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Don't get caught flat-footed when it comes to CTAPP

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It's time for all California lawyers to renew their State Bar license and certify their compliance with CTAPP. Given this, a quick review of client trust accounts and CTAPP is in order.

WHAT ARE IOLTA AND CTA ACCOUNTS?

Pursuant to Rule of Professional Responsibility 1.15, "all funds received or held by a lawyer or law firm for the benefit of a client or other person" in trust must be deposited in one or more bank accounts separate from the lawyer's business and/or personal accounts. Lawyers must maintain accurate books and report to their client regarding the status of these funds.

The two most common accounts used by lawyers to hold client funds are: an IOLTA account (Interest on Lawyers' Trust Account) which is an account held at an approved financial institution in which funds from multiple clients can be held, or an individual CTA (Client Trust Account) which is created for the purpose of holding the funds of a single client. Interest on IOLTA accounts accrues to the benefit of nonprofit legal service organizations. Interest on an individual CTA accrues to the benefit of the client whose funds are deposited.

ACCOUNTING STANDARDS REQUIRED FOR LICENSEES AND CONSEQUENCES FOR NON-COMPLIANCE

Licensees are subject to several accounting requirements under Rule of Professional Conduct (RPC) 1.15(d)(3). A client ledger must be maintained, which includes the name of the client, date, amount, source of all funds, payee, and purpose of each disbursement and the balance. Bank statements and canceled checks must also be maintained from the bank where the CTA is kept. Further, an accounting journal must be maintained which sets forth the name of the account, the date, amount, and client affected by each debit and credit, and the current balance in the account. Finally, licensees must perform reconciliation each month, which requires balancing the ledger and journal against bank statements and canceled checks.

Failure to properly maintain a trust account as required by RPC 1.15 can lead to negative consequences, including misappropriation, commingling, and delays in communicating with clients about funds or the disbursement of funds. In the case of misappropriation, discipline may be warranted even if the mismanagement was neither fraudulent nor willful because misappropriation may occur without an intent to commit a conversion of client funds. Commingling, on the other hand, is committed when a client's money is intermingled with that of their attorney and its separate identity lost so that it may be used for the attorney's personal expenses or subjected to claims of the attorney's creditors.

BACKGROUND BEHIND THE CLIENT TRUST ACCOUNT

The Client Trust Account Protection Program (CTAPP) was implemented by the State Bar on Dec. 1, 2022. California Rule of Court (CRC) Rule 9.8.5 and

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State Bar Rule 2.5 requires licensees to annually register each and every trust account in which the licensee held such funds at any time during

the prior year. The State Bar provides two express reasons for implementing CTAPP: to strengthen public protection and to better support attorneys in fulfilling their client trust accounting duties. See the CTAPP Annual Reporting webpage.

The impetus behind the adoption of CTAPP was the State Bar's handling of past discipline complaints against now-disbarred attorney Thomas Girardi, which was purportedly affected by Girardi's connections to and influence at the State Bar.

CTAPP REQUIREMENTS

All California lawyers, with very limited exception, must now comply with three requirements under CTAPP. These requirements include registration of CTAs (including IOLTAs) annually with the State Bar, either individually or through the lawyer's law firm/organization; completion of an annual self-assessment of CTA management practices to ensure compliance; and certification with the State Bar that the lawyer understands and complies with the requirements and prohibitions applicable to the safekeeping of funds and property of clients or others in RPC 1.15. Failure to comply with CTAPP requirements may result in the assessment of fees for non-compliance and being enrolled as involuntarily inactive and unable to practice law.

Step One is the Annual Registration of trust accounts. Attorneys must report to the State Bar if they are responsible for client funds and funds entrusted by others, and if so, the attorney must register each account online through their My State Bar Profile. Law firms can provide account information for attorneys through Agency Billing. To register a CTA (including IOLTA), a lawyer must report the year-end balance on Dec. 31 of the reporting period.

Step Two is the Annual Self-Assessment. This step calls for a licensee to review the CTAPP rules on the State Bar's CTAPP website and determine whether they are exempt from CTAPP reporting. Recommended CTAPP rules to review include CRC Rule 9.8.5 (reporting requirements), State Bar Rule 2.5 (CTAPP procedures), RPC Rule 1.4 (client communications regarding funds), and RPC Rule 1.15 (safekeeping/disbursement of funds).

Step Three is the Annual Self-Assessment and Certification. This step requires attorneys to take a self-assessment and certify that they are knowledgeable about and in compliance with applicable rules and statutes governing CTAs and the safekeeping of funds.

EXEMPTIONS FROM CTAPP REPORTING REQUIREMENTS

Attorneys exempt from CTAPP compliance include attorneys who were not on active status at any time during the reporting period and attorneys who were not entitled to practice law f or any reason other than voluntarily inactive enrollment.

All licensees who are not exempt from the requirements must comply with CTAPP reporting requirements. Lawyers who have no responsibilities to comply with RPC 1.15 - such as a government attorney employee who does not (nor does their office/organization) maintain funds in trust - can comply with their reporting requirements by answering "no" to the question of whether they were responsible for trust funds in the reportable time frame. State Bar Rule 2.5.

LAW FIRM REPORTING

Attorneys must do their own CTAPP compliance, but for attorneys in firms that avail themselves of the Agency Billing Platform, the law firm may register trust accounts on the attorney's behalf. The firm must identify each attorney covered by the firm's submission of account information on behalf of the firm's lawyers. Lawyers should contact their firm administrator to confirm whether the firm will register the trust account information on behalf of the lawyer. However, all attorneys must still complete the self-assessment and certify their compliance with the requirements and prohibitions of RPC Rule 1.15.

CONCLUSION

Even prior to the adoption of CTAPP, violations of the client trust rules embodied in RPC 1.15 have long been a hot-button issue for the State Bar and have historically been the source of many client complaints to the Bar. The CTAPP rules were designed to reduce the number of such complaints with the dual goals of protecting the public and increasing public confidence in the legal profession. All lawyers must comply with the CTAPP requirements. Failure to do so can lead to temporary ineligibility to practice.

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