

SUFFOLK ACADEMY OF LAW

The Educational Arm of the Suffolk County Bar Association 560 Wheeler Road, Hauppauge, NY 11788 (631) 234-5588



SUMMER SERIES Opening a Practice – What You Need to Know About Finance, Cash Flow & Escrow Management

FACULTY
Justin M. Block, Esq.

Sponsored by:



August 16, 2017 Suffolk County Bar Center, NY

JUSTIN M. BLOCK

Justin M. Block has been a member of the Suffolk County Bar Association since his admission to the bar in 1988. He is the incoming Second Vice-President, having finished a term as Treasurer without being indicted. He had previously been a member of the Board of Directors from 2005 until his term expired in 2008. In addition to his prior Board membership and his current membership on the Executive Committee, he has served as Chair of the Professional Ethics and Civility Committee, the Fee Disputes Committee and what was then known as the Young Lawyers Committee and as a member of the Grievance, Bench-Bar, Judicial Screening, Solo and Small Firm Practitioners and District Court Committees. He received the SCBA's Directors' Award in 2002 and Awards of Recognition in 1990, 1991, 2005 and 2014. He had been a member of the New York State Bar Association House of Delegates from 2008 until his term expired in 2012, and was just appointed as an alternate Delegate for this year.

Outside of the Bar Association, he has been a tireless worker for Rotary International and the Hauppauge Rotary Club in particular, the American Heart Association, having served as Chairman of the Board and member of the Executive Committee of the Suffolk County and Long Island Regions and on the Board of Directors of the New York State Affiliate. He also served as a member of the Board of Directors for the Long Island Chapter of the Juvenile Diabetes Research Foundation. Proudly, since 1997 Justin has been the Chairman of the Ira P. Block Memorial Golf Classic, honoring his late father District Court Judge Ira P. Block and awarding "Second Chance" Scholarships to deserving people, both Hauppauge High School seniors and graduates of the Suffolk County Drug Court, who have turned their lives around. In 2014, he was named "Alumnus of the Year" from Hauppauge High School.

After graduating from Hauppauge High School in 1980, Justin received his B.S. in 1984 from Cornell University, and his J.D. in 1988 from Hofstra University School of Law. He presently is a sole practitioner in general practice in Commack, New York. Previously he had been a partner with Jaeger & Block, LLP, successor firm to Jaeger, Mari & Block. He continues to maintain a general practice, with concentrations in civil, criminal and commercial litigation, small business counseling and residential and commercial/business and real estate transactions.

Between college and law school, Justin worked for Baumann & Sons Transportation Company, Inc. as Operations and Personnel Manager for this multi-location transportation firm with over 2,000 employees and over \$20 million in gross revenues. He had previously worked for the New York State Mediation Board as an Arbitrator/Mediator of labor disputes involving private and public sector employers and employees in New York City and the metropolitan area.

Justin enjoys what passes for golf (at least in his book), cooking, traveling, dining out, and he most especially enjoys spending time with his family and friends, including his wife Sheila and their son Cooper (who at 8 months is getting far more media exposure than his parents ever did; apparently he and Jane LaCova have some sort of secret arrangement); his mother Roz; his sister Belinda; and his nephew Gabriel.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.

RULE 1.15.

Preserving Identity of Funds and Property of Others; Fiduciary Responsibility; Commingling and Misappropriation of Client Funds or Property; Maintenance of Bank Accounts; Record Keeping; Examination of Records

(a) Prohibition Against Commingling and Misappropriation of Client Funds or Property.

A lawyer in possession of any funds or other property belonging to another person, where such possession is incident to his or her practice of law, is a fiduciary, and must not misappropriate such funds or property or commingle such funds or property with his or her own.

(b) Separate Accounts.

(1) A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution within New York State that agrees to provide dishonored check reports in accordance with the provisions of 22 N.Y.C.R.R. Part 1300. "Banking institution" means a state or national bank, trust company, savings bank, savings and loan association or credit union. Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity; into such special account or accounts all funds held in escrow or otherwise entrusted to the lawyer or firm shall be deposited; provided, however, that such funds may be maintained in a banking institution located outside New York State if such banking institution complies with 22 N.Y.C.R.R. Part 1300 and the lawyer has obtained the prior written approval of the person to whom such funds belong specifying the name and address of the office or branch of the banking institution where such funds are to be maintained.

- (2) A lawyer or the lawyer's firm shall identify the special bank account or accounts required by Rule 1.15(b)(1) as an "Attorney Special Account," "Attorney Trust Account," or "Attorney Escrow Account," and shall obtain checks and deposit slips that bear such title. Such title may be accompanied by such other descriptive language as the lawyer may deem appropriate, provided that such additional language distinguishes such special account or accounts from other bank accounts that are maintained by the lawyer or the lawyer's firm.
- (3) Funds reasonably sufficient to maintain the account or to pay account charges may be deposited therein.
- (4) Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.
- (c) Notification of Receipt of Property; Safekeeping; Rendering Accounts; Payment or Delivery of Property.

A lawyer shall:

- (1) promptly notify a client or third person of the receipt of funds, securities, or other properties in which the client or third person has an interest;
- (2) identify and label securities and properties of a client or third person promptly upon receipt and place them

- in a safe deposit box or other place of safekeeping as soon as practicable;
- (3) maintain complete records of all funds, securities, and other properties of a client or third person coming into the possession of the lawyer and render appropriate accounts to the client or third person regarding them; and
- (4) promptly pay or deliver to the client or third person as requested by the client or third person the funds, securities, or other properties in the possession of the lawyer that the client or third person is entitled to receive.
- (d) Required Bookkeeping Records.
 - (1) A lawyer shall maintain for seven years after the events that they record:
 - (i) the records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law; these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement;
 - (ii) a record for special accounts, showing the source of all funds deposited in such accounts, the names of all persons for whom the funds are or were held, the amount of such funds, the description and amounts, and the names of all persons to whom such funds were disbursed;
 - (iii) copies of all retainer and compensation agreements with clients;
 - (iv) copies of all statements to clients or other persons showing the disbursement of funds to them or on their behalf;

- (v) copies of all bills rendered to clients;
- (vi) copies of all records showing payments to lawyers, investigators or other persons, not in the lawyer's regular employ, for services rendered or performed;
- (vii) copies of all retainer and closing statements filed with the Office of Court Administration; and
- (viii) all checkbooks and check stubs, bank statements, prenumbered canceled checks and duplicate deposit slips.
- (2) Lawyers shall make accurate entries of all financial transactions in their records of receipts and disbursements, in their special accounts, in their ledger books or similar records, and in any other books of account kept by them in the regular course of their practice, which entries shall be made at or near the time of the act, condition or event recorded.
- (3) For purposes of Rule 1.15(d), a lawyer may satisfy the requirements of maintaining "copies" by maintaining any of the following items: original records, photocopies, microfilm, optical imaging, and any other medium that preserves an image of the document that cannot be altered without detection.

(e) Authorized Signatories.

All special account withdrawals shall be made only to a named payee and not to cash. Such withdrawals shall be made by check or, with the prior written approval of the party entitled to the proceeds, by bank transfer. Only a lawyer admitted to practice law in New York State shall be an authorized signatory of a special account.

(f) Missing Clients.

Whenever any sum of money is payable to a client and the lawyer is unable to locate the client, the lawyer shall apply to the court in which the action was brought if in the unified court system, or, if no action was commenced in the unified court system, to the Supreme Court in the county in which the lawyer maintains an

office for the practice of law, for an order directing payment to the lawyer of any fees and disbursements that are owed by the client and the balance, if any, to the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(g) Designation of Successor Signatories.

- (1) Upon the death of a lawyer who was the sole signatory on an attorney trust, escrow or special account, an application may be made to the Supreme Court for an order designating a successor signatory for such trust, escrow or special account, who shall be a member of the bar in good standing and admitted to the practice of law in New York State.
- (2) An application to designate a successor signatory shall be made to the Supreme Court in the judicial district in which the deceased lawyer maintained an office for the practice of law. The application may be made by the legal representative of the deceased lawyer's estate; a lawyer who was affiliated with the deceased lawyer in the practice of law; any person who has a beneficial interest in such trust, escrow or special account; an officer of a city or county bar association; or counsel for an attorney disciplinary committee. No lawyer may charge a legal fee for assisting with an application to designate a successor signatory pursuant to this Rule.
- (3) The Supreme Court may designate a successor signatory and may direct the safeguarding of funds from such trust, escrow or special account, and the disbursement of such funds to persons who are entitled thereto, and may order that funds in such account be deposited with the Lawyers' Fund for Client Protection for safeguarding and disbursement to persons who are entitled thereto.

(h) Dissolution of a Firm.

Upon the dissolution of any firm of lawyers, the former partners or members shall make appropriate arrangements for the maintenance, by one of them or by a successor firm, of the records specified in Rule 1.15(d).

(i) Availability of Bookkeeping Records: Records Subject to Production in Disciplinary Investigations and Proceedings.

The financial records required by this Rule shall be located, or made available, at the principal New York State office of the lawyers subject hereto, and any such records shall be produced in response to a notice or subpoena duces tecum issued in connection with a complaint before or any investigation by the appropriate grievance or departmental disciplinary committee, or shall be produced at the direction of the appropriate Appellate Division before any person designated by it. All books and records produced pursuant to this Rule shall be kept confidential, except for the purpose of the particular proceeding, and their contents shall not be disclosed by anyone in violation of the attorney-client privilege.

(j) Disciplinary Action.

A lawyer who does not maintain and keep the accounts and records as specified and required by this Rule, or who does not produce any such records pursuant to this Rule, shall be deemed in violation of these Rules and shall be subject to disciplinary proceedings.

RULE 1.16.

Declining or Terminating Representation

- (a) A lawyer shall not accept employment on behalf of a person if the lawyer knows or reasonably should know that such person wishes to:
 - (1) bring a legal action, conduct a defense, or assert a position in a matter, or otherwise have steps taken for such person, merely for the purpose of harassing or maliciously injuring any person; or
 - (2) present a claim or defense in a matter that is not warranted under existing law, unless it can be supported by a good faith argument for an extension, modification, or reversal of existing law.
- **(b)** Except as stated in paragraph (d), a lawyer shall withdraw from the representation of a client when:
 - (1) the lawyer knows or reasonably should know that the representation will result in a violation of these Rules or of law:

RULE 5.1.

Responsibilities of Law Firms, Partners, Managers and Supervisory Lawyers

- (a) A law firm shall make reasonable efforts to ensure that all lawyers in the firm conform to these Rules.
 - (b) (1) A lawyer with management responsibility in a law firm shall make reasonable efforts to ensure that other lawyers in the law firm conform to these Rules.
 - (2) A lawyer with direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the supervised lawyer conforms to these Rules.
- (c) A law firm shall ensure that the work of partners and associates is adequately supervised, as appropriate. A lawyer with direct supervisory authority over another lawyer shall adequately supervise the work of the other lawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter, and the likelihood that ethical problems might arise in the course of working on the matter.
- (d) A lawyer shall be responsible for a violation of these Rules by another lawyer if:
 - (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
 - (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the other lawyer practices or is a lawyer who has supervisory authority over the other lawyer; and
 - knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or

(ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.2.

Responsibilities of a Subordinate Lawyer

- (a) A lawyer is bound by these Rules notwithstanding that the lawyer acted at the direction of another person.
- **(b)** A subordinate lawyer does not violate these Rules if that lawyer acts in accordance with a supervisory lawyer's reasonable resolution of an arguable question of professional duty.

RULE 5.3.

Lawyer's Responsibility for Conduct of Nonlawyers

- (a) A law firm shall ensure that the work of nonlawyers who work for the firm is adequately supervised, as appropriate. A lawyer with direct supervisory authority over a nonlawyer shall adequately supervise the work of the nonlawyer, as appropriate. In either case, the degree of supervision required is that which is reasonable under the circumstances, taking into account factors such as the experience of the person whose work is being supervised, the amount of work involved in a particular matter and the likelihood that ethical problems might arise in the course of working on the matter.
- **(b)** A lawyer shall be responsible for conduct of a nonlawyer employed or retained by or associated with the lawyer that would be a violation of these Rules if engaged in by a lawyer, if:
 - (1) the lawyer orders or directs the specific conduct or, with knowledge of the specific conduct, ratifies it; or
 - (2) the lawyer is a partner in a law firm or is a lawyer who individually or together with other lawyers possesses comparable managerial responsibility in a law firm in which the nonlawyer is employed or is a

lawyer who has supervisory authority over the nonlawyer; and

- knows of such conduct at a time when it could be prevented or its consequences avoided or mitigated but fails to take reasonable remedial action; or
- (ii) in the exercise of reasonable management or supervisory authority should have known of the conduct so that reasonable remedial action could have been taken at a time when the consequences of the conduct could have been avoided or mitigated.

RULE 5.4.

Professional Independence of a Lawyer

- (a) A lawyer or law firm shall not share legal fees with a nonlawyer, except that:
 - (1) an agreement by a lawyer with the lawyer's firm or another lawyer associated in the firm may provide for the payment of money, over a reasonable period of time after the lawyer's death, to the lawyer's estate or to one or more specified persons;
 - (2) a lawyer who undertakes to complete unfinished legal business of a deceased lawyer may pay to the estate of the deceased lawyer that portion of the total compensation that fairly represents the services rendered by the deceased lawyer; and
 - (3) a lawyer or law firm may compensate a nonlawyer employee or include a nonlawyer employee in a retirement plan based in whole or in part on a profitsharing arrangement.
- **(b)** A lawyer shall not form a partnership with a nonlawyer if any of the activities of the partnership consist of the practice of law.
- (c) Unless authorized by law, a lawyer shall not permit a person who recommends, employs or pays the lawyer to render legal service for another to

Supreme Court of the State of New York Appellate Division: Second Judicial Department

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RANDALL T. ENG, P.J.
WILLIAM F. MASTRO
REINALDO E. RIVERA
MARK C. DILLON
DANIEL D. ANGIOLILLO, JJ.

2010-01047

DECISION & ORDER ON REMITTITUR

In the Matter of Peter J. Galasso, admitted as Peter John Galasso.

Grievance Committee for the Ninth Judicial District, petitioner; Peter J. Galasso, respondent.

(Attorney Registration No. 1783984)

DISCIPLINARY proceeding instituted by the Grievance Committee for the Ninth Judicial District. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on March 10, 1982, under the name Peter John Galasso. The Grievance Committee for the Ninth Judicial District moved, inter alia, to suspend the respondent from the practice of law on an interim basis and for authorization to institute and prosecute a disciplinary proceeding in this Court. By decision and order on motion of this Court dated April 30, 2010, the Grievance Committee for the Ninth Judicial District was authorized to institute and prosecute a disciplinary proceeding, as the petitioner, against Peter J. Galasso, admitted as Peter John Galasso, as the respondent, based upon the acts of professional misconduct set forth in a petition dated January 21, 2010, and the matter was referred to Steven C. Krane, Esq., as Special Referee to hear and report. That branch of the motion which was to suspend the respondent from the practice of law on an interim basis was denied. By further decision and order on motion dated June 28, 2010, this Court, on its own motion, reassigned the matter to the Honorable Arthur J.

December 19, 2012 Page 1.

Cooperman, as Special Referee to hear and report, following the death of Steven C. Krane, Esq.

By opinion and order of this Court dated February 21, 2012, the respondent was suspended from the practice of law for a period of two years, commencing March 21, 2012, and continuing until further order of the Court. By order dated May 1, 2012, the Court of Appeals granted both the respondent's motion for leave to appeal, and the respondent's motion for a stay. By opinion and order of the Court of Appeals dated October 23, 2012, the opinion and order of this Court dated February 21, 2012, was modified to the extent of dismissing charge five of the petition and the matter was remitted to this Court for further proceedings in accordance with the opinion and order of the Court of Appeals, to "consider whether the sanction previously imposed remains an appropriate sanction."

Upon review of whether the two-year suspension previously imposed remains an appropriate sanction in light of the Court of Appeals's opinion and order dated October 23, 2012, we conclude that the sanction remains appropriate. The modification of this Court's opinion and order dated February 21, 2012, dismissing charge five of the petition, which charge alleged that the respondent failed to comply with the lawful demands of the Grievance Committee, does not warrant a change in the sanction imposed.

In determining an appropriate measure of discipline to impose, this Court considered all of the mitigation proffered by the respondent including, but not limited to, the absence of venality; the lengths to which the respondent went to bring his brother to justice; the expense the respondent has borne seeking recovery for his clients' losses; and the substantial evidence of the respondent's good character.

Whether, and to what extent, attorneys are subject to discipline under circumstances where a defalcation was occasioned by someone other than the attorney within the attorney's firm, depends on a number of factors: (1) the subject attorney's partnership status and/or level of experience; (2) the presence (or absence) of "early warning signs" of financial improprieties, whether such signs were ignored and, if so, for how long; (3) whether the proper authorities were notified of defalcations upon their discovery; (4) the presence (or absence) of monetary loss to clients and the magnitude thereof; and (5) whether the attorney attempted to reimburse client losses caused by another (see e.g. Matter of Dahowski, 103 AD2d 354; Matter of Cardoso, 152 AD2d 157; Matter of Forman, 250 AD2d 116; Matter of Ponzini, 259 AD2d 142, mod 268 AD2d 478; Matter of Felman, 299 AD2d 15; Matter of Fonte, 75 AD3d 199; Matter of Laudonio, 75 AD3d 144; see also December 19, 2012

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Matter of Jones, 100 AD3d 57). The foregoing factors were all considered in this matter, particularly the presence of "warning signs" and "red flags;" the extent of the clients' monetary losses; and the fact that there has been no reimbursement of the client losses caused by the respondent's brother.

The cases proffered by the respondent in support of his argument that he should be, at most, publicly censured, are inapposite. Unlike those cases, the respondent herein was charged with having been unjustly enriched by the use of clients' funds for his personal benefit, and that charge was sustained.

The most fundamental obligation of attorneys entrusted with client funds is the duty to safeguard those funds. As the Court of Appeals stated, that duty, if no other, is "crystal clear" and "a reasonable attorney, familiar with the Code and its ethical strictures, would have notice of what conduct is proscribed" *Matter of Galasso*, 19 NY3d 688, *4, quoting *Matter of Holtzman*, 78 NY2d 184, 191). We reiterate that the respondent failed to maintain appropriate vigilance over his firm's bank accounts, resulting in actual and substantial harm to clients.

ENG, P.J., MASTRO, RIVERA, DILLON and ANGIOLILLO, JJ., concur.

Upon remittitur, it is

ORDERED that the sanction of a two-year suspension imposed by this Court in the opinion and order dated February 21, 2012, is adhered to; and it is further,

ORDERED that the suspension from the practice of law of the respondent, Peter J. Galasso, admitted as Peter John Galasso, shall commence on January 22, 2013, and shall continue until further order of this Court. The respondent shall not apply for reinstatement earlier than July 22, 2014. In such application, the respondent shall furnish satisfactory proof that during said period he: (1) refrained from practicing or attempting to practice law, (2) fully complied with this opinion and order and with the terms and provisions of the written rules governing the conduct of disbarred, suspended, and resigned attorneys (22 NYCRR 691.10), (3) complied with the applicable continuing legal education requirements of 22 NYCRR 691.11(c)(2), and (4) otherwise properly conducted himself; and it is further,

ORDERED that pursuant to Judiciary Law § 90, during the period of suspension and until the further order of this Court, the respondent, Peter J. Galasso, admitted as Peter John Galasso, shall desist and refrain from (l) practicing law in any form, either as principal or agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application, or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that if the respondent, Peter J. Galasso, admitted as Peter John Galasso, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:

Aprilanne Agostino
Clerk of the Court

BEFORE OPENING AN INTEREST ON LAWYER ACCOUNT (IOLA)

Q. Should I open an IOLA Account?

New York attorneys who hold "qualified funds" (as explained below), in trust for a client or third-party beneficial owner are subject to the IOLA Fund's New York State statutes and regulations and must open and maintain an IOLA escrow account.

Q. What are "qualified funds"?

Funds held in trust by an attorney that are "too small in amount or are reasonably expected to be held for too short a time to generate sufficient income to justify the expense of administering a segregated account for the benefit of the client or beneficial owner" are "qualified funds" and are appropriate for deposit in an IOLA account. See <u>Judiciary Law 497 §2</u> and Section 7000.2(d) of the <u>Trustees Regulations</u>.

Q. Who determines whether funds are "qualified funds"?

The determination is made solely in the judgment of the attorney who holds the funds in trust. New York has a statuary hold-harmless provision. New York attorneys shall neither be liable in damages nor held to answer for a charge of professional misconduct because of a deposit of moneys into an IOLA account, pursuant to the attorney's good-faith judgment that such moneys were qualified funds. §Judiciary Law 497(5); 21 N.Y.C.R.R. 7000.8(b).

Q. Does the Fund provide a benchmark for determining whether a sum of money is appropriate to be placed in an IOLA?

No, the attorney makes that determination taking into account the amount of deposit, the duration it is expected to be held, and current interest rates and bank fees on non-IOLA escrow accounts.

OPENING AN IOLA ACCOUNT

Q. How do I open an IOLA account?

<u>Please click here to complete an online Enrollment Form</u> -- it comes with detailed instructions on opening an IOLA account.

Q. How do I choose a bank?

Approximately 200 banks statewide participate in the IOLA program. The IOLA Fund maintains an up-to-date <u>list of participating banks</u> on this site. Banks in the first tier (Platinum Partners) have generously agreed to offer favorable rates. Banks that waive fees are also indicated. Opening an account at a bank that pays a higher rate and waives fees means that more interest will go to help low-income New Yorkers get the civil legal assistance they need from the Fund's grantees.

Q. Can I maintain multiple IOLA accounts?

The underlying concept of an IOLA account is that all of an attorney's qualified funds may be pooled into a single account, thus reducing the bank fees that the Fund must pay and increasing its yield per account. In addition, many banks pay tiered rate structures on IOLA accounts, resulting in higher yields for IOLA on those accounts that have higher balances.

Q. How Should I title my IOLA account?

All IOLA Account <u>must</u> contain the attorney's name followed by the acronym IOLA and must end in one of the following phrases; Attorney Trust Account, Attorney Escrow Account or Attorney Special Account. For details, see <u>A Lawyer's Guide to Opening an IOLA account</u>.

MANAGING YOUR IOLA ACCOUNT

Q. Which fees does the Fund pay?

The Fund pays for regular monthly maintenance and service charges on IOLA accounts. These fees are ONLY paid out of the interest earned on the account, and should NEVER be taken out of the principal client funds. This means that if your bank charges \$5.00 a month but your account only earned \$3.50 in interest, the bank may only take \$3.50 in charges for that month (though they may opt to carry the charge forward to be taken from future interest).

Q. Which fees must the attorney pay?

The attorney is responsible for paying any fees not mentioned above, including those associated with wire transfers, stop payments, or NSFs (overdrafts).

Effective January 1, 2010 attorneys who open new IOLA accounts will be responsible for paying the initial checkbook-printing fee. IOLA will no longer assume the cost after that date.

If the attorney maintains an operating account at the same bank, the bank may agree to arrange for fees to be taken from the operating account. Alternately, the attorney can deposit funds into your IOLA account in an amount sufficient to cover such fees before they are charged.

Q. Can I make wire transfers from my IOLA account?

Yes, but you must make arrangements to cover any fees. The fund will not pay for them. See above.

Q. The bank took a fee from the principal in my account. What should I do?

Contact the bank and ask them to correct it, or contact the IOLA Fund and ask the Bank Liaison for help resolving the issue.

Q. Can I move my IOLA account to a different bank?

Yes. The process for changing banks is the same as for any other account. When opening an IOLA account at the new bank, follow the procedure explained above.

CLIENT QUESTIONS

Q. I think my attorney stole my money. What do I do?

Clients who have lost money due to an attorney's mishandling of escrow funds may apply for reimbursement to the <u>Lawyer's Fund for Client Protection</u>.

MISCELLANEOUS QUESTIONS

Q. An attorney who maintained an IOLA account has died. What should be done about the client funds that are still in the account?

The procedure for designation of successor signatories is explained in the Disciplinary Rules of the Code of Professional Responsibility. See Rules of Professional Conduct; 22 N.Y.C.R.R. Part 1200, Rule 1.15 (g).

Q. Can I hold escrow funds in an IOLTA account in another state?

Every state has a program that is similar to New York's IOLA Fund. Typically, they are known by the acronym "IOLTA" or "Interest On Lawyer Trust Accounts." Since an IOLA account is an escrow account, the answer would depend on the nature of the matter as it relates to the funds held in escrow. If it would be appropriate to hold the funds in escrow in another state when all relevant considerations are taken into account, then there is no requirement that they should be placed in a New York IOLA account.

Q. How does the FDIC cover IOLA deposits?

The FDIC insures the owner of the Funds held in an attorney's IOLA escrow account at a bank. For details about the coverage, see www.fdic.org. Please select the Coverage Disclosure and Regulatory Reporting Revisions Link.

Deposits in IOLA accounts held at credit unions are not insured by the FDIC but by the National Credit Union Share Insurance Fund, subject to limiting rules. See www.ncua.gov

Q. I would like to learn more about handling client funds. Are resources available to help me?

Yes. The New York State Bar Association publishes a comprehensive guide, "Attorney Escrow Accounts." You can order a copy from the Bar's website and it may be in your local courthouse or bar association library. Also, from time-to-time the State Bar and others offer CLE courses about handling client funds.

Also, please see the publications by the Lawyers' Fund for Client Protection here.

Disciplinary matters involving client funds are handled by the grievance committees at each of the Appellate Divisions.

Pivotal Planning Group LLC

Investment Management & Business Advisors



Michael J. Desmond, MBA

Professional Profile

Michael Desmond is a Senior Adviser and Business Consultant at the Investment Advisory firm Pivotal Planning Group, LLC. located in Long Island, New York.

Mr. Desmond brings to the firm extensive knowledge in all areas of retirement planning, captive consulting and investment management. His experience as a business consultant has proven invaluable to business owners facing the challenges of growing, operating and transferring their businesses. As a member of our Investment Policy Committee, he plays an integral role in achieving our mission to provide our clients with independent and unbiased advice.

Desmond resides on Long Island with his wife and their two daughters.



Education

Desmond received a M.B.A. in Banking and Finance, graduating Summa Cum Laude from Dowling College and is a member of the Delta MU Delta National Finance Honor Society. By earning the Accredited Investment Fiduciary professional designation he has received formal training in investment fiduciary due diligence and resonsibility. The AIF desination is awarded by the Center for Fiduciary Studies associated with the University of Pittsburh. Desmond is also a member of the Investment Management Consultants Associations, and earned the Certified Investment Management Consultants Association, and earned the Certified Investment Management Analyst designation from the Wharton School of Business.

Areas of Expertise

Retirement Plans, Captive Consulting and Portfolio Management

Investment Policy Statement

Prepared for:

Sample 401k Client

Executive Summary

Client Name: Sample 401k Client
Client Type: Retirement Plans - Participant Directed
Client Subtype: Corporate Defined Contribution
Fiduciary Standard of Care: ERISA
Tax id: 00-0000000
Current Assets; \$10,000,000

"Safe Harbor" Compliance Options: 404(c): Selected Fiduciary Adviser: Selected QDIA: Selected

This Investment Policy Statement should be reviewed by an attorney knowledgeable in this specific area of the law. Any change to this policy should be communicated in writing and on a timely basis to all interested parties. If any term or condition of this Investment Policy Statement conflicts with any trust and/or plan document, the document shall control, as long as such term or condition is consistent with the law.

Investment Options List

Money Market Taxable Short-Term Bond Intermediate Government Intermediate-Term Bond Inflation-Protected Bond Target Date 2000-2010 Target Date 2016-2020 Target Date 2026-2030 Target Date 2036-2040 Large Blend Large Value Target Date 2051+ Large Growth Mid-Cap Blend Foreign Large Blend Small Blend

Purpose

The purpose of this Investment Policy Statement (IPS) is to assist the Investment Committee (Committee) in effectively supervising, monitoring and evaluating the management of the Retirement Plan (Plan). The Committee has the authority to oversee the investment of the Plan's assets. The Committee will discharge its responsibilities under the Plan solely in the interests of Plan participants and their beneficiaries.

The plan's investment program is defined in the various sections of this IPS by:

- 1. Stating in a written document the committee's attitudes, expectations, objectives and guidelines for the investment of all of the plan's
- Encouraging effective communications between the committee and all parties involved with the investment management decisions.
- Establishing formal criteria to select, monitor, evaluate and compare the performance results achieved by each investment option on a regular basis.
- 4. Establishing the number and characteristics of offered investment options.
- 5. Providing rate-of-ratum and risk characteristics for each asset class represented by various investment options.
- 6. Complying with all ERISA, fiduciary, prudence and due diligence requirements experienced investment professionals would utilize, and with all applicable laws, rules and regulations from various local, state, federal and international political entities that may impact the Plan assets.

Statement of Objectives

The Plan is a defined contribution plan started in 12/31/1999, and currently covers 1202 employees. Plan size is currently \$10,000,000 and annual contributions should total \$25,000. The purpose of the plan is to encourage employees to build long-term careers by providing eligible employees with a convenient way to save on a regular and long-term basis for retirement.

This IPS has been arrived at upon consideration by the Committee by a wide range of policies, and describes the prudent investment process the Committee deems appropriate. This process includes offering various asset classes and investment management styles that, in total, are expected to offer participants the opportunity to diversify their investments in a manner appropriate to their retirement objectives and risk/return requirements.

The objectives of the Plan are:

- Have the ability to pay all benefit and expense obligations when due,
- Control costs of administering the plan and managing the investments.
- Refrain from giving what could be construed as investment advice except as may be provided by the Fiduciary Adviser operating under an eligible investment advice arrangement.
- Follow general "safe harbor" rules:
- i. Use prudent experts (registered investment adviser (including mutual funds), bank, or insurance company) to make the investment decisions
- ii. Demonstrate that the prudent expert was selected by following a due diligence process
- lii. Give the prudent expert discretion over the assets
- |v. Have the prudent expert acknowledge their co-fiduciary status (mutual funds are exempt from this requirement the prospectus is deemed to serve as the fund's fiduciary acknowledgement).
- v. Monitor the activities of the prudent expert to ensure that the expert is performing the agreed upon tasks.
- Follow additional ERISA 404(c) "Safe Harbor" requirements:
- I. Notify plan participants that the plan sponsor intends to constitute a 404(c) plan
- II. Provide participants at least three investment options that have a different risk/return profile.
- iii. Provide participants with sufficient information so the participant can make an informed decision about his or her selection of investment option(s); and
- iv. Permit participants to change their investment strategy/allocation with a frequency that is appropriate in light of marketvolatility.
- Provide a Qualified default investment alternative defined as:
- i. Age-based life-cycle or targeted retirement date funds or accounts
- il. Risk-based, balanced funds; or
- iii. An investment management service.

Employer stock is permissible if: (1) the stock is held or acquired by a pool investment vehicle; and (2) the stock is acquired as a matching contribution from the employer and the stock is held at the direction of the participant.

- Follow ERISA "fiduciary adviser" safe harbor rules:
- i, Prudently selecting a qualified fiduciary adviser
- ii. Have the fiduciary adviser acknowledge in writing: (i) fiduciary status to the plan and to the participants; (ii) all forms of compensation; and (iii) all conflicts of interest
- iii. Determine that the fees and expenses for the fiduciary adviser are fair and reasonable for the level of services being rendered
- iv. Monitor the activities of the fiduciary adviser, ensuring that both the arrangement between the plan sponsor and the fiduciary adviser, and the "eligible investment advice arrangement" (computer-based investment models and/or level fee) are audited on an annual basis.

Duties and Responsibilities

Investment Committee

As fiductaries under the plan, the primary responsibilities of the Committee are

- 1. Prepare and maintain this investment policy statement.
- 2. Prudently diversify the plan's assets to meet an agreed upon risk/return profile.
- 3. Prudently select investment options.
- 4. Control and account for all investment, record keeping and administrative expenses associated with the plan.
- 5. Monitor and supervise all service vendors and investment options.
- 6. Avoid prohibited transactions and conflicts of interest.

Custodian

Custodians are responsible for the safekeeping of the plan's assets. The specific duties and responsibilities of the custodian are:

- 1. Value the holdings.
- 2. Collect all income and dividends owed to the plan.
- 3. Settle all transactions (buy-sell orders).
- Provide monthly reports that detail transactions, cash flows, securities held and their current value, and change in value of each security
 and the overall plan since the previous report.
- 5. Maintain separate accounts by legal registration.

Investment Advisor

The investment Advisor serves as an objective, third-party professional retained to assist the committee in managing the overall investment process. The Advisor is responsible for guiding the committee through a disciplined and rigorous investment process to enable the committee to meet the fiduciary responsibilities outlined above.

Fiduciary Advisor

The Fiduciary Adviser serves as an objective, third-party professional retained to provide specific investment advice to participants.

Asset Class Guidelines

The committee believes long-term investment performance, in large part, is primarily a function of asset class mix. The committee has reviewed the long-term performance characteristics of the broad asset classes, focusing on balancing the risks and rewards. Historically while interest-generating investments, such as bonds, have the advantage of relative stability of principal value, they provide kittle opportunity for real long-term capital growth due to their susceptibility to inflation.

On the other hand, equity investments, such as common stocks, clearly have a significantly higher expected return but have the disadvantage of much greater year-by-year variability of return. From an investment decision-making point of view, this year-by-year variability may be worth accepting provided the participant's time horizon is sufficiently long (five years or greater).*

The following asset classes were selected and ranked in ascending order of "risk" (least to most) according to the most recent quarter's median 3-year Standard Deviation values.

Money Market Taxable

Short-Term Bond

Intermediate Government

Intermediate-Term Bond

Inflation-Protected Bond

Target Date 2000-2010

Target Date 2016-2020

Target Date 2026-2030 Target Date 2036-2040

Large Blend

Large Value

Target Date 2051+

Large Growth

Mid-Cap Blend

Foreign Large Bland

Small Blend

Implementation

Each investment option should be managed by: (i) a bank, (ii) an insurance company; (iii) a registered investment company (mutual fund); or, (iii) a registered investment adviser. The committee will apply the following due difference criteria in selecting each money manager or mutual fund.

fi360

fi360 Fiduciary Score Avg (3yr)

Threshold: <= 25 | Pass 1 of the last 1 quarters | Treat missing data values as a failure
Please referance the fi360 Fiduciary Score Methodology document in Appendix C for additional details.

Expenses

Prospectus Net Exp. Ratio (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Performance

10 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

3 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

5 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Risk

Alpha (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Operations

Style (Optional)

Threshold: No Style Drift | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Assets (Optional)

Threshold: >= 75 Mit | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Inception Date (Optional)

Threshold: >= 5 Years | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Manager Tenure (Optional)

Threshold: > 5 Years | Pass 1 of the last 1 quarters | Treat missing data values as a failure

In addition to meeting any required criterion, 6 of the 9 optional criterion must be satisfied to meet the overall Due Ditigence Criteria.

Monitoring - Performance Objectives

The committee acknowledges fluctuating rates of return characterize the securities markets, particularly during short-term time periods. Recognizing that short-term fluctuations may cause variations in performance, the committee intends to evaluate investment performance from a long-term perspective.

The committee is aware the ongoing review and analysts of the investment options is just as important as the due diligence process. The performance of the investment options will be monitored on an ongoing basis and it is at the committee's discretion to take corrective action by replacing a manager if they deem it appropriate at any time.

On a timely basis, but not less than quarterly, the committee will meet to review whether each investment; specifically:

- 1. The investment option's adherence to the Watch List Criteria Identified below;
- 2. Material changes in the investment option's organization, investment philosophy and/or personnel; and
- 3. Any legal, SEC and/or other regulatory agency proceedings affecting the investment option's organization.

Monitoring - Benchmarks

The Committee has determined it is in the best interest of the Plan's participants that performance benchmarks be established for each investment option. Manager performance will be evaluated in terms of an appropriate market index (e.g. the S&P 500 stock index for large-cap domestic equity manager) and the relevant peer group (e.g. the targe-cap growth mutual fund universe for a large-cap growth mutual fund).

Banchmark Index

Peer Group MSCI ACWI Ex USA NR USD Foreign Large Blend

Barclays US Treasury US TIPS TR USD Inflation-Protected Bond Barclays US Government TR USD Intermediate Government Barclays US Govt/Credit 5-10 Yr TR USD Intermediate-Term Bond

S&P 500 TR Large Blend

Russell 1000 Growth TR USD Large Growth Large Value Barcleys ABS TR USD S&P MidCap 400 TR Mid-Cap Blend

USTREAS T-Bill Auction Ave 3 Mon Money Market Taxable Bardays Govt/Credit 1-5 Yr TR USD Short-Term Bond

Russell 2000 TR USD Small Blend

Morningstar Lifetime Moderate 2010 Target Date 2000-2010 Morningstar Lifetime Moderate 2020 Target Date 2016-2020 Target Date 2026-2030 Morningstar Lifetime Moderate 2030 Morningstar Lifetime Moderate 2040 Target Date 2036-2040 Morningstar Lifetime Moderate 2050 Target Date 2051+

Monitoring - Watch List Criteria

The decision to retain or terminate an investment option cannot be made by a formula. Also, extraordinary events do occur that may interfere with the investment option's ability to prudently manage investment assets. It is the committee's confidence in the investment option's ability to perform in the future that ultimately determines the retention of an investment option.

An investment option may be placed on a Watch List and a thorough review and analysis of the investment option may be conducted, when

fizen

6360 Fiduciary Score Ava (3vr)

Threshold: <= 25 | Pass 1 of the last 1 quarters | Treat missing data values as a failure

*Please reference the f350 Fiduciary Score Methodology document in Appendix C for additional details

Prospectus Net Exp Ratio (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Реполивансе

10 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

3 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

5 Year Return (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 querters | Treat missing data values as a failure

Alpha (Optional)

Threshold: Top 50% of peer | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Style (Optional)

Threshold: No Style Orift | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Assets (Optional)

Threshold: >= 75 Mil | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Inception Date (Optional)

Threshold: >= 5 Years | Pass 1 of the last 1 quarters | Treat missing data values as a failure

Manager Tenura (Optional)

Threshold: > 5 Years | Pass 1 of the last 1 quarters | Treat missing data values as a failure

In addition to meeting any required criterion, 6 of the 9 optional criterion must be satisfied to meet the overall Due Diligence Criteria.

Monitoring - Measuring Costs

- The committee will review at least annually all costs associated with the management of the plan, including:

 1. Expense ratios of each mutual fund against the appropriate peer group.

 2. Administrative Fees; costs to administer the plan, including record keeping, custody and trust services.

 3. The proper identification and accounting of all parties receiving soft dollars and/or 12b-1 fees generated by the plan.

Investment Policy Review

The committee will review this IPS at least annually to determine whether stated investment objectives are still relevant and the continued feasibility of achieving the same. It is not expected that the IPS will change frequently. In particular, short-term changes in the financial markets should not require adjustments to the IPS.

Prepared by		Signature	Date
A4	Title/Position	Etamatusa.	Date
Name	Titles is desired.	Signature	Pere
James Smith	Vice President		
	Vice President		

Appendix C: fi360 Fiduciary Score« Methodology

The fi380 Fiduciary Scores is a peer percentile ranking of an investment against a set of quantitative due diligence criteria selected to reflect prudent fiduciary management. For each investment with at teast a three-year history, fi380 calculates the fi360 Fiduciary Score based on the following due diligence criteria; regulatory oversight, minimum track record, stability of the organization, assets in the investment, composition consistency with asset class, style consistency, expense ratioflees relative to peers, risk-edjusted performance relative to peers, and performance relative to peers. Investments are evaluated at the conclusion of each month, if an investment does not meet an individual due difigence criterion, points are awarded a investments that satisfy at of the due diligence criteria receive a fi360 Fiduciary Score of 0. Every other investment is given a Score of 1-100 based on their point total, and representing their percentile ranking within their peer group. The fi360 Fiduciary Score Average is a one-, three-, five- or tan-year rolling average of an investment fi360 Fiduciary Score is also calculated on a monthly basis. The fi360 Fiduciary Score represents a suggested course of action and is not intended, nor should it be used, as the sole source of information for reaching an investment decision. Visit fi360.com/fi360-Fiduciary-Score for the complete methodology document.



Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
Basic plan type	Defined Contribution	Defined Contribution	Defined Contribution	Defined Contribution	Defined Contribution	IRA based	[RA based
Who generally adopts	Corporations, partnerships, limited liability companies	Sole proprietorships, partnerships, limited liability companies and corporations with no common-law employees	Sole proprietorships, partnerships, limited liability companies and corporations	Sole proprietorships, partnerships, limited liability companies and corporations with 100 or fewer eligible employees	Sole proprietorships, partnerships, Ilmited liability companies and corporations	Sole proprietorships, partnerships, and small businesses	Sole proprietorships, partnerships, limited liability companies and corporations with 100 or fewer employees
Can employer sponsor other qualified retirement plans	Yes	Yes	Yes	No	Yes	Yes	No
Who can contribute	Employee; employer contributions are optional	Employee; employer contributions are optional	Employee and employer	Employee and employer	Employer	Employer	Employee and employer
Cost Index	Low to High depending upon design complexity, service model adopted and other factors	Low to Medium	Low to Medium	Low to Medium	Low to High depending upon design complexity, service model adopted and other factors	Low	Low
Maximum employee deferral contribution	The lesser of \$18,000 for 2017 (indexed for inflation each year) or 100% of compensation	The lesser of \$18,000 for 2017 (indexed for inflation each year) or 100% of compensation	The lesser of \$18,000 for 2017 (Indexed for inflation each year) or 100% of compensation	The lesser of \$12,500 for 2017 (indexed for inflation each year) or 100% of compensation	None	None. Contributions are generally by Employer only	The lesser of \$12,500 for 2017 (indexed for inflation each year) or 100% of compensation



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Page 1



Employer contributions Discretionary; maximum tax-deductible employer contribution is 25% of eligible payroll; overall maximum contribution per eligible employee is 100% of compensation not compensation not compensation not compensation of compensation compensation of compensation compensation compensation compensation compensation compensation co	Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
		maximum tax- deductible employer contribution is 25% of eligible payroll; overall maximum contribution per eligible employee is 100% of compensation not	maximum tax- deductible employer contribution is 25% of eligible payroll; overall maximum contribution per eligible employee is 100% of compensation not	100% on the first 3% of employee deferral plus 50% on the next 2% of employee deferral OR 3% of compensation to all eligible	100% up to 3% of employee's compensation OR 2% of compensation to all eligible	maximum tax- deductible employer contribution is 25% of eligible payrol; overall maximum contribution per eligible employee is 100% of compensation not	cannot exceed the lesser of 25% of the employee's compensation or	compensation (may be reduced to 1% in 2 of any 5 years) OR 2% of compensation to all eligible

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Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
Catch-up contributions for those ages 50 and older	\$6,000 for 2017 (Indexed for Inflation each year) ¹	\$6,000 for 2017 (Indexed for inflation each year) ¹	\$6,000 for 2017 (indexed for inflation each year) ¹	\$3,000 for 2017 (indexed for inflation each year) ¹	N/A	N/A	\$3,000 for 2017 (indexed for inflation each year)
							9
					in the Att		



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Feature	401(k)	Salo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
Employee eligibility	Age requirement cannot exceed 21; service requirement can't exceed one year; may exclude union employees	Age requirements cannot exceed 21; service requirements can't exceed one year	Age requirement cannot exceed 21; service requirement can't exceed one year; may exclude union employees	Age requirement cannot exceed 21; service requirement can't exceed one year; may exclude union employees	Age requirement cannot exceed 21; service requirement can't exceed one year; two years if 100% vested; may exclude union employees	Age requirement cannot exceed 21; have earned compensation in three of the past five years; received compensation of at least \$600; may exclude union employees	All employees earning \$5,000 for any past two years and is expected to do so in current year; no age limit permitted; may exclude union employees
Who directs investments	Employer/Trustee or plan may allow individual direction	Individual	Employer/Trustee or plan may allow individual direction	Individual	Employer/Trustee or plan may allow individual direction	Individual	Individual
IRS reporting by employer	Form 5500	Form 5500-EZ when plan assets reach \$250,000	Form 5500	Form 5500	Form 5500	None	None



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Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
Establishment deadline	By the last day of the plan year for which the plan is effective	By the last day of the plan year for which the plan is effective	Any date between January 1 and October 1; may not have an effective date that is before the date plan actually adopted	Any date between January 1 and October 1; as soon as administratively feasible for businesses established after October 1st	By the last day of the plan year for which the plan is effective	Established by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Any date between January 1 and October 1; as soon as administratively feasible for businesses established after October 1st
Complexity Index	High	Medium	High	Medium	Medium	Low	Low
Loans	Yes ¹	Yes¹	Yes¹	Yes¹	Yes ^t	No	No
Roth Contributions Allowed	Yes¹	Yes¹	Yes¹	Yes¹	No	No	No





Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
Funding deadline	Employee contributions must be deposited as soon as administratively possible ² ; employer contributions must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Unincorporated businesses employer/employer employer employer contributions: by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken; incorporated businesses Employer contributions: by tax-filing date plus extensions and employee contributions must be deposited as soon as administratively possible.	Employee contributions must be deposited as soon as administratively possible?; employer contributions must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Employee contributions must be deposited as soon as administratively possible ² ; employer contributions must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Contributions must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Funded by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken	Employee contributions must be deposited as soon as administratively possible; employer contributions must be deposited by the time the corporate tax return (with extensions) is filed for the tax year in which the deduction is being taken
Minimum vesting	Immediate on Employee Contributions; Employer contributions can be subject to vesting schedule	Immediate	Immediate	Immediate	Employer contributions can be subject to vesting schedule	Immediate	Immediate



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Page 6



Feature	401(k)	Solo 401(k)	Safe Harbor 401(k)	SIMPLE 401(k)	Profit Sharing	SEP IRA	SIMPLE IRA
When can withdrawals be taken	Withdrawals can generally be made for the following reasons: • termination of employment • disability • death • retirement • hardship If taken prior to an employee reaching age 59½ may be subject to a 10% penalty;³ withdrawals are generally considered taxable income	Withdrawals can generally be made for the following reasons: • termination of employment • disability • death • retirement • hardship If taken prior to an employee reaching age 59½ may be subject to a 10% penality;³ withdrawals are generally considered taxable income	Withdrawals can generally be made for the following reasons: • termination of employment • disability • death • retirement • hardship If taken prior to an employee reaching age 59½ may be subject to a 10% penalty; withdrawals are generally considered taxable income	Withdrawals can generally be made for the following reasons: • termination of employment • disability • death • retirement • hardship If taken prior to an employee reaching age 59½ may be subject to a 10% penalty; withdrawals are generally considered taxable income	Withdrawals can generally be made for the following reasons: • termination of employment • disability • death • retirement • hardship If taken prior to an employee reaching age 59½ may be subject to a 10% penalty; withdrawals are generally considered taxable income	Withdrawals can be taken at any time; withdrawals taken prior to an employee reaching age 59½ may be subject to IRS penalties; withdrawals are generally considered taxable income	Withdrawals can be taken at any time; withdrawals taken prior to an emplayee reaching age 59½ and within the first two years of participation, may be subject to a 25% early withdrawal penalty; after two years, a 10% early withdrawal penalty would apply; withdrawals are generally considered taxable income

IMPORTANT NOTE: This chart provides a high-level comparison of the features and benefits of the plans included and is not intended as a comprehensive or detailed review of each plan type. It is intended to be general in nature. As a result, exceptions to each plan feature can exist. Be sure to consult with a professional retirement planner or expert before you act on any information contained in this chart.



^{1.} This is a design option that the plan may or may not permit.
2. Plans with fewer than 100 participants must deposited employee deferrals no later than seven business days after the date the amount is withheld.

^{3.} There is an exception to this rule which allows an employee who retires during the calendar year in which they turn 55, or later, to withdraw without penalty.

ERP

401(k) PLANS
DEFINED CONTRIBUTION PLANS
CASH BALANCE/DEFINED BENEFIT PLANS
NON-QUALIFIED PLANS

ACTUARIES & CONSULTANTS

NEW YORK CITY 225 West 34th Street 9th Floor New York, NY 10122 212.563.5060

LONG ISLAND 135 Pinelawn Road Suite 240 North Melville, NY 11747 631.777.5060

www.erpactuaries.com

ERP Actuaries & Consultants' corporate mission is to help businesses save money and accumulate retirement wealth with a qualified retirement plan solution. Known and respected as an industry leader, ERP effectively delivers superior, customized retirement plan designs, compliant plan administration and experienced actuarial and retirement plan services that reduce plan costs and increase savings. Our team of credentialed pension professionals is committed to providing timely information and proactive solutions to help business owners save money through their 401(k) and other qualified retirement plans.

Today, it is necessary for small businesses to provide a 401(k) plan for their employees in order to compete for and retain the best workforce. ERP will design the best, customized employee benefits program to attract, motivate and retain excellent talent. We will also assess your existing plan to find ways to save you money.



ERP provides businesses with the added advantage of cost savings while offering the best 401(k) and retirement plan solution that achieves all current and future retirement goals.

ERP Actuaries & Consultants is one of the leading pension specialist/actuarial firms in the New York/Metropolitan area and has clients in over 20 states. The cornerstone of our success is our philosophy of providing the highest level of service,

generally reserved for Fortune 500 companies, to small and midsize businesses at affordable prices. Plus, backed by our industry-respected reputation, our clients always have peace of mind knowing that their plan is operating according to IRS regulations while continuing to meet all retirement objectives.

ERP Actuaries & Consultants provides the following plan services:

- > Plan Design and Implementation
- > Plan Document Services
- > Development of Procedures and Forms
- > Plan Design Consultation
- > IRS Form 5500 Preparation
- > Annual & Mid-Year Compliance Testing
- > Loan Processing
- > Employee Terminations

- FASB Valuations
- Actuarial Certification of DB Plans
- > 401(k) Administration
- > 401(k) Safe Harbor
- Profit Sharing Plans
- > New Comparability Plans
- 401(k)/Cash Balance Combo Plans

For more information please contact:

James Suessmann
Director of Business Development
ERP Actuaries & Consultants
201.401.5842
jsuessmann@erpactuaries.com



Sole Proprietorship 401(k) Profit Sharing/Defined Benefit Sample Plan Design for 2017

ACTUARIES & CONSULTANTS			Maximum Allocation in a 401(k) Profit Sharing Plan Combined with a Defined Benefit Plan				
Name	Age	Compensation ¹	401(k)	Profit Sharing	Defined Benefit ²	Total	
Sole Proprietor	61	270,000	24,000	16,200	282,457	322,657	
Grand Total		270,000	24,000	16,200	282,457	322,657	
Total To Owners 270,000			24,000	16,200	282,457	322,657	
Total To Employees	35) -)		- 12		
Total Employer Contribution (inc	ludes owner's 40	1(k) deferrals)				322,657	
Tax Savings (assumes a 45% tax rate)						145,196	
Net After Tax Cost of Plan Total Owner Allocations (includes 401(k) deferrols)						177,461	
						322,657	
Estimated after tax savings or (cost)						145,196	

		Profit	Defined	
Projected Account Balance*	401(k) ³	Sharing ³	Benefit	Total
Sole Proprietor	133,946	90,414	1,560,753	1,785,113

^{*} at either age 65 or after 5 years of service, whichever is later

Contribution Percentage	401(k)	Profit Sharing	Defined Benefit	Total
Sole Proprietor	8.89%	6.00%	104.61%	119.50%

¹ Only the first \$270,000 of compensation may be used to determine profit sharing contributions and plan benefits.

For more information, please contact:

James Suessmann
Director of Business Development
(201) 401-5842
JSuessmann@erpactuaries.com

² This contribution is an average annual cost. For the first plan year, this contribution amount may be slightly less than the amount shown

³ Assumes a 5.5% annual investment return.



ABC Company

401(k) Profit Sharing/Cash Balance Proposal For 2017

				HIGHIIGHIVE I -	talles(tt)Prif			Orellipping 1-	erd will be the	
			Non	-Elective Safe	Harbor 401(k)		Non	-Elective Safe	Harbor 401(k)
				with New Com	parability	2		with New Com	parability	
		- 1		5H Profit	Profit			SH Profit	Profit	
Name	Age	Comp 1	401(k)	Sharing	Sharing	Total ²	401(k)	Sharing	Sharing	Total *
Owner	72	112,000	24,000	malay - 1	10,080	34,080	24,000		36,000	60,000
Spouse	55	56,000	24,000	-	1,680	25,680	24,000		8,120	32,120
Employee 1	43	41,000		1,230		1,230		1,230	1,025	2,255
Employee 2	41	31,000		930		930		930	775	1,705
Employee 3	53	56,000		1,680		1,680	71 1:	1,680	1,400	3,080
1. Grand Total	5	296,000	48,000	3,840	11,760	63,600	48,000	3,840	47,320	99,160
2. Total To Owners	2	168,000	48,000		11,760	59,760	48,000		44,120	92,120
3. Total To Employees	3	128,000		3,840		3,840		3,840	3,200	7,040
4. Total Employer Contribution	firelados avener	's 402(h) sheferrals)				63,600				99,160
5. Tax Savings (assumes a 45% tax rate)						28,620				44,622
6. Net After Tax Cost of Plan						34,980				54,538
7. Total Owner's Allocations (including 401(s) deferrals)						59,760				92,120
8. Estimated After-Tax Sav	ings or (Cost)				24,780		E-74T, I		37,582

		SH Profit	Profit			SH Profit	Profit	
Projected Account Balance*	401(k) ⁴	Sharing 4	Sharing 4	Total	401(k) ⁴	Sharing 4	Sharing 4	Total
Owner	133,946		56,257	190,203	133,946		200,919	334,865
Snouse	309,008		21.631	330,639	309,008		104,548	413,556

^{*} At either age 65 or after 5 years of service, whichever is later.

		SH Profit	Profit			SH Profit	Profit	
Contribution Percentages	401(k)	Sharing	Sharing	Total	401(k)	Sharing	Sharing	Total
Owner	21.43%	0.00%	9.00%	30.43%	21.43%	0.00%	32.15%	53.58%
Spouse	42.86%	0.00%	3.00%	45.86%	42.86%	0.00%	14.50%	57.36%
Employees	A STATE OF THE STA	3.00%	0.00%	3.00%		3.00%	2.50%	5.50%

Only the first \$270,000 of compensation may be used to determine profit sharing contributions and plan benefits
 Excludes Salary Deferrals for the non-owners
 This contribution is an average annual cost. For the first plan year, the contribution is statutorily limited to a lower amount.
 Assumes a 5.50% annual investment return

ABC Firm

401(k) Profit Sharing/Cash Balance Proposal For 2017

MINNASS, CINSTITUTE			Alternative I - Minimum Non-Elective Safe Harbor 401(k) with New Comparability			Alternative I - Maximum Non-Elective Safe Harbor 401(k) with New Comperability				Alternative II - Maximum Non-Elective Safe Harbor 401(k) with New Comparability/Cash Balance					
				SII Profit	Profit	10000000		SH Profit	Profit	1000000		SH Frofit	Profit	Cash	Toronto 1
Name	Age	Comp 1	401(k)	Sharing	Sharing	Total *	401(k)	Sharing	Sharing	Total ²	401(k)	Sharing	Sharing	Balance*	Total *
Partner 1	70	270,000	24,000	-	24,300	48,300	24,000	- 100 · 2000	36,000	60,000	24,000	THE STATE	16,200	291,600	331,800
Partner 2	64	270,000	24,000		24,300	48,300	24,000		36,000	60,000	24,000		16,200	270,000	310,200
Partner 3	58	270,000	24,000		24,300	48,300	24,000		36,000	60,000	24,000		16,200	175,500	215,700
Partner 4	51	270,000	24,000	-	24,300	48,300	24,000		36,000	60,000	24,000		16,200	140,400	180,600
Partner 5	61	270,000	24,000		24,300	48,300	24,000		36,000	60,000	24,000		16,200	261,900	302,100
Associate 1	59	180,000			5,400	5,400		+	5,400	5,400			9,000		9,000
Associate 2	28	175,000			5,250	5,250		DESIGNATION OF THE PERSON OF T	5,250	5,250			8,750		8,750
Associate 3	59	130,000			3,900	3,900			3,900	3,900			6,500		6,500
Employee 4	33	55,000		1,650		1,650		1,650	1,100	2,750		1,650	1,650	3,300	6,600
Employee 5	47	50,000		1,500		1,500		1,500	1,000	2,500		1,500	1,500	3,000	6,000
Employee 6	26	45,000		1,350		1,350		1,350	900	2,250		1,350	1,350	2,700	5,400
Employee 7	41	40,000		1,200		1,200		1,200	800	2,000		1,200	1,200	2,400	4,800
1. Grand Total	12	2,025,000	120,000	5,700	136,050	261,750	120,000	5,700	198,350	324,050	120,000	5,700	110,950	1,150,800	1,387,450
2. Total To Partners	5	1,350,000	120,000		121,500	241,500	120,000	1.	180,000	300,000	120,000		81,000	1,139,400	1,340,400
3. Total To Employees	7	675,000		5,700	14,550	20,250		5,700	18,350	24,050		5,700	29,950	11,400	47,050
4. Total Employer Contribution	-	rs 401 lib deferred				261,750				324,050					1,387,450
S. Tan Savings (converse of 45% tox rotal)						117,788				145,823					624,353
6, Net After Tax Cost of Plen		10 to				143,962				178,227					763,097
7, Total Partner's Allocations						241,500				300,000					1,340,400
8. Estimated After-Tax Sav	ings or i	Cost)				97,538				121,773					577,303

		SH Profit	Profit			5H Profit	Profit			SH Profit	Profit	Cash	
Projected Account Balance*	401(k) a	Sharing *	Sharing a	Total	401(k) 4	Sharing *	Sharing *	Total	401(k)*	5haring *	Sharing *	Balance	Total
Partner 1	133,946	-	135.621	269,567	133,946	-	200,919	334,865	133,946		90,414	1,611,274	1,835,634
Partner 2	133,946		135,621	269,567	133,946		200,919	334,865	133,946		90,414	1,491,920	1,716,280
Partner 3	198,405		200,886	399,291	198,405		297,608	496,013	198,405		133,924	1,428,922	1,761,251
	487,022		493,110	980,132	487,022		730,533	1,217,555	487,022		328,740	2,513,525	3,329,287
Partner 4	133,946		135,621	269,567	133,946		200,919	334,865	133,946	Marie III	90,414	1,321,130	1,545,490
Partner S	133,340		133,041	202,101	200,000		O tracks and	00 17000					

^{*} At million age \$5 or other 5 yours of service, whichever it later.

		SH Profit	Profit			SH Profit	Profit			SH Profit	Profit	Cash	
Contribution Percentages	401(k)	Sharing	Sharing	Total	401(k)	Sharing	Sharing	Total	401(k)	Sharing	Sharing	Balance	Total
Partner 1	8.89%	0.00%	9.00%	17.89%	8.89%	0.00%	13.34%	22.23%	8.89%	0.00%	6.00%	108.00%	122.89%
Partner 2	8.89%	0.00%	9.00%	17,89%	8.89%	0.00%	13.34%	22.23%	8.89%	0.00%	6.00%	100.00%	114.89%
	8.89%	0.00%	9,00%	17.89%	8,89%	0.00%	13.34%	22.23%	8.89%	0.00%	6.00%	65.00%	79.89%
Partner 3	8.89%	0.00%	9.00%	17.89%	8.89%	0.00%	13.34%	22.23%	8.89%	0.00%	6.00%	52.00%	66.89%
Partner 4	8.89%	0.00%	9.00%	17.89%	8.89%	0.00%	13.34%	22.23%	8.89%	0.00%	6.00%	97.00%	111.89%
Partner 5	8.85%	0.00%	3.00%	3.00%		0.00%	3.00%	3.00%		0.00%	5.00%	0.00%	5.00%
HCEs		3.00%	0.00%	3.00%		3.00%	2.00%	5.00%		3.00%	3.00%	6.00%	12,00%
Staff		3.00%	0.00%	3.0076		3.0070	2.00.0	2.00.0					

<sup>Only the first \$270,000 of compensation may be used to determine profit sharing contributions and plan benefits
Escludes Salary Deletials for the non-owners
This contribution is an everage annual cost. For the first plan year, the contribution is in statutorify limited to a lower amount.
Assumer a \$50% should investment return.</sup>



Retirement Plan Consultants SEC Registered Investment Adviser

125 Jericho Turnpike - Suite 200 Jericho, New York 11753 www.pivotalplanning.com (516) 333-6565

Retirement Plan Consultants

Pivotal Planning Group, LLC is a SEC Registered Investment Adviser and a fiduciary to 401(k) and retirement plans. We specialize in helping plan sponsors and trustees meet their fiduciary responsibilities by managing, formalizing, selecting and monitoring their plan assets along with educating their employees. We serve in a fiduciary capacity to the plan and thus assume most of the fiduciary responsibility from the plan trustees.

We are one of a few firms here on Long Island that is willing to act as a 3(38) Investment Manager to retirement plans. This significantly reduces the plan sponsors and trustees personal risk and shifts many important responsibilities to us as an independent expert. Most will experience better service, a shrinking work load and a reduction in personal liability as the fiduciary to the plan. Additionally, in most cases we have been able to lower the overall fees to the plan and its participants. As a fiduciary, we avoid conflicts of interest and have no hidden agenda. Pivotal Planning Group exists for one reason, to help our clients achieve their goals through education, prudent planning and unbiased advice.

"Simply stated, your best interests always come first."

Our Fiduciary Oath

Pivotal exists for one reason, to help our clients achieve their goals through education, prudent planning and unbiased advice.

We are committed to advising our clients in a fiduciary capacity. Simply stated, your best interests always come first.

We will avoid conflicts of interest and immediately inform you if any should arise that would affect our impartiality.

We do not receive compensation from the sale of securities or other financial products.

Fiduciary Services for Trustees

Are you a TRUSTEE or FIDUCIARY?

A Trustee has a fiduciary duty and stands in a special relationship of TRUST, CONFIDENCE and RESPONSIBILITY.

A Fiduciary is anyone who exercises discretionary authority regarding the management and administration of a retirement plan or trust and its assets.

Why is this important to know?

There has been an increase in the number of lawsuits against plan trustees in the private sector, the primary reason being "Breach of Fiduciary Duty".

Also, are you aware that a trustee and fiduciary may be personally liable for a breach of their fiduciary duty?

Unfortunately, many fiduciaries struggle to understand the exact nature of their responsibilities, the extent of their personal liability and how to comply with government regulations.

How can we help?

At Pivotal Planning Group we provide:

Education – To trustees, board members and investment committee members on their fiduciary duties and provide them with the necessary systems and tools to meet their responsibilities.

Prudent Planning — We will implement a custom Fiduciary Quality Management System. It is intended to uncover fiduciary non-compliance and liability issues and provide the framework of a disciplined investment process.

Unbiased Advice – Meaning the adviser works commission-free and conflict-free. We do not accept third-party compensation or sell products. Simply stated, your best interests always come first.

Retirement Plan Advisory Services

How many investments choices should we have? Which companies should we be working with? Should we use index funds or actively managed funds?

Creating the proper investment menu is one of the most crucial decisions a TRUSTEE can make. While working with a broker may have been the traditional way of choosing investments, the landscape has changed.

Unfortunately, most of the retirement plan advisors in this country do not have the legal capacity to act as a fiduciary. In addition, most lack the professional expertise or credentials needed to deliver prudent plan governance procedures necessary to help mitigate the personal liability that fiduciaries face.

Today more and more plan sponsors are working with an independent fee-only adviser, who can offer unbiased advice in the investment selection process. This independent adviser can help manage liability and minimize cost, while seeking to maximize performance and improve the effectiveness of the retirement plan.

How we can help?

At Pivotal Planning Group we will:

Assist - In creating a well-balanced investment menu so that the plan participants will have greater flexibility.

Create and Monitor – Model Portfolios based on risk and return characteristics. Participants have access to professionally managed portfolios for no additional fee.

Implement – A rigorous due diligence process to ensure a "Best in Breed" approach is being used. This also ensures that an independent and unbiased selection and monitoring process is strictly followed.

These services are well suited for Trustees concerned with reducing liability and exemplifies their commitment to an independent investment selection and monitoring process based on prudent investor principles.

Pension & Employee Benefits Consulting

The proper design and implementation of a company's retirement plan is critical in today's changing economic environment. Our planning and design team can create a customized plan document suited to your needs. Whether you need a defined benefit plan, 401(k) / profit sharing plan or a hybrid plan, our clients utilize our expertise in developing a customized plan compared to the traditional prototype plan offered by large institutions. Typically these prototype plans do not effectively achieve the retirement goals of the business owners and the plan participants.

In addition, rising health care costs & group health benefits are a primary concern of our business clients. We can analyze all group benefits including medical, dental, disability and supplemental insurance programs and provide unbiased advice.

Do you have an exceptional employee benefits package in place?

Are you maximizing your pre-tax contributions into a qualified retirement plan?

Most of our clients are eligible to contribute much more in to their retirement plan and receive a significant tax reduction.

Firm History

Pivotal Planning Group, LLC (PPG) was formed to provide unbiased investment advisory services to the accounting & business advisory clients of Satty, Levine & Ciacco, CPAs, P.C. (SL&C). SL&C was founded in 1949 based on the principles of honesty and integrity and always placing our clients' interests first. That culture drove the partners of SL&C to form Pivotal Planning Group, LLC, a firm devoted to advising our clients in a fiduciary capacity. Today, however, we have grown to enjoy relationships with several CPA firms and other professionals who refer their clients to us because we share the common belief that our client's best interests must always come first. We are a privately owned and completely independent consulting firm. We are not part of a large bank, brokerage firm, insurance company or any other large institution and therefore have no hidden agenda.

Advisory Committee

John Marchisotta CFP[®], ChFC, AIFA[®] – Managing Partner

Roger Ciacco, CPA/PFS, CFP® - Partner

Robert E. Bertucelli, CPA, CFP® – Partner

Larry Marchisotta, CPA/PFS, CFP* = Partner

Frank W. Sluter, CPA - Partner

Michael J. Desmond, CIMA®, AIF® - Senior Adviser

James P. Diver - Adviser

Gratis Meeting

The following company overview has provided you with a brief summary of our services as well as our professional experience. This does not begin to explain the level of expertise and service we provide our clients. We are hopeful that you have gained an appreciation of the level of dedication we have toward our profession and more importantly, the families and organizations that we represent.

Our success has been sustained as a direct result of referrals from existing clients and colleagues, such as yourself. Therefore, if you know of someone who would benefit from meeting with us, we welcome the opportunity, and invite them to call our office to arrange a complimentary meeting.

Please call us to get an *UNBIASED* second opinion regarding your company retirement plan.

We can be reached at our office in Jericho, New York at

(516) 333-6565

Please ask to speak directly with John Marchisotta or Michael Desmond

Thank you for your consideration.

SELF DIRECT IRA:

What Are Alternative Assets?

An Alternative Asset refers to an investment beyond the traditional stock, bond, and mutual fund. Alternative investments can bring significant benefits to an investor's portfolio by diversifying the risks associated with traditional investments in equity markets.

Traditional investments linked to market trends pose a systematic risk outside the individual investor's control, as these type of investments move with the market.

Alternative investments such as Real Estate, Private Equity, Precious Metals, Commodities Promissory Notes, and Equity Crowdfunding present a way to maximize investment options. They also allow an investor to control their funds, risk, and growth potential.

Types of Alternative Assets

Real Estate

There are several different types of real estate investments and ways in which you can acquire them. Real Estate assets are held in a self-directed retirement account and include a vast array of residential and commercial properties, REITS, and tax liens.

Private Equity

Private equity refers to investing in privately-held companies and businesses that are not publicly traded on the stock exchange. Self-directed IRAs invest in private companies through a fund or directly into a company of your choice.

Precious Metals

Precious metals offer investment opportunities in tangible assets such as gold, silver, palladium, or platinum.

Equity Crowdfunding

Crowdfunding platforms give investors access to private stock in up and coming startups. Investors can use their IRAs, 401Ks, and other retirement plans to fund virtually any crowdfunded venture.

Promissory Notes & Trust Deeds

A promissory note represents a promise to repay a borrowed sum of money by a specified maturity date. The investment is made on set terms with fixed interest payments, and both principal and interest are collected on behalf of a self-directed IRA.

Managed Futures

Managed futures is an industry in which direct investments are placed in the global currency, interest rate, equity, metal, energy, and agricultural markets. Commodities and foreign currency exchanges put its focus on taking long and short positions in the futures market.

Satty, Levine & Ciacco, CPAs, P.C. Certified Public Accountants & Business Advisors



Michael Freedman, JD, CPA

Professional Profile

Michael Freedman is a Tax Manager at the accounting and business advisory firm, Satty, Levine & Ciacco, CPAs, P.C.

Michael works with the firm's tax and business advisory team to assist our clients with complex tax compliance, planning, and consulting matters.

Michael brings over eighteen years of combined experience in the accounting, tax, and legal fields, specializing in assisting individuals and closely-held businesses with their individual, partnership, corporate, and estate tax needs. Previously, Michael worked at companies such as Prudential Financial and a Deere & Company subsidiary, in addition to his experience in public accounting and as a practicing attorney.

Professional Affiliations

Mr. Freedman is a member of the American Institute of Certified Public Accountants (AICPA), the New York State Society of Certified Public Accountants (NYSSCPA), and the New York State Bar Association (NYSBA).

Recognition

Michael has been featured in "Who's Who in Accounting", and "Accounting Ones to Watch", in the Long Island Business News. Michael has also been interviewed several times on various relevant tax topics by Long Island Business News and FiOS1 News.

Education

Michael earned a B.S. in Business Administration (Finance concentration), magna cum laude, from Boston University; an M.S. in Accountancy (Tax Concentration), from Long Island University, C.W. Post, where he received the Dean's Award for outstanding academic performance; and a J.D., cum laude, from Albany Law School, where he was an Associate Editor of the Albany Law Review. Michael is currently licensed as both a Certified Public Accountant and attorney in the State of New York.



Since 1949...People...Relationships...Results.

FINANCE AND CASH FLOW MANAGEMENT

A. UNDERSTANDING THE DIFFERENCE BETWEEN PROFITABILITY AND CASH FLOW -- CASH BASIS vs. ACCRUAL BASIS ACCOUNTING

The difference between the two methods of accounting lies in the timing of when sales and purchases are recorded in your accounts.

Under <u>cash basis accounting</u>, revenue is recognized when cash is received. Expense is recognized when cash is paid (or payment is charged to a credit card). Profitability is generally reflective of cash flow.

Under <u>accrual basis accounting</u>, revenues and expenses are recorded when they are earned or incurred, regardless of when the money is actually received or paid. Uses the matching principle, wherein expense is recognized in the period in which related revenue is recognized. Receivables and payables are recorded to reflect that cash may have not yet been received or paid, even though revenue and expense have been recognized. Thus, profitability is typically not reflective of cash flow.

ILLUSTRATION:

Imagine you perform the following transactions in a month of business:

- 1. Sent out an invoice for \$5,000 for an estate planning project completed this month.
- 2. Received a bill for \$1,000 in computer maintenance fees for work done this month.
- 3. Paid \$75 in fees for a bill you received last month.
- 4. Received \$1,000 from a client for an engagement that was invoiced last month.

The Effect on Profit and Cash Flow

Using the cash basis method, the profit for this month would be \$925 (\$1,000 in income minus \$75 in fees), which matches the cash flow for the month.

Using the accrual method, the profit for this month would be \$4,000 (\$5,000 in income minus \$1,000 in computer maintenance fees), much different than the \$925 of positive cash flow for the month.

Note: The IRS permits you to keep one set of tax books based on the cash basis and one set of books for business records based on the accrual basis. For example, since the accrual basis is a better measure of the changes in your business, you may want to have those numbers to compare year-to-year; however, you can still use your cash basis books for your tax return so that you do not end up being taxed on money you have yet to receive. For professional service businesses, this is typically the approach used.

B. CASH FLOW ACTIVITIES AND MANAGEMENT

Cash is the lifeblood of any business and a primary indicator of business health. Therefore, a business owner must efficiently and effectively manage the activities that provide cash. These activities include: billing customers as quickly as possible, disbursing payments only when they come due, collecting cash on overdue accounts, and investing idle cash.

Managing cash flow involves several objectives:

- Accelerating cash inflows wherever possible.
- Delaying cash outflows until they come due.
- Investing surplus cash to earn a rate of return.
- Borrowing cash at the best possible terms.
- Maintaining an optimal level of cash that is neither excessive nor deficient.

In order to meet these objectives, it becomes important to be able to answer the following questions:

- How much cash do we need to run our business?
- How much cash is locked-up in other current assets?
- How long does it take to collect our cash from customers?
- How much cash should we hold?
- How do we cover cash deficits?
- How do we identify problems with cash flow?

It is necessary to understand the time involved with each of the cash flow management activities mentioned above in order to properly plan our cash flows.

C. CASH FLOW CYCLES

Since cash consists of disbursements and receipts, think of cash flow in terms of two cycles: Disbursement Cycle and Receipt Cycle.

<u>Disbursement Cycle:</u> The total time between when an obligation occurs and when the payment clears the bank.

Example - Disbursement Cycle Time:

Specific Activity	Day
Obligation to Supplier	0
Process Invoice from Supplier	10
Run Payables and cut checks	25
Payment clears the bank	35

Total Cycle Time for Disbursement = 35 days

The overall objective within the Disbursement Cycle is to increase the cycle time; i.e., delay making payments until they are due. By increasing the float times within disbursements, we have the use of cash for several more days; this is a source of spontaneous financing. We can delay payments by controlling three types of float times:

- 1. Mail Float: Increase time spent in the mail. For example, mailing checks from locations not close to vendors will increase the mail time or mail float within the disbursement cycle.
- 2. Clearance Float: Time spent trying to clear the bank. For example, disbursing checks from a remote bank will increase the time required for the payment to clear the bank.
- 3. Processing Float: Time required to process cash flow transactions. For example, purchasing with credit cards so that the time required for making payment is much longer. By using a credit card, you will receive a bill at the end of the month payable in 30 additional days.

<u>Receipt Cycle:</u> The total time between when products or services are delivered and when payment from the customer clears the bank.

Example - Receipt Cycle Time:

Specific Activity	Day
Begin Services to Customer	0
Issue Invoice to Customer	30
Receive Payment	62
Payment clears the bank	66

Total Cycle Time for Receipts = 66 days

The overall objective within the Receipts Cycle is to decrease the cycle; i.e., shorten the time necessary to collect and have use of cash. We can shorten the receipt cycle by:

- Invoicing customers as quickly as possible (e.g., e-mail invoices).
- Taking immediate action when a customer becomes delinquent.
- Rewarding customers for making early payment by offering a discount.
- Imposing a finance charge on customers that are seriously delinquent.
- Evaluating the financial soundness of customers before extending credit.
- Accepting credit cards for payment.
- Issuing monthly statements to remind customers of amounts owed.
- Placing collection centers near customers and/or having banks control deposits (e.g., use of a lockbox system).

Measuring Cycle Times

In order to monitor progress in managing cash, it is useful to understand how much cash is tied-up; i.e., not available to us. A business owner can get an idea of cycle times by looking at average days in inventory (work-in-process), average days in receivables, and average days in payables. These three components cover the two basic cash flow cycles, disbursements and receipts.

- a. Average Days in Receivables Average Receivable Balance / Average Daily Credit Sales
- b. Average Days in Inventory = Average Inventory Balance / Average Daily Cost of Goods Sold
- c. Average Days in Payables = Average Payables Balance / Average Daily Purchases on Account

The overall cash flow cycle time is calculated as: a + b - c. (Inventory and receivables tie up cash receipts less payables for disbursements.)

Example - Calculate Cash Flow Cycle Time

Average Monthly Activity for selected financial accounts is as follows:

Accounts Receivable \$1,300,000; Credit Sales \$950,000 Inventory \$550,000; Cost of Goods Sold \$700,000 Accounts Payable \$200,000; Purchases \$525,000

Average Days in Accounts Receivable = 1,300,000 / (950,000 / 30) = 41 Average Days in Inventory = 550,000 / (700,000 / 30) = 24 Average Days in Accounts Payable = 200,000 / (525,000 / 30) = 11

Total Cash Flow Cycle Time = 41 + 24 - 11 or 54 days.

You also can plot cash flow cycle times by looking at the activity times within each cycle. For example:

Inventory		Accounts Receiva	<u>ble</u>	Accounts Payable		
Activity Days		Activity	Days		Activity	<u>Days</u>
	_	D		•	T 1	
Research	5	Deliver Sales Ord	er	2	Receive Invoice	4
Prepare Document	10	Invoice Customer		10	Approve Invoice	4
Process / Copy	2	Receive Payment		36	Process Invoice	3
		Payment Clears B	ank	5	Prepare & Mail Cl	neck 3
		•			Check Clears Ban	k 6
		4			-	
Total Days	17			53		20

Total Cash Flow Cycle Time = 17 + 53 - 20 = 50 days

Once we have determined cash flow cycle times, we can move to the next step in cash flow management, planning.

D. CASH FLOW PLANNING

One of the objectives of cash flow management is to hold the right amount of cash, maintaining a balance that is neither excessive nor deficient. If we hold too much cash, we lose the opportunity to earn a return on idle cash. If we hold too little cash, we run the risk of not making timely payments to suppliers, banks, and other parties. The optimal cash balance is determined by looking at the four reasons for holding cash:

- 1. <u>Transaction Amounts:</u> We have to hold enough cash to cover our outstanding payments or transactions. In addition to transaction amounts, we should add any compensating balances required under loan agreements. Therefore, the amount of cash on hand must be transaction amounts + compensating balances.
- 2. <u>Precautionary Amounts:</u> We need to maintain cash for unexpected disbursements. This is the precautionary amount of cash.
- 3. <u>Speculative Amounts:</u> If we are anticipating making an investment, we will hold a speculative amount to take advantage of opportunities in the marketplace.
- 4. <u>Financial Amounts:</u> In order to acquire assets, retire debt, or meet some major event, we will accumulate and hold a financial amount of cash.

Note -- The minimal cash balance is most commonly equal to the total transaction amount (includes compensating balances) + total precautionary amount.

Cash Flow Forecasting

In order to determine the optimal cash balance, we need to fully understand cash flow patterns, which requires that we plot cash flows and prepare a forecast. A cash flow forecast gives us a detail projection of future cash inflows and outflows. This will help us avoid cash deficiencies, as well as excessive cash balances. A cash flow forecast also answers several questions, such as how long can we invest idle cash, when will it be necessary to borrow cash, and when can we purchase new capital assets? A typical cash flow forecast will include: Cash on Hand, Expected Receipts, and Expected Disbursements. Each major receipt and disbursement should be listed as a separate line item.

Illustration — Monthly Cash Flow Forecast

	January
Beginning Cash on Hand	\$60
Operating Receipts:	
Accounts Receivable	1,200
Other Receipts	- 0 -
Operating Disbursements:	
Payroll	(850)
Taxes	(35)
Utilities	(80)
Insurance	(110)
Supplies	(60)
Services	(350)
Other	(40)
Net Operating Cash Flow	(\$325)
Investment Receipts:	
Investment Income	- 0 -
Sale of Marketable Securities	- 0 -
Sale of Assets	- 0 -
Investment Disbursements:	
Invest in Marketable Securities	- 0 -
Invest in Capital Assets	- 0 -
Financing Receipts:	
Proceeds from Loans	- 0 -
Proceeds from Asset Borrowings	- 0 -
Financing Disbursements:	
Repay Loans & Debt	- 0 -
Net Change in Cash	(\$325)
Total Available Cash	(265)
Minimum Cash Balance	40
Surplus (Deficit)	(305)
Activate Line of Credit	325
Ending Cash Balance	\$60
-	

The overall objective is to prepare a cash flow forecast that is accurate enough to determine cash sufficiency. As a general rule, it is more difficult to predict cash receipts than cash disbursements. When making estimates about receipts and disbursements, consider using expected values, especially if you are uncertain about final amounts.

Example -- Calculate the Expected Value of Receipts

	Legal	Probability of	Expected
Customer	Engagement	Getting Engagement	Value
Ashcroft	\$ 10,000	20%	\$ 2,000
Carson	\$ 15,000	50%	\$ 7,500
Franklin	\$ 8,000	80%	\$ 6,400
		Total Expected Value	\$15,900

Another way to predict customer receipts is to simply plot your collection patterns based on past sales collections.

Example -- Plot Historical Collection Percentage's

	0-30	31-60	61-90	91-120	Over 121	
Sales Month	Days	Days	Days _	Days	Days	Total %
January	15%	38%	40%	6%	1%	100%
February	14%	42%	39%	4%	1%	100%
March	14%	41%	39%	5%	1%	100%
April	12%	46%	36%	5%	1%	100%

Also, consider the following points when preparing cash flow forecasts:

- Prepare cash forecasts for shorter periods of time (weekly or daily) if cash flows are tight.
- Use available data as much as possible to prepare cash flow forecasts.
- If necessary, prepare two forecasts: Early Warning Forecast for longer periods of time (six months) and Targeted Forecast for shorter periods of time (weekly).
- Be advised that cash flow forecasting is extremely difficult in periods of rapid growth.

Using Special Bank Accounts to Maintain Optimal Cash Balance

One method for maintaining an optimal cash balance is to use Sweep Accounts, and Investment Accounts. These accounts will automatically invest surplus cash while still serving as your main transaction account. Disbursements are cleared through a special account which has just enough cash to cover all transactions. The Bank makes a "sweep" of the account and takes any surplus cash and places it into a money market account. Money market accounts are one of the most popular

accounts for investing surplus cash. Brokerage houses also offer investment accounts which sometimes earn slightly higher rates than money market accounts. When deciding which types of accounts to use, consider the following guidelines:

- If your average daily surplus cash exceeds \$50,000, setup a sweep account with your bank.
- If your average daily surplus cash is below \$50,000, consider using a regular investment account with a brokerage house.

E. SHORT-TERM FINANCING

Part of managing cash flows is to understand how to finance operating cash flows. We previously discussed how to predict cash deficits with forecasting. We now have to understand how to finance our cash flow deficits. Whenever we use short-term financing to cover cash deficits, we must consider costs, risks, restrictions imposed upon the organization, financing flexibility, our current financial situation, and other factors. Some of the questions we need to ask include:

- How long will we need financing?
- How much cash do we need?
- How will we use the borrowed funds?
- When and how will we repay the borrowed funds?

The first and most practical source of financing is spontaneous financing or trade credit. By lengthening the disbursement cycle, we obtain additional cash. Once we have exhausted spontaneous sources of financing, we than use conventional sources of financing, such as bank loans, lines of credit, and asset based borrowing.

Bank Financing

One of your key partners in business should be your bank. Therefore, it is essential that you establish a good working relationship with a bank officer. This relationship is the basis for how you will obtain bank financing. For example, a line of credit is one way to address recurring cash deficits. You can also arrange a revolving loan. Under these arrangements, you borrow as deficits occur up to a maximum amount. Unless you have excellent credit, you will be required to put up collateral (such as receivables, inventory, etc.). The bank may also require a commitment fee or compensating balance (percentage of loan). Some key points about bank financing are:

- Make arrangements to borrow when you least need it. This is the best way to obtain favorable terms and conditions for short-term financing.
- Borrow more than you think you will need. Many organizations underestimate the amount of borrowing required for short-term financing.
- The moment you think you will need short term financing, begin preparing immediately. Bank financing takes time to arrange and execute.
- Borrow to meet your strategic plans, not to avoid possible bankruptcy.
 Banks are much more receptive to financing when it fits with some type of long-term plan.
- Make sure you maintain the best possible relationship with the bank. Send regular reports and information to the bank officer.

Receivable Financing*

In addition to bank financing, you may be able to borrow against your assets from a financing company. Accounts Receivable is a liquid asset that provides a form of financing. There are two forms of receivable financing, factoring and assignments.

Factoring: Under this form of financing, you sell your receivables to the financing company. You receive the face value of the receivable less a commission charge. The financing company assumes responsibility for collecting the receivable. Factoring gives you immediate cash and freedom from collecting from customers. However, it is costly and it sometimes confuses customers since they now make payment to a financing company.

Assignment: Under this arrangement, you transfer or assign your receivables over to the financing company. However, you still retain ownership of the receivables. The financing company advances 60% to 80% of the receivable balance. You continue to collect the receivables and the financing company charges you interest and service fees on the borrowed funds.

*Note, however, that this option may only available to contingency fee attorneys, and be sure to consider and remain in compliance with any code of ethics requirements.

F. BEST PRACTICES AND OTHER TIPS

Collections Process:

Requires diligence. Specific collection techniques include letters, telephone calls, faxes, emails, and legal action. However, you must balance the need for quick cash collections with the needs of your customers. Therefore, collection efforts must be customer specific in order to be effective. For example, customers who are important to your business should be treated carefully, as opposed to customers who may mean less to your future business.

The overall collection process should be pro-active and preventative.

- Try to collect payment immediately as products or services are delivered, or soon thereafter, when the value to the client is at the highest.
- Establish good billing practices. Be consistent, regular, and timely with invoicing.
- Accept credit cards as a form of payment.
- Require retainers from clients that have a history of late payments.
- Use credit applications to weed-out bad clients.
- Include a clause in the credit application or retainer agreement that states all collection costs are reimbursed by the customer on delinquent accounts.
- If you receive payment in the form of a bad check, retain the check as evidence that you have a valid claim.

Disbursement Practices:

Problem areas to watch-out for: payroll, purchasing, inventories, and insurance.

<u>Payroll:</u> Payroll is a large cash outflow and requires special attention. One option is to implement a flexible workforce since the flow of work fluctuates. Outsourcing and temporary workers are often part of a flexible workforce. Retain a full-time workforce for core activities. You can also increase payroll float times for non-direct deposits by simply distributing payroll checks after 2:00 p.m., since banks will not clear payroll checks until the following week.

<u>Purchasing:</u> Flexible purchasing can help cash flow. Consider renting certain items as opposed to purchasing. Ask yourself do we really need this item and how often will we use it? If practical, order items out-of-season when prices are low. Finally, consider using credit cards to make purchases since this will give you more time for making payment.

<u>Inventory (Work-In Process)</u>: Keep an eye on the levels of work done but not billed. Leave minimum time on hold. Consider sending out progress invoices to speed up cash collection and increase the overall likelihood that a client will pay.

Insurance: Insurance should be used to cover risks that are material, but occur infrequently. Make sure you have appropriate (not excessive) levels of insurance for your business. Purchase insurance in group packages to obtain the lowest premiums. Start by covering your largest risks first. Structure as high a deductible as you can afford. Avoid duplication and excessive insurance. Consider shifting certain costs, such as health insurance to the employee through higher payroll deductions.

Warning Signs:

One important element in cash flow management is to fully understand the warning signs of cash flow distress. Some early warning signs include:

- Cash balances are low compared to historical balances.
- Work-in-process is accumulating.
- Vendor payments are made late.
- Banks are requesting financial statements.
- Major purchases have to be postponed.
- Management has become very risk adverse; i.e. overly cautious about spending money.

Monitoring Cash Flow:

One way to monitor cash flow is to track liquidity ratios and compare these ratios to historical ratios and/or industry averages. Some examples include:

Current Ratio = Current Assets / Current Liabilities

Acid Test = Cash + Accounts Receivable + Marketable Securities / Current Liabilities

Cash Flow to Debt Ratio = Cash Flow / Total Debt

Cash Flow to Income Ratio = Operating Cash Flow / Net Income