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Attorney trust account ethics

A LOOK AT CLIENT TRUST ACCOUNTS, INCLUDING GOVERNING RULES AND BEST PRACTICES IN ORDER TO PREVENT UNETHICAL MISSTEPS

Rule of Professional Conduct 4-100 outlines the basic requirement where attorneys and law firms hold funds for the benefit of clients. For example, when a client pays an advance for costs, fees or other expenses, the funds need to be deposited in banks identified as a "Trust Account" or with similar language. Another common example is when the case settles, but the accounting isn't yet complete, or when client funds are held for distributing to third parties, such as lien holders.

An IOLTA (Interest on Lawyer Trust Accounts) Client Trust Account can hold funds for multiple clients, but accurate record keeping is paramount.

The interest and dividends from IOLTA accounts are directed to over 100 legal service programs in California to provide legal services to underrepresented communities. Most of the funds, in fact more than 95 percent of the funds are distributed in grants to legal services programs. The IOLTA program collects a varying amount, depending on the interest rate, but in 2008, it collected over $22 million, and in 2016, collected over $6 million.

California Rule of Professional Conduct 4-100

It may be a combination of the duty of communication, the duty of loyalty, and common sense that underlies the California Rule of Professional Conduct 4-100.

At the initiation of the account with the bank, it is important to label the account appropriately as a "Trust Account" or "Clients' Funds Account." Client properties or securities also need to be promptly labeled and placed in safekeeping. Also, when you receive funds, securities or properties, you should inform the client.

As the client's funds ultimately belong to the client, there should not be commingling of attorney funds with client funds. The attorney can, however, deposit funds to pay for bank charges. (*In the Matter of Respondent F* (Rev. Dept. 1992) 2 Cal. State Bar Ct. Rptr. 17.) Also, if an attorney deposits funds to pay for charges, for instance, they should withdraw the money as soon as they are able to. The client funds should be deposited for safekeeping, and as requested by the client, the attorney must pay funds, securities or properties promptly.

Compliance with California Rule of Professional Conduct 4-100 should include maintaining a client ledger to detail each monetary transaction, an account journal to keep track of the money flowing in and out of the client trust bank account, bank statements and canceled checks, written reconciliation with the account journals, and any journals for other properties with detailed information about the distributions.

The California Rule of Professional Conduct 4-100(B)(4) also has been found to apply to payments to third parties such as lien payments due to an attorney's ongoing fiduciary duty to the client. The attorney needs to honor the client's agreements with medical lien providers or would be in violation of this rule even though the rule only refers to obligations to pay clients. (*Kaiser Foundation Health Plan v. Aguiluz* (1996) 47 Cal.App.4th 302.) In fact, ignorance of liens may be considered gross negligence. (*In the Matter of Riley* (Rev. Dept. 1994) 3 Cal. State Bar Ct. Rptr. 91.)

Best Practices

Do not overdraft

If you do not maintain a sufficient client trust account, it can support a finding of misappropriation. Even though money has been deposited into the account, often, there may be a delay before the funds are available. It is prudent not to write a check or withdraw funds unless the money has been deposited and cleared.

Do not commingle

Because the funds ultimately belong to the client, an attorney cannot use the client's money to pay for anything other than that client's obligations. It would be unethical to use these funds for personal expenses, to pay for taxes, payroll funds or business expenses. It would also be unethical to borrow money from the account to repay later. It is also unwise to write checks payable to "cash" from the account.

Whether withdrawing cash for personal use as in *In the Matter of Heiner* (Rev. Dept. 1990) 1 Cal. State Bar Ct. Rptr. 301, or adding funds to an account to conceal funds from the Franchise Tax Board in *In the Matter of Koehler* (Rev. Dept. 1991) 1 Cal. State Bar Ct. Rptr. 615, using these accounts for personal purposes is improper.

See Greenman, Next Page

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Know your balance

To be a prudent fiduciary of your client's funds, you need to know your balance and track it carefully. This means adding deposited funds to the previous balance or subtracting the funds to the previous balance and keeping track in the client ledger. This will also ensure that you do not overspend and create a negative balance on the account.

Be ready for an audit

Keeping records through the period ending five years from the disbursement is not only a requirement under the rules, but also helpful for an audit. Records should include: initial deposit slips, bank statements of when transactions were posted as well as charged, checkbook stubs, canceled checks, and copies of executed drafts. In *Fitzsimmons v. State Bar* (1983) 34 Cal.3d 327, an attorney received money without keeping records related to costs charged to clients as well as client fund disbursement, which warranted discipline.

Other considerations

First, the bank account should be in California, per California Rule of Professional Conduct 4-100(A), unless you obtain your client's written consent to an out-of-state account. When considering a bank and the timing of transactions, you should be aware of the deadline for posting deposits, when statements are sent, bank charges and other procedures specific to your bank. It is best to choose an FDIC-insured bank. However, even if all the funds are covered by FDIC insurance, the process of recovering funds from a bank in receivership may be time-consuming and could adversely impact the client; for example, a client may miss out on a business opportunity while waiting for funds to process. Also, if a bank is no longer operational, it could cause difficulties in getting copies of necessary records. So please, choose the bank carefully.

There should be only one signatory of client trust bank account checks, and attorneys should monitor the management of client trust accounts carefully, since attorneys could be found to be responsible for the resulting theft or embezzlement caused by others when they fail to supervise the management of the account. (*In the Matter of Malek-Yonan* (Rev. Dept. 2003) 4 Cal. State Bar Ct. Rptr. 627; *In the Matter of Steele* (Rev. Dept. 1997) 3 Cal. State Bar Ct. Rptr. 708; *In re Basinger* (1988) 45 Cal.3d 1348.) The California Supreme Court also discourages the use of pre-signed, blank checks. (*Waysman v. State Bar* (1986) 41 Cal.3d 452.)

Overdrafts need to be handled promptly. A lawyer should not deposit their own funds to prevent overdrafts. An attorney is encouraged to have automatic overdraft protection. (See, Cal. Prac. Guide, Prof. Resp. (The Rutter Group) Ch. 9-B, §§ 9:153 and 9:174.2.)

Remember that if fees are in dispute, you cannot withdraw funds. If there is a combination of disputed and undisputed funds, the undisputed funds should be distributed, and if the disputed funds are linked to funds for third parties, they need to be alerted.

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