice - someone will need to call me and tell me when they are coming over. I think that my receipt of funds from or for a client could be the clients' privilege of confidentiality. I have a spread sheet of clients' funds and my check register and my monthly bank statements and they all reconcile but I don't know if I can share that information with anyone. If a client complains to the Bar I think that would waive their privilege but not otherwise.
14.	The exemption period of five years might cause some attorneys to believe they have a "free pass" after they've been audited, as they know it cannot happen again for at least five years. I don't know how large of a concern that is.
15.	I work for the Public Defender's office, so I don't have a trust account.
16.	I am a government attorney, so this does not apply to me. I do not want to sway the answers that do not apply to me, so I did not answer many of the questions. I was a member of the Client Security Fund years ago, and suggested this practice back then. I thought random audits was a good idea then as it is now. I, however, think less than 2% per year is not enough to make an impact, and every 5 years is too infrequent. Additionally, what would be the penalty if an attorney does not cooperate?
17.	I do not have any clients in Nevada and do not handle any client money in Nevada.
18.	It is unclear whether an attorney with an out of state principal residence who does not handle funds for Nevada based clients would exempt.
19.	What can we learn from other state bars who have implemented this? Was it successful? Was it a cost item and a waste of time for the State Bar personnel? Who will pay for this?
20.	While this sounds like a worthwhile program, I have concerns about how the stated objective of "detecting minor trust account management errors early to prevent larger issues" impacts the audited lawyer. I strongly believe that when errors not amounting to an ethical or other rules violation are found, that this should not be somehow be used against the attorney at the time of the audit or in any future audit, random or otherwise, conducted.
21.	I'm in-house counsel so I don't deal with trust accounts.
22.	Providing advance notice of an audit might be a bit purpose defeating. I recognize the goal isn't to catch bad acts, but giving advance notice or the ability to "straighten out" audit books would give those who actually are intentionally misusing their trust accounts time to rectify/replenish. I think timing is important though - you should avoid month-end or quarter-end audits so accounting teams have more time to devote to responding to an audit.
23.	In order for the audit to effectively train lawyers on best practices, it must be a "no fault" program, meaning that, wherever mistakes in accounting, allocation, or practice are discovered, the attorney must have a reasonable opportunity to fix the mistake and learn from the mistake. If it is understood from the very beginning that the auditor is not an adversary, but instead someone to help inform and train the attorney on best practices, then the attorney is more likely to be honest and open with the auditor, resulting in better disclosure and better outcomes.
24.	Has the information that is already in the possession of the Bar regarding misappropriation of client funds provided any insight into the impact that an audit will have on deterrence? Short Thought: Is the main purpose deterrence? What does the bar know right now about trust accounts such that creating this program is necessary to deter prospective misappropriation? How many attorneys are screwing with client money to necessitate this action?
25.	Conceptually, this seems to be a good idea. However, I would have grave concerns, given the way the Bar has handled disciplinary issues for a number of attorneys in the past few years. Lack of notice and due process are

- frequently discussed, and this program would have the potential of making mountains out of molehills for lawyers who are otherwise attempting to serve their clients honorably. That said, I again think that the program is (conceptually) a good idea. It would all depend on the implementation.
26. I think it is a bad idea to have a 5 year grace period following an audit. The grace period would give a dishonest attorney, like Mr. Graham a great opportunity to steal. There should be some sort of random re-audit procedure during the 5 year grace period.
27. I am only Nevada licensed attorney in my out-of-state firm. We have a NV IOLTA Trust Account, but I don't believe we've had any balance in it for quite some time because I'm not handling matters where I have client funds, or unearned fee retainers for clients for Nevada members.
28. I would be concerned with privacy and the amount of time an audit would take. If our office manager is tied up preparing for the audit, or letting an auditor into our programs to conduct the audit, she will not be able to do other tasks. This could cause us to fall behind and would be potentially costly. We use older accounting programs, so I would question how easily an audit could be performed without taking over our office manager's computer.
29. My concern is the time it would take away from other things. Any audit would be taken seriously and therefore cause stress in our otherwise busy lives. Staff time, detracting from getting work done, etc., can impact the bottom line for a law firm of any size.
30. This is not an issue unless you hold client funds for the client, like settlement proceeds. This is different of all you hold is retainers for work performed
31. I am retired but my specialty for 10 years was representing plaintiffs in attorney malpractice actions. In other words I sued lawyers. In my experience the biggest problem in Nevada (I was also licensed and practiced for 20+ years in CA) was the lack of malpractice insurance. My work sent one lawyer to jail and caused one judge (Gary Davis) to be disbarred. I would be glad to discuss my experience with the group putting this effort together.
Sharon Green
32. I do not handle client's money and therefore have no need for a trust account. Your survey does not provide for this option.
33. I deal with auditors as a regular part of my law practice due to clientele. The auditors generally do a good job, but it is not uncommon for an auditor to make a mistake. The Bar will need to have a challenge and appeal process, and it does not seem right to saddle a law firm with extensive costs of the challenge/appeal process if the Bar's auditor is wrong or if there are multiple ways of viewing the accounting practices.
34. I am a brand new attorney. Therefore, I do not feel I have enough experience to have a strong opinion either way about this proposed program.
35. I don't have client funds. I am a government lawyer.
36. My practice does not involve client trust accounts. I am a public lawyer.
37. My experience is limited inasmuch as I have only three major clients: Special Legal Counsel to the Washoe County Sheriff's Office and Administrative Law Judge for the Nevada Interscholastic Activities and Association and the Nevada State Board of Medical Examiners. I have to client trusts that I handled: The rental income and expenses for a rental home inherited by my 3 siblings and myself which income and expenses are initially handled by a property manager and accounted for to me and my siblings with monthly reports that are provided to my siblings on an annual basis along with the tax information and disbursements; and a trust fund for a client who deposits weekly set amounts for my payment of his estimated income taxes, property taxes and insurance (home and automobile) premiums with annual accounts so that the amount of the monthly deposits can be adjusted in keeping with the needed funds to make the payments for the upcoming year.
38. It is important to make sure that the audit program is fair, confidential and not unduly burdensome to any particular firm by repeated audits. If there is a reasonable basis for concern, there should be an ability to do targeted audits. Otherwise, audits should be distributed fairly and randomly among all firms. Audits cannot become a tool to harass firms that are out of favor or not politically correct.

39. How would this audit affect the Atty/Client privilege? Waivers from clients? prior notice to clients? Black list of Atty's? This type of event raises so many questions that only litigation/restraining orders would be able to clarify the response. The opportunity for abuse of this would be very likely. Particularity when distinguishing between large/political firms and small/solo firms. This is highlighted by the existence of multiply state firms.
40. The time it would take to audit my books with a random person would be very disruptive as we are a small firm and I do my own books. Furthermore, I do not believe the State Bar is necessarily the most ethical organization. The State Bar forces drug and alcohol classes but nearly 100% of their functions are bar and alcohol related. One of the biggest offenders of the advertising rules is on the advertising comity. These are not people I trust looking through my books. The organization needs to look at its own practices before it randomly looks into my practice.
41. I work full time in real estate and provide these audits annually so I know what is required for trust accounting and also have taken their CE on the subject. I worked at a brokerage where the broker was most likely able to provide falsified records and allow a HUGE embezzlement despite the annual audits. I found it to be terribly ineffective at preventing hundreds of victims from being stolen from in that case. Further, I only place \$250 arbitration deposits in my legal trust account and maybe once a year one minor deposit on a client matter. As I prepare extensive audit paperwork for two trust accounts on about 200 rental units each year, I would love an exemption from an audit on the minor trust accounting I do in my legal account. I think right now and pretty much always I have around \$3,000 in the IOLTA account.
42. I would be interested in learning about the process for obtaining an exemption to this program prior to its implementation. My practice involves the taking of retainers as advance payment of expected attorneys fees and costs, which are applied as services are rendered or expenses are paid, but does not involve the handling or safekeeping of client funds for other reasons, such as awards in PI litigation. I'm not suggesting the profiling of attorneys for auditing purposes but logically the attorneys that handle substantial amounts of client funds at least have the opportunity to "mismanage" those funds, whereas in my practice I do not. Accordingly, while a random selection of attorneys to audit perhaps can be used to appear fair to the members of the bar as well as be used to as PR to demonstrate internal policing efforts to the public, without an exemption process or some other measure that efficiently narrows the pool of potential attorneys to audit, I feel like this program will just be a burden to those selected without producing any real results.
43. My "clients" are strictly ADR "clients", where I conduct Arbitration and Short Trials. However, I still deposit the initial deposits into my Client Trust Account and withdraw earned funds and costs upon the conclusion of the matter, pursuant to SCR Rule 78.5.
44. the devil is in the details
45. I have no idea about any of this
46. I think a deep dive of only 2% is a poor methodology. A lesson can be learned from other industries like real estate, where 100% of trust accounts submit less in depth reports annually. Then, qualified auditors detect anomalies based upon those required reports.
47. I do not handle client funds.
48. Merely pointing out that many trust accounts are for only odd matters, and thus will have only a small number of transactions (less than 10 per year), and relatively small amounts held in trust in the aggregate (i.e., balance in trust account never exceeds \$100,000 or probably even \$50,000). Seems like these should be able to go through some abbreviated "quick audit" procedure, so that a lot of time is not spent on them as if it were a larger or more often-used account.
49. I am semi-retired and rarely have client funds in my trust account. This should be a basis for exemption.
50. Are there studies/data that show a need for a formal program that will need to be staffed with auditors, and what are the risks of the auditors justifying their existence? Costs and these factors need to be considered in creating such a program.

51. My largest concern is the ability of the auditor to access confidential client records, such as settlement statements, confidential documents signed by the clients, and general confidential documents. Without the client's permission the auditor shall not have access to these things. Further, will the auditor sample a portion of a trust account? How far back will the auditor go? Could you imagine how ridiculous that would be? How many years would it take to audit Glen Lerner's account versus a second year attorney? There must be parameters to the audit, otherwise, it is unfair.
52. As in house counsel, the potential audit does not impact me.
53. I understand the need for oversight in this area, but you could create more harm than good in small firms with no bar/trust account issues. Also, this does not sound like "self-regulating" to me, but again in light of recent problems by various high profile members of the bar, I do understand that some proactive measure is needed.
54. Experience sort of dictates that firms that heavily advertise should receive greater attention over all other firms. Solo or small firms should be next followed by medium and large firms by strictly random selection.
55. There shouldn't be any penalty for non-intentional errors or errors that can easily be fixed.
56. Only concern is how "random" these audits would actually be.
57. I have a minimal practice and don't handle client funds. This survey is really somewhat inapplicable to me.
58. Suggested that the time period for the audit be prior 7 years or less consonant with other requirements for record keeping.
59. It would be very beneficial to know the statistics of "bad apples." Obviously, we are all aware of Rob Graham's trust abuse. However, I have no idea how many other attorneys are abusing the trust accounts. I really believe that if an attorney is in such dire circumstances to take client funds from trust, that the threat of a random audit would not deter the abuse. How many individuals have suffered irreparable harm by attorney's taking money from trust in the last five years? Is it really worth the cost of putting the 99 through random audits to catch the 1? My experience with state auditors is that they look for an excuse to justify their job.
60. Extensions should require a snapshot of the accounts at the time of notice.
61. na
62. Audit will not stop those individuals with substance abuse issues. Moreover, it seems like State Bar can focus audits on individuals who receive State Bar complaints instead of a random selection.
63. Several of the questions on this survey were poorly written, and will therefore provide poor, unusable or misleading results.
64. As a lawyer who practices in both Ca and Nevada, I maintain two separate trust accounts for each state. I assume that the audit would only relate to my Nevada Trust account and Nevada clients.
65. Amount of money flowing thru account should be considered as a threshold. Auditing a Trust account with carrying amounts of less than \$20,000 or \$25,000 should be exempt, as well as accounts that are primarily funds from court mandated Alternative Dispute Resolutions.
66. Problem with a random audit program, or something like this, is that I have little info to give as I am just an associate.
67. I would like to see resources focused on attorneys or firms that have actual complaints from clients. This random audit seems like searching citizens homes at random to fight "crime." Sure it might solve or prevent some crimes but at what expense? Seems like lazy work. Focus on the known bad apples, this should trigger an audit.
68. The large national and regional firms have already established stringent guidelines for trust accounts and has the resources to cover accounts which may be subject to defalcation. Auditing them serves no useful purpose other than creating a windfall for CPAs. Focus on the sole practitioner or small firm, especially where the

attorney has previously been the subject of disciplinary action. Guys like estate and probate practitioner, who without conscience, stole and didn't have the resources to cover, should be the focus of your attention. Also, examine the nature of the practice. A PI firm or estate/probate firm is more likely to misuse client funds than a bankruptcy firm, which is scrutinized by the Federal system. Don't make this another P.C. exercise where everyone has to take off their shoes at the airport, even the 90 year old guy with the walker!

69. My firm is small and I now work part time so I was not able to answer questions in survey pertaining to large firms. I have never worked at such a firm.
70. Was just admitted to practice a month ago. Not sure what an audit of IOLTA accounts would entail.
71. Rather than random audits, the bar should consider instead doing periodic audits of attorneys that have a history of complaints and problems. Why police those with a clean record? An overwhelming majority of attorneys conduct their practices and maintain their trust accounts in a prudent fashion. Instead, focus the efforts where the highest likelihood of problems lie. The time and resources would be far more effectively spent that way.
72. I think the 5 year period after the audit is too long. It should be similar to jury duty, I think 18 months or 2 years. 5 years can cause a lot of damage because they will do good up to the audit and then know they have 5 years to do whatever they want with the money.
73. I'm not sure if the survey was well done. I'm not sure if it will be as helpful as if you might have had a social sciences to it.. That is I do not understand the purpose of the survey.
74. You did not provide an opportunity to state that my practice does not have an IOLTA account, as I do not handle client funds.
75. I would like to see a report on annual audits to know what common mistakes people are making.
76. Audit should be limited to offices within the State of Nevada (our other state offices have their own trust accounts that do not affect Nevada clients). Oregon PLF has a great practice manual on trust accounting practices.
77. As a public free lawyer, I have no dog in this race.
78. I am 72 years old and have been licensed to practice law in Nevada since 1976. I have not experienced any issues or complaints regarding the handling of trust account funds during that time. I anticipate retiring within the next five years. It would be extremely burdensome for me to undergo such an audit. If such a program were to be adopted, then I believe that there should be an exemption created for solo practitioners, based upon years of practice and/or age.
79. We do not currently have an office in Nevada. One attorney maintains her active status in Nevada just for the occasional client who needs assistance in Nevada.
80. I am not currently required to have a trust account as I am self-employed as a lobbyist at this time but I am interested in best practices and procedures in the event that I would engage in private practice and be required to maintain a client trust account sometime in the future.
81. I am concerned with discipline for discovered errors that do not rise to level of direct malfeasance.
82. It seems the Bar places undue emphasis on very minor problems regarding inappropriate trust account transactions when there weightier matters like rampant solicitation of clients. If the Bar can put a stop to the unethical acquisition of clients and still has resources left over to investigate wrongdoing, go ahead and audit the trust accounts.
83. If the Bar is looking to prevent misappropriation, it may want to consider a larger sample size. Those intent on bad acts may choose to play the odds. The idea of random audits may get more traction if lawyers know that only egregious errors will be reported and/or disciplined. If the idea is to catch and correct minor errors before they become bigger problems, it seems prudent to have clear guidelines in place of what must be reported (maybe everything), what must be disciplined, and what can be corrected without discipline, and to let attorneys know what those guidelines are from the start.

EXHIBIT D



COMPLIANCE AUDIT PROGRAM POLICIES AND PROCEDURES

A. PURPOSE

1. *Safeguarding Public Confidence*

The State Bar's Compliance Audit Program gives the public and the bar trust and confidence in the honesty of attorneys and their ability to handle monies entrusted to their care.

At any given time, clients allow Nevada attorneys to hold more than \$400 million in primary attorney trust accounts ("IOLTA" trust accounts) alone. Both public protection and the public's trust in attorneys require a high degree of accountability. Nevada Supreme Court Rule ("SCR") 78.5 provides for the safekeeping of these funds by requiring attorneys engaged in the practice of law to maintain and preserve for a period of at least five years, after final disposition of the underlying matter, the records of the account, subject to random compliance audits.

2. *Auditing Objectives and Goals*

The central objectives of the Compliance Audit Program are to ensure the books, records and accounts of an attorney's practice comply with the Supreme Court's financial recordkeeping rules and to educate lawyers on the proper method of fulfilling their fiduciary obligations to clients. For most firms, this will be a straightforward review and will provide the opportunity for lawyers and their staff to raise any questions they may have on trust and general accounting systems and procedures. The goal of the audits is to:

- Help law firms correct minor problems with record-keeping before they lead to serious issues of non-compliance and possible professional conduct issues;
- Do an in-depth review of accounting records and a sample check of client files — to ensure trust funds are being handled properly;
- Answer any questions lawyers may have about trust accounting; and
- Help lawyers develop proper accounting systems, record-keeping practices and trust fund handling procedures.

Another reason underlying the program is a by-product of the first — deterrence. Just knowing there is an active audit program is an incentive not only to keep accurate records, but also to avoid temptations to misuse trust funds. While not quantifiable, the deterrent effect on those few attorneys who might be tempted otherwise to abuse their clients' trust is undeniably present. Random audits serve to detect misappropriation in those relatively small number of law firms where it occurs.

B. ADMINISTRATION

1. *Auditing Authority.* The State Bar of Nevada will administer the Compliance Audit Program and audits will be conducted by qualified licensed professionals with the necessary experience to audit attorney trust accounts.
2. *Random Selection.* A computer program based on an algorithm for randomness will determine who is chosen for audit. The identifier used in the selection process will be a lawyer's bar number. As a result, every attorney regardless of the size of the law firm, has an equal chance of being selected for audit. The cost of the audit will be borne by the State Bar of Nevada.

A lawyer's failure to cooperate if selected for a random audit will result in an administrative suspension and referral to the Office of Bar Counsel.

3. *Records Subject to Audit.* When the attorney is selected for the audit, the entire firm's Nevada trust accounts are subject to the audit. The audited attorney or law firm shall make available all records required pursuant to SCR 78.5. If requested by the auditor and related to the audited records, the attorney or law firm shall also make available financial records relating to the firm's operating account(s).
4. *Exemption from Audit.* If selected for audit, an attorney may petition the state bar from exemption if one of the following conditions are met:
 - (a) The attorney attests that no client funds are maintained in trust;
 - (b) The attorney submits an audited statement from the firm's auditor stating the firm's account is in compliance with the rules.
5. *Referral to the Office of Bar Counsel.* Notwithstanding the Auditing Procedures below, if a serious rule violation is identified during the audit, the auditor may refer the attorney to the state bar's Office of Bar Counsel. The referral will be automatically opened and investigated.

C. AUDITING PROCEDURES

The audit will generally take 1 -2 days but may vary depending on the size of the firm and the state of the law firm's records. Although the auditor's review focuses on the trust records, monthly trust reconciliations, and a review of selected client files, a limited review of the law firm's general account records is also conducted. Typically, within a month or so of the audit, the auditor will send a letter to the law firm outlining the results of the audit and detailing any necessary changes that are required.

In general, auditors are contractors or employees of the State Bar. However, there may be times when accounting firms are hired to perform the compliance audits.

1. ***Scheduling***

Random audits are scheduled in writing two weeks in advance. While the audit scheduled date is firm, requests for continuance will be considered on a case by case basis. To ensure minimal disruption to a lawyer's practice all records should be ready and available on the date of the review and submitted electronically.

2. ***Record Examination***

At the direction of the auditor, state bar staff will initially request three months of records for examination that can be submitted electronically. Additional records may be requested, including records dating beyond the three-month period and/or financial records for the law firm's operating account(s).

3. ***Summary Report -- After an Audit***

Shortly after the audit, the attorney is formally advised by correspondence of the results. The summary report of the auditor will do one of the following:

- Provide an offer to confer with the lawyer in an exit conference to review and explain the findings; or
- Close the file, if no deficiencies were found or minor deficiencies have been corrected; or
- Arrange a follow-up visit to address more serious deficiencies and ensure corrections to the records have been made and procedures have been put in place; or
- Provide a written request for further documentation to support deficiencies in the accounting records; or
- Refer file to the Office of Bar Counsel, in the event of serious breaches of the trust accounting rules.

4. ***Major Deficiencies***

If, at any point during the audit process, major deficiencies are discovered, such as misappropriation of client's trust funds, the matter will be immediately referred to the Office of Bar Counsel.

Forms and Resources

- Compliance Audit Books and Records Checklist
- Compliance Audit FAQs
- Compliance Audit sample letter
- Trust Accounting Handbook