

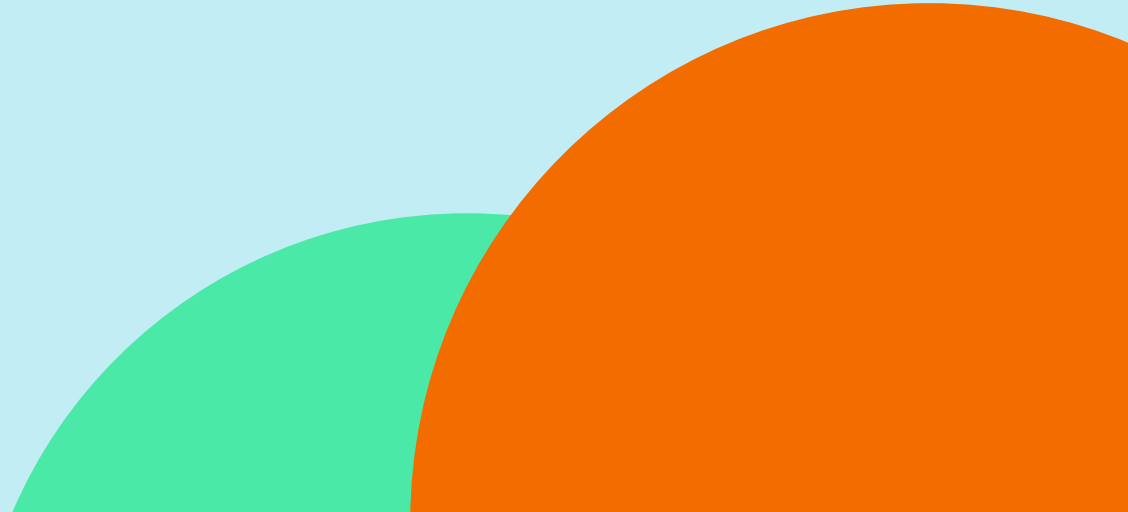
# The Top 10 Trust Blunders: How to Avoid a Grievance



**Laurence Colletti**  
Attorney | Freelance Producer



**Jordan Turk**  
Attorney | Director of Education & Attorney Development,  
Smokeball



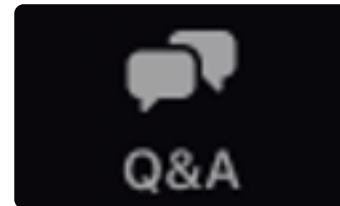
# Housekeeping



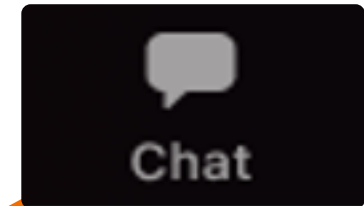
## Ask Questions

Ask us questions using the **Q&A** (1)  
Engage with attendees with **Chat** (2)

(1)

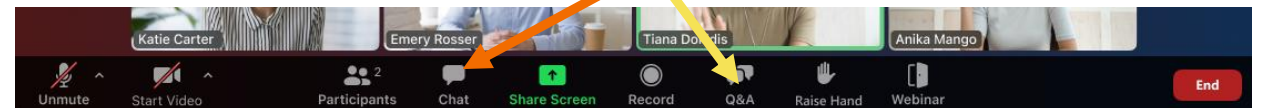


(2)



## Slides

Slides will be available after the presentation.



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### **Payments**

Offer clients online payment options to get paid faster



# Jordan L. Turk

**Director of Education & Attorney  
Development, Smokeball**

- JD, University of Arkansas School of Law
- BA, The University of Texas at Austin
- Practicing Family Law Attorney in Texas
- Host, Hacking Law Firm Success



# Laurence Colletti

Attorney | Freelance Producer

- J.D., Loyola University New Orleans
- Began career in business law and commercial real estate

Former Executive Producer for Legal Talk Network

Admitted to practice in law in Colorado





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- Automatic time tracking - bill more accurately with a fraction of the effort
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# AGENDA

1. Trust Accounting Basics
2. Top 10 Trust Account Blunders
3. Running the Right Reports
4. Story Time
5. Live Demonstration



Part 1

# Trust Accounting Basics

# IOLTA

## “INTEREST ON LAWYERS’ TRUST ACCOUNT”

- An account used to store client or third-party funds, the interest of which gets sent to **the Louisiana Bar Foundation**
- Remember, you are a fiduciary of your clients’ funds
- IOLTAs are NOT operating accounts
- Be careful about to whom you give access to your IOLTA
- IOLTAs are an important source of funding for Louisiana’s largest civil legal service programs, pro bono programs, battered women shelters, and numerous other community organizations

# La. Rules of Prof'l Conduct r. 1.15

## Safekeeping Property



“(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation **separate from** the lawyer’s own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept in one or more separate interest-bearing client trust accounts maintained in a bank, credit union or savings association...”

# La. Rules of Prof'l Conduct r. 1.15

## Safekeeping Property



“(a)

....

**Complete records** of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.”

# ABA Model Rules, R. 1.15



## **Comment 1 to ABA Model Rule 1.15:**

“ A lawyer should hold property of others with the care required of a **professional fiduciary**...All property that is the property of clients or third persons must be kept **separate from** the lawyer's business and personal property and, if funds, in one or more trust accounts. Separate trust accounts may be warranted when administering estate funds or acting in similar fiduciary capacities.”

Part 2

# **Top 10 Trust Account Blunders**

# Blunder #1 – Failing to Reconcile Your Account(s)!

## La. Rules of Prof'l Conduct r. 1.15(f)

A lawyer shall subject all client trust accounts to a reconciliation process at least quarterly, and shall maintain records of the reconciliation as mandated by this rule.

# Three-Way Reconciliation

The three components – match all of these up:

- The IOLTA bank statement;
- The Firm's IOLTA balance; and
- The individual Client balance

# Three-Way Reconciliation

- Steps:
  1. Reconcile your firm's trust ledger to your bank statement
  2. Review discrepancies (i.e., transactions reflected in the firm's ledger but not on that month's bank statement)
  3. Reconcile the trust account statement with the client matter
- Best practices for reconciliation
- Use technology to your advantage

# Three-Way Reconciliation

Mary Weathers Custody, Support & Visit... Bank Reconciliation 07/15/2018 - 07/31/2018

Matters Contacts Time & Fees Invoices Accounts Reports

### Bank Reconciliation

PAYMENTS AND RECEIPTS ADJUSTMENTS

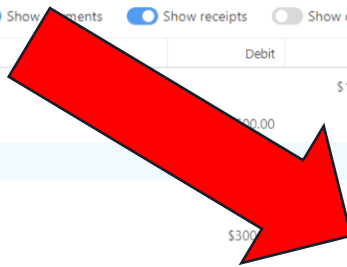
PRINT Search for... Show unreconciled items only Show payments Show receipts Show deleted

Transaction D...	Description	Reference	Matter	Debit	Credit
07/31/2018	Check deposit	9845	125VL-1017 - Wilson - Civil Dispute - Peterson		\$1,500.00
07/31/2018	Payment to Larry Wilson	329	125VL-1017 - Wilson - Civil Dispute - Peterson	\$1,500.00	
07/30/2018	Transfer to Operating for payment of invoice #823		594VL-0218 - Viola - Pre Decree - Viola		\$265.00
07/30/2018	Reversal: Transfer to Operating for payment of invoice #688		594VL-0218 - Viola - Pre Decree - Viola	\$300.00	
07/30/2018	Transfer to Operating for payment of invoice #825		594VL-0218 - Viola - Pre Decree - Viola		\$1,500.00
07/30/2018	Check deposit		594VL-0218 - Viola - Pre Decree - Viola		\$1,500.00
07/30/2018	Transfer to Operating for payment of invoice #824		594VL-0218 - Viola - Pre Decree - Viola	\$415.00	
07/29/2018	Check deposit		176VL-1217 - Aaron K. Basinger & Erin Basinger - Estate Planning		\$5.00
07/29/2018	Check deposit		176VL-1217 - Aaron K. Basinger & Erin Basinger - Estate Planning		\$20.00
07/29/2018	Check deposit		176VL-1217 - Aaron K. Basinger & Erin Basinger - Estate Planning		\$5.00
07/27/2018	Check deposit		594VL-0218 - Viola - Pre Decree - Viola		\$2,500.00
07/27/2018	Transfer to Operating for payment of invoice #822		594VL-0218 - Viola - Pre Decree - Viola	\$800.00	
07/25/2018	Check deposit		2017-EP-3131 - Murdock - Estate Planning		\$8,000.00
07/24/2018	Check deposit		652VL-0518 - Williams & Associates, LLC - Limited Liability Company		\$3,500.00
07/24/2018	Transfer to Operating for payment of invoice #812		594VL-0218 - Viola - Pre Decree - Viola	\$485.00	

Reconciliation for 07/15/2018 to 07/31/2018

Opening Cash Book Balance	\$537,781.73
Add Receipts	\$38,640.00
Less Payments	-\$10,855.00
<b>Cash Book Balance</b>	<b>\$565,566.73</b>
<b>Ledger Balance</b>	<b>\$565,566.73</b>
<b>Bank Statement Balance</b>	<b>\$ 465,611.74</b>
Add Unbanked Receipts	\$100,000.00
Less Unpresented Checks	-\$100.00
Adjustments	\$54.99
<b>Reconciliation Balance</b>	<b>\$565,566.73 (\$0.00)</b>

RECONCILE SAVE DRAFT Cancel Draft



## Blunder #2 – Sloppy or Incorrect Reconciling

- Issue: what if my bank statement doesn't match up with my monthly trust report?
- Show. Your. Work.

# Blunder #3 – Improper Commingling of Client or Third-Party Property

## La. Rules of Prof'l Conduct r. 1.15(f)

“(a) A lawyer shall hold property of clients or third persons that is in a lawyer’s possession in connection with a representation **separate from** the lawyer’s own property. Except as provided in (g) and the IOLTA Rules below, funds shall be kept **in one or more separate interest-bearing client trust accounts** maintained in a bank, credit union or savings association...”

# Automate It! (Ethics Edition)

## Protect Funds

The screenshot shows a 'Protect Trust Funds' dialog box with the following fields and values:

- MATTER:** 747-BB1119 - Agrest - Pre Decree - Opened 11/20/2019
- CONTACT:** Trent Adams & Jane Adams (\$24,300.00 available)
- AVAILABLE FUNDS:** \$ 24300.00
- PROTECTED FUNDS REASON:** House proceeds
- AMOUNT:** \$ 15000
- AMOUNT:** \$ (empty)
- TOTAL AMOUNT:** \$ 15000.00

A blue 'PROCESS' button is located at the bottom of the dialog box.

# Blunder #4 – Improper Commingling of Credit Card Fees



See PUBLIC Opinion  
12-RPCC-019 for more  
information!

PROPER SEPARATION OF EARNED AND UNEARNED FEES IS KEY.

# Blunder #4 – Improper Commingling of Credit Card Fees

## Can I Surcharge?

YES! With some caveats – check with your jurisdiction. The biggest issue to keep in mind is that you cannot unduly benefit from a surcharge.

For example, if a client comes in and want to pay by card, and the processing fee is 4%, you cannot turn around and assess a 10% surcharge on the transaction. Also, it's capped in LA at 4% (3% for Visa transactions)

# Blunder #5 – Improper Retention of Trust Account Records



## La. Rules of Prof'l Conduct r. 1.15(a)

"...Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of **five years** after termination of the representation."

# Blunder #5 – Improper Retention of Trust Account Records

Best Practice?



Call your malpractice carrier!

# Blunder #6 – Misuse of Advance Deposits and Retainers

- **Retainer**

- Sometimes lawyers (and clients) mistakenly call “advance deposits” by the name of “retainer”
- True retainer = amount paid by client to keep a lawyer generally available to the client
- Earned upon receipt; NOT held in trust

- **Advanced Deposit**

- Payment by client for legal services before actually being earned by the attorney.
- Held in trust!

- **Things to Think About**

- True retainers are rare in this day and age!
- Just because you call something a retainer does not make it so

# Blunder #7 – Failure to Properly Disburse Funds

- **Mistake:** Leaving settlement funds, court awards, or refunds in trust indefinitely
- **How can I avoid this?** Disburse promptly after the funds clear, keeping only what's necessary for legitimate issues, disputed amounts, or ongoing work

# Blunder #7 – Failure to Properly Disburse Funds

- **Question:** What if I have trust funds that I need to refund back to the client, but I cannot locate the client?
- **Answer – see Order Amending Louisiana Rule of Professional Conduct 1.15 (signed March 23, 2016, and one signed November 27, 2018):** The Louisiana Supreme Court amended this rule in 2016 and 2018 to provide that “[a] lawyer who learns of Unidentified Funds or Unclaimed Funds in an IOLTA account **must remit the funds to the Louisiana Bar Foundation.**

# Blunder #8 – Overdrawing the Trust Account

## From the FAQ Section of LADB's Website:

### **1. Is the registration of trust accounts required annually, even if nothing has changed from prior years?**

Yes, under Supreme Court Rule XIX, section 28D and RPC 1.1(c) the **annual registration** process for lawyers includes trust account registration and must be submitted annually even if no changes have occurred since the prior registration.

### **2. How has the trust account registration process changed?**

In the past, the registration of trust accounts included a feature that required lawyers to obtain a contractual commitment from their bank to report overdraft events involving their trust accounts in order to comply with Supreme Court Rule XIX, section 28D. Beginning January 1, 2012 the Supreme Court made the process easier for lawyers and banks alike. **Instead of requiring the lawyer to secure the banker's signature on the trust account registration form, the Court has allowed banks to sign an agreement to report overdraft events occurring on a lawyer's client trust account.** Banks who have signed that agreement are listed on a 'participating' or 'approved' list of banks. So long as the lawyer maintains a trust account with a participating or approved bank, they are assured that they are in compliance with the Court's rule and that any overdraft event will be reported to the Office of Disciplinary Counsel in accordance with the rule.

# Blunder #8 – Overdrawing the Trust Account

## What does that mean?

**If your trust account dips below \$0, the bank notifies the Bar. You should NEVER have negative client funds. Clients can owe you money, but your IOLTA should never dip below \$0.**

# Blunder #9 – Failure to Communicate With Clients About Their Funds

## La. Rules of Prof'l Conduct r. 1.15(d)

“...In all instances except as stated in this rule or as otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall **promptly** render a **full accounting** regarding such property.”

# Blunder #10 – Abusing Client Funds

**Always Remember:**

**Until you have billed and collected for it (i.e., earned it), that money is the property of YOUR CLIENT. We will discuss this more in Story Time.**



Part 3

# Running the Right Reports

# Run the Right Reports

## Trust Balances

Trust Balances Report					
IOLTA					
as at 04/17/2024					
Matter Reference	Matter Description	Matter Type	Client(s)	Last Transaction Date	Balance
0000Test2 -111- BB0522		Post Decree	Rita Oxbury	11/02/2023	4,860.00
005VL031 7 - 8	State Agency Charge No.: 392102	Employment Claim	Lauren Anna Anderson	02/20/2024	46,524.00
1067- BB0121		Buy	Ian Richards	01/11/2024	500.00
1110- BB0321	Montgomery 0602-0012346-2021	Debt Collection	ABC Homeowners Association of Maryland (Branch name is for internal tracking)	01/26/2024	45.70
1114- BB0321		Workers' Compensation	Hugh Connelly	11/13/2023	3,845.22
1143- BB0421		Civil Dispute	Allan Archer	02/19/2024	2,500.00
114VL- 0917	Cook 2017-CR-8745	DUI	Jeff Bensch		
1164- BB0521	For Settlement Webinar Cook 2019-CV-1928382   Incident Date: 12/20/2017   SOL Date: 12/20/2019	Personal Injury - Plaintiff	Anne Kensington   Kim Young		

**Remember to treat  
this money like you  
are a professional  
fiduciary!**



Part 4

# Story Time

# The Busted Bookkeeper

IN RE PRB FILE NO. 2016-042 (VERMONT)

## Facts of the case:

- An attorney hired an independent bookkeeper to oversee the IOLTA using Quicken
- After 5 years, the bookkeeper quit the firm and the attorney discovered the IOLTA had not been reconciled in 6 months
- The attorney hired a CPA to audit the IOLTA for the 5-year period it was overseen by the bookkeeper and transform the firm's IOLTA management practices

## What was discovered?

- \$75,000 in stale checks related to real estate transactions, payable to the firm for insurance commissions
- \$32,000 balance in attorney fees (unearned)

# The Busted Bookkeeper

IN RE PRB FILE NO. 2016-042 (VERMONT)

## The attorney:

- Commingled business/client funds
- Failed to safeguard funds – did not maintain accurate records or reconcile in a timely fashion
- Claimed he was unaware of requirements to maintain a record of each client's IOLTA funds, including deposits, disbursements, and balances

## They were found negligent for:

- Failing to track transactions by client or matter in Quicken
- Failing to timely reconcile the IOLTA
- Failing to correct errors leading to a running balance

# The Busted Bookkeeper

IN RE PRB FILE NO. 2016-042 (VERMONT)

## Discipline?

## Private admonition

*\*Remember, although the attorney assigned tasks to the bookkeeper and employee, the attorney is ultimately responsible for ensuring the IOLTA is administered according to the rules*

# How Do I Avoid this Outcome?

- **Do not commingle!** Make sure business funds and client funds are separated
- Reconcile regularly (at least monthly) and make sure you understand the tools you are using to reconcile
- Ensure that your IOLTA reporting can track client funds, transaction details, and purpose of all IOLTA transactions
- Track outstanding checks that have not cleared
- Deposit incoming checks in a timely manner and move earned fees out of IOLTA once the fees are earned

# I'm a Lawyer, Not an Accountant

IN RE LUIS SALGADO (DC BAR)

## Facts of the case

- A small, low-income firm had six bank accounts but could not afford “a sophisticated accounting system,” so no accounting system was used to track funds
- The attorney left enough earned funds in IOLTA to ensure client funds would never be misused, compensating for a previous mistake when staff were paid directly from earned funds in IOLTA, including attorney fee-splitting
- The attorney also deposited an insurance check in IOLTA for reimbursement related to property damage

# I'm a Lawyer, Not an Accountant

IN RE LUIS SALGADO (DC BAR)

## Findings

- The attorney did not withdraw earned fees in a timely manner
- The attorney did not meet the obligation to maintain complete records of handling, maintenance, and disposition of all account funds
- The attorney failed to exercise supervision of non-attorney staff access to his signature stamp for IOLTA
- The attorney failed to acknowledge wrongfulness of misconduct or to appreciate fiduciary responsibilities for funds
- The investigation failed to conclude that funds had remained intact and were not expended on operating expenses or commingled with other funds

# I'm a Lawyer, Not an Accountant

IN RE LUIS SALGADO (DC BAR)

## Discipline?

30-day suspension! Also had to prove fitness for reinstatement with sufficient accounting mechanisms to comply with the rules and fiduciary requirements of trust accounting

# How Do I Avoid this Outcome?

- Just like law school, ignorance of the rules is not an excuse
- Do not leave excess funds in IOLTA
- Withdraw earned fees from IOLTA in a timely manner
- Use technology for IOLTA accounting and organization
- Use a tool that enables virtual sub accounts, maintains client records, provides reporting, and tracks all money movement
- Maintain records of all account activity
- Restrict access and permissions for support staff

# Maybe Don't Hire the Walking Red Flag

## FL DISCIPLINARY BOARD V. GILBERT (FL BAR)

### Facts of the case

- An attorney knowingly hired an employee who was previously convicted of 11 counts of wire fraud and sentenced to 41 months imprisonment, with 5 years probation and restitution of \$7.9 million
- This employee was hired despite a federal probation officers warning that it was inappropriate to hire a man previously convicted of fraud and embezzlement
- Five months into his employment, the employee steals and forges the owner's signature on an account check to pay for his girlfriend's \$20,950 cosmetic surgery
- The employee is terminated but is brought back a few years later and given full reign over real estate closings
- The employee takes IOLTA funds intended to pay off client mortgages and transfers them to a shell company, keeping the mortgages alive by making monthly payments, and paying staff from IOLTA
- **THE EMPLOYEE ULTIMATELY STOLE \$4,750,708.70.**

# Maybe Don't Hire the Walking Red Flag

FL DISCIPLINARY BOARD V. GILBERT (FL BAR)

## Findings:

- The attorney failed to supervise staff due to lack of meaningful post-closing supervision and follow-up of employee actions

# Maybe Don't Hire the Walking Red Flag

FL DISCIPLINARY BOARD V. GILBERT (FL BAR)

**Discipline?**

Disbarred!

# How Do I Avoid this Outcome?

- If you need assistance managing your IOLTA, hire someone you can trust (your license is on the line!)
- Actively monitor the IOLTA and activity – you should understand the purpose of every transaction
- If you see a red flag, act immediately
- Restrict access and permissions for support staff – never take staff at their word

# So You Mean I Can't Commingle Funds?

IN RE CLARISSA THOMAS EDWARDS (DC BAR)

## Facts of the case

- An attorney was disciplined for commingling funds and failing to keep complete records of the same
- The attorney was publicly censured and ordered to take 5 hours CLE and meet with manager of Practice Management Advisory Service of the DC Bar
- One year later, the attorney commingled funds again, even while knowing that she was being investigated for several years
- The attorney failed to provide records of check registers, subsidiary client ledgers, and monthly reconciliations.

# So You Mean I Can't Commingle Funds?

IN RE CLARISSA THOMAS EDWARDS (DC BAR)

## Findings

- “Respondent’s lack of record keeping was so egregious that it ‘stymied Disciplinary Counsel’s efforts to reconcile or reconstruct the funds’ in Respondent’s accounts”
- No clear and convincing evidence of intentional dishonesty, but reckless**
- “Respondent has not, for example, shown that she has developed any mechanisms to avoid making the same very serious mistakes that result from her habit of rushing.” **Thus, clear and convincing evidence that there is serious doubt as to her fitness to practice**

# So You Mean I Can't Commingle Funds?

IN RE CLARISSA THOMAS EDWARDS (DC BAR)

## Discipline?

Two-year suspension! Also, a requirement to demonstrate fitness before reinstatement.

# How Do I Avoid this Outcome?

- Don't be "reckless" – keep detailed records of IOLTA activity
- Leverage tools to help you maintain a check register, track money movement by client, and understand the purpose of each IOLTA transaction
- Have a process for regular reconciliation (at least monthly)
- Employ controls and safeguards to prevent commingling funds



**Live  
Demonstration!**

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## Billing Dashboard

### Today's Billable

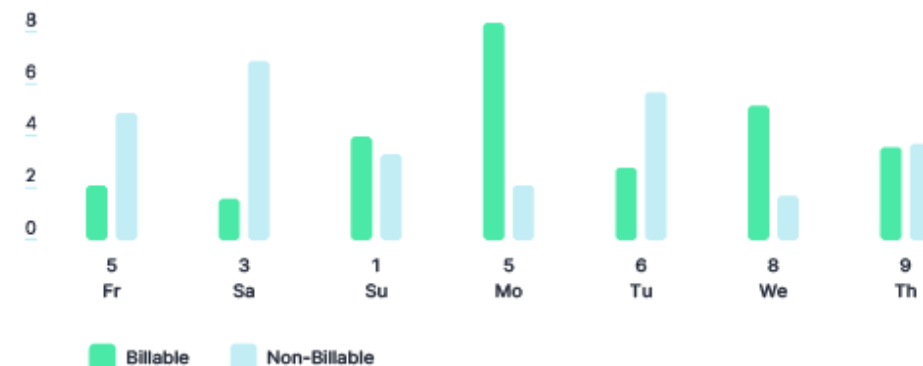
🕒 4.4 Hrs 💰 2,600

### Last 7 Days Billable


🕒 22.4 Hrs 💰 11,200

### Billable/Non-Billable

Last 7 Days Till Today



### Recent Matters

 William Holden Family



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3-way reconciliation to help you stay compliant.



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- Comes prebuilt with a library of 20k+ legal forms
- Identify business opportunities through powerful insights and reporting
- Enhance your output with the power of AI



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If **yes**, one of our law firm specialists will follow up.



Yes



Not at this  
time



I'm already a  
Smokeball  
user



**Questions?**

# Thanks for joining!



**Laurence Colletti**  
Attorney & Freelance Producer  
[icolletti100@gmail.com](mailto:icolletti100@gmail.com)

