

AGENDA ITEM

RAD III.I. JULY 2016

DATE: July 11, 2016

TO: Board Committee on Regulation and Discipline

FROM: Client Trust Accounting Survey Staff Working Group

SUBJECT: Client Trust Accounting Survey - Initial Report and Recommendations for Education and Outreach

At a March 10, 2016 joint session meeting of the Admissions & Education Committee and the Regulation & Discipline Committee, staff presented an initial report and recommendations for education and outreach of the staff working group assigned to consider the data collected on a survey concerning client trust accounting practices (see March 10, 2016 joint session meeting agenda item III.B. for more information). At the joint meeting, an overview of the survey and the results was presented, including a preliminary discussion of the working group's proposals.

Please refer to the attached copy of the March, 2016 agenda item and review the "Proposals Under Consideration by the staff Working Group" on pages four through seven. The working group requests feedback on which proposals are of interest to the Board, including guidance on prioritization for beginning staff implementation. Board members with questions can contact Randall Difuntorum at (415) 538-2161.

AGENDA ITEM

RAD III.C. MARCH 2016

DATE: February 23, 2016

TO: Board Committee on Regulation and Discipline

FROM: Client Trust Accounting Survey Staff Working Group

SUBJECT: Client Trust Accounting Survey - Initial Report and Recommendations for Education and Outreach

EXECUTIVE SUMMARY

This item presents the initial report and recommendations for education and outreach of the staff working group assigned to consider the data collected on a survey concerning client trust accounting practices. While no action is requested at this time, the working group welcomes Board Committee member input on the various proposals that are under consideration.

BACKGROUND

At the January 23 – 24, 2015 planning meeting of the Board of Trustees (“Board”), the topic of “Prevention, Education and Proactive Regulation” was discussed, including a preliminary concept paper describing an education initiative for preventing client trust accounting violations. A primary component of this initiative was a proposal to consider an anonymous voluntary survey of bar members to collect data on client trust accounting practices and to assess member awareness of State Bar client trust accounting requirements and resources.

A staff working group was assigned and at the Board’s May 8, 2015 meeting a draft survey was reviewed and authorized to be conducted from June 1, 2015 through July 31, 2015.¹ The anonymous voluntary survey was publicized through various methods including a news release, multiple social media posts using the State Bar’s Twitter account, and articles in the CalBar e-Journal. One thousand, one hundred and twenty-three (1,123) survey responses were timely completed. To review the data collected and develop proposals for enhancing education and outreach with the ultimate goal of prevention of trust accounting violations, the staff working group met on October 1, 2015 and January 13, 2016.

¹ Rule 6.21 of the State Bar Rules addresses public communications and provides, in part, that “Unless expressly authorized by the Board or the Rules of the State Bar, a State Bar officer, agent, committee, commission, or other entity must not . . . (C) circularize, poll, or put to the vote of all or a substantial number of members of the State Bar any matter on which the State Bar has acted or is empowered to act.”

DISCUSSION

The survey questions and responses are provided as Attachment A. The survey included an open field for entering comments concerning challenges faced in client trust accounting. Attachment B summarizes those comments.

The Survey: The survey included questions for lawyers who do personally handle trust funds, as well as those who do not. The bulk of the questions pertained to the former group. In addition to demographic information, the topics addressed in the survey were the following:

- Establishment of IOLTA Accounts, including Reporting Requirements
- Establishment of Non-IOLTA Accounts
- Information on Trust Account Balances
- Recordkeeping, including Ledgers, Journals, Bank Statements and Reconciliation
- Retention of Records
- Bank Notices of Insufficient Funds
- Providing an Accounting to a Client
- Overdraft Protection on Trust Accounts
- Acceptance of Credit Cards to Advance Fees that are Held in a Trust Account
- Deposit of Costs/Expenses Advanced to a Trust Account
- Use of Computerized Accounting Applications, Bookkeepers or Accountants
- Awareness of Existing State Bar Resources on Trust Accounting
- Experience with Trust Accounting MCLE Courses
- Resolution of Disputes Concerning Funds in a Trust Account
- Attorneys as Client Trust Account Signatories
- Resolution; Timeliness of Recordkeeping; and Disbursement of Funds Belonging to the Lawyer

The Survey Respondents: Of the 1,123 responses, 1,010 indicated that they were employed as an attorney. A majority of these respondents indicated that they have practiced for “20+ years” (502 responses). The primary type of practice was “Private Law Practice” (891 responses). Regarding size of practice, most were sole practitioners (432 responses). Fields of practice varied. The higher concentrations were in estate planning (139 responses) and family law (120 responses).

Inferences Drawn from the Data: In reviewing the survey responses, the following categories of questions suggest a need for enhanced member education and outreach.

- **IOLTA Accounts Reporting Requirements**

(see responses to questions 10 – 12)

49 said they don't know the approximate IOLTA account balance

36 said they don't know how many clients have funds in IOLTA account.

145 said they don't know about IOLTA reporting

151 said they don't report annually

- **Non-IOLTA Accounts – Standard for Utilizing**

(see responses to questions 13 – 17)

86 said they don't know if they have a non-IOLTA account

2 said they don't know the balance

2 said they don't know how long

13 said they don't know the interest rate

- **Record Keeping, including Ledgers, Journals, Bank Statements and Reconciliation**

(see responses to questions 19 & 20)

The survey listed the four types of accounting records required by the Board adopted recordkeeping standards pursuant to Rule of Professional Conduct 4-100(C),² the average "yes" answer across all four types was 541 of the 710 results; none of the types had a 100% "yes;" the highest was bank statements/cancelled checks with 633; the lowest was a written journal with 433.

- **Requirement to Provide an Accounting to a Client**

(see responses to question 21)

21 said they don't know when an accounting is provided to a client

- **Retention of Records**

(see responses to question 22)

Of the four types of records that could be retained, the average "yes" answer was 349 of the 710 results; none of the types had a 100% "yes;" the highest was all bank statements/cancelled checks with 604; the lowest was a monthly reconciliation with 437.

- **Acceptance of Credit Cards to Advance Fees that are Held in a Trust Account**

(see responses to question 30 & 31)

404 said "yes" they accept credit cards to advance fees

317 said "yes" advances are deposited into a multi-client trust account

- **Use of Overdraft Protection on Trust Accounts**

(see responses to question 33)

625 (highest) said "no" they have not considered advantages and disadvantages of having some form of overdraft protection for client trust accounts

² Rule 4-100(C) states:

The Board of [Trustees] of the State Bar shall have the authority to formulate and adopt standards as to what "records" shall be maintained by members and law firms in accordance with subparagraph (B)(3). The standards formulated and adopted by the Board, as from time to time amended, shall be effective and binding on all members.

- **Handling of Disputes Concerning Funds in Trust**

(see responses to question 34)

33 said “no” they don’t maintain the disputed portion of funds in trust until the dispute is resolved

- **Awareness of Existing State Bar Resources on Trust Accounting**

(see responses to question 27)

Of the thirteen types of existing State Bar resources, awareness of the Cal Bar Journal (914 of 1123 results) was the highest category; and awareness of the State Bar’s Client Trust Accounting school was the lowest (68 of 1123 results)

- **Value of MCLE Courses on Client Trust Accounting**

(see responses to question 24)

803 of 1,123 results said “no” to the question of whether they have ever taken an MCLE course on client trust accounting

Proposals Under Consideration by the Staff Working Group: The working group’s proposals are set forth below. They are divided into two groups: proposals that do not require Board action; and those that likely would require Board action.

NO BOARD ACTION REQUIRED

1. Model MCLE Program: Develop a model client trust accounting MCLE program outline that covers the most important topics, including a collection of program written materials (e.g., text of rules, code sections, ethics opinions, and etc...). This would be similar to the curriculum used by enforcement in Client Trust Accounting School diversion but would be refined as an off-the-shelf product that would be made readily available for use by local and specialty bar associations or any other MCLE provider. During MCLE compliance peak time (December and January), staff often receives requests from local or specialty bar associations or law firms asking for assistance in presenting a program for ethics credit. The Model Program could be provided in response to these requests.
2. Take Advantage of MCLE Compliance Peak Time to Publish Self-Study MCLE Articles on Client Trust Accounting: Among the publications that periodically include self-study MCLE articles are the Cal Bar Journal and Bar Section publications. Targeting MCLE compliance peak time for publishing self-study articles on the topic of client trust accounting should increase usage by members. For example, the Cal Bar Journal has worked with members of COPRAC to submit MCLE self-study articles and each year COPRAC could be asked to prepare an article on client trust accounting for a December or January issue.
3. Resource Checklist for Members: Create a comprehensive hard-copy list of State Bar client trust accounting resources to distribute to members where appropriate. For example, the Ethics Hotline staff will mail/fax a copy of a published ethics opinion if a member does not otherwise have ready access to the opinion. Even if the member’s question to the Hotline did not concern client trust accounting, the Hotline staff could include the comprehensive list of client trust accounting resources. Compare the

current online [Client Trust Accounting Resources page](#) found in the Ethics Information Area of the Bar's website.

4. Resource Checklist for Banking Industry: Adapt the above resource document for distribution to the bank industry association and leaders. It is not just members who have questions about IOLTA and client trust accounting requirements. Representatives of banking industry associations also have issues and a resource list tailored to that group could be used to routinely distribute to those inquirers. Compare the "[Information for Financial Institutions](#)" presently available online at the Bar's website.
5. Include a Client Trust Accounting Statement in Law Corporation and Similar Special Admission Applications: Members seeking registration as a law corporation are likely to be members who will engage in private law practice and handle client trust funds. The Bar's application for registration could be revised to include a statement that the applicant is aware of and will comply with the IOLTA and other client trust accounting requirements. Not all members engage in private practice. Members who are law corporations might be reasonably expected to do so and emphasizing to that sub-group the importance of client trust accounting could promote greater awareness and compliance. Note that currently a member applying for law corporation registration must complete [a form](#) in which the applicant declares that the name of the law corporation complies with Rule of Professional Conduct 1-400 (prohibition against false, deceptive or misleading communications, including firm names).
6. Consumer Pamphlet Revision: Amend the Bar's current consumer information pamphlet entitled "Finding the Right Lawyer" (hard-copy and [online version](#)) to include information concerning client trust accounting practices that a prospective client should consider discussing with a lawyer or firm before making a hiring decision. The current consumer pamphlet includes information on questions about how a firm handles fees and costs. Revisions could include questions such as the firm's policy for providing an accounting to a client and whether the firm has overdraft protection on the client trust account.
7. New Admittee Packet: Add to the information included in new admittee packets a collection of links to relevant client trust accounting information at the State Bar website (e.g., [IOLTA page](#), and [Ethics Information Area](#)) Although it is not clear how much of the information provided to a new admittee is retained for future use, trust accounting links might be viewed as valuable at least to those who recall from their legal ethics course that trust account mismanagement is a frequent cause for discipline.
8. Promote Awareness of Trust Accounting Duties with Social Media: Use the State Bar Twitter account (and other social media tools) to regularly remind members about key client trust accounting compliance issues. For example, a periodic tweet could remind lawyers about the IOLTA update form and the need to report changes.
9. Broaden the Distribution of the IOLTA Brochure: Establish a bar-wide practice for including the IOLTA brochure whenever related information is sent to a member, including member inquiries concerning: change of status; sample written fee agreements; law corp/LLP registration; MJP/special admissions; transfer of estate planning documents; pro bono practice inquiries; requests for copies of ethics opinions and other Competence publications; and etc.... For example, a member

inquiring about transfer of estate planning documents might mean that the member is involved in closing a law practice and the IOLTA brochure would be helpful in alerting that member to the requirement to properly close any IOLTA account.

10. Inform COPRAC and the Committee on Mandatory Fee Arbitration about the Compliance Issues Raised by the Survey: COPRAC considers legal ethics issues for possible guidance in formal ethics opinions. The Committee on Mandatory Fee Arbitration develops arbitrator advisories. The working group could provide a list of client trust accounting issues or hypotheticals that might benefit from the issuance of a formal ethics opinion or arbitrator advisory. For example, the survey data indicates that some members may be unsure about the obligation to provide an accounting to client and an ethics opinion addressing that precise issue could promote understanding and compliance.
11. Consider Press Releases: When a member is found culpable for misconduct involving egregious client trust accounting misconduct, the Bar could consider issuing a press release or other publicity. Trust accounting violations may not be the typical high profile discipline case but publicizing disciplinary matters could promote both member and consumer awareness.
12. Include a Client Trust Accounting Survey as a Part of Ethics School: Not all members in the discipline system who are required to attend Ethics School are also required to attend Client Trust Accounting School. For Ethics School attendees, the taking of a client trust accounting survey might itself serve as an educational experience. The voluntary survey could be re-purposed for this function and the data might be helpful for ongoing consideration of education and outreach enhancements.
13. Repurpose the Survey as a Self-Assessment Test: The survey is no longer accessible to members but it could be revised and repurposed to serve as a self-assessment test that is continually available at the State Bar website for any member to take. Similar to the preceding proposal concerning Ethics School attendees, any member would likely benefit from taking the survey because it includes links to resources and many of the questions prompt consideration of issues that otherwise might be ignored.

BOARD ACTION LIKELY REQUIRED

1. TFARR (Task Force on Admissions Regulation Reform) Recommendation: Consider modifying the TFARR MCLE requirement to require one hour of credit on the topic of client trust accounting and IOLTA. The working group considered a possible proposal to modify the existing four hour legal ethics MCLE requirement generally applicable to all members to include at least one hour on the topic of client trust accounting. There was no consensus for this proposal primarily because not all members handle client trust funds (such as government lawyers, in-house lawyers and prosecutors). However, there was a consensus to recommend that the Board consider modifying the TFARR MCLE requirement because new admittees might be evaluating whether to enter into private practice and client trust accounting responsibilities should be a key factor in making that decision.
2. Amend the Lawyer Referral Service Rules: The Lawyer Referral Service Rules impose eligibility requirements for a lawyer to serve as a panel attorney (see Rule 3.823(C)), such as a requirement to have malpractice insurance. The Board could

- consider amending that rule to require any new panel member to state that they have read and are familiar with the IOLTA rules and Rule 4-100 (including the Board adopted recordkeeping standards). This is a case of a sub-group of the population of members who are likely to handle trust funds and it would be prudent prevention to assure that these members are familiar with IOLTA and client trust accounting duties.
3. Amend the Requirements for Certification or Recertification as a Legal Specialist: Similar to the above proposal regarding the Lawyer Referral Service Rules, the Board could ask the Board of Legal Specialization to consider a new requirement that an applicant state that they have read and are familiar with the IOLTA rules and Rule 4-100 (including the Board adopted trust account recordkeeping standards). While not all specialty fields might involve frequent handling trust funds, the granting of certified specialist status communicates higher consumer expectations and requiring this sub-group of members to be familiar with IOLTA and client trust accounting duties would be consistent with these consumer expectations.
 4. Recordkeeping Standards Recommendation: Consider assigning COPRAC or the Rules Revision Commission to study the trust account recordkeeping standards adopted by the Board pursuant to Rule 4-100(C). The Board's standards have not changed since becoming effective on January 1, 1993. After proposed new Rules of Professional Conduct are submitted to the Supreme Court in 2017, the Board could consider a follow-up assignment in 2017 asking the Commission or COPRAC to study the client trust accounting recordkeeping standards and recommend revisions. Board consideration could appropriately follow the pending comprehensive rule revision project for two reasons: (1) the recordkeeping standards do not require California Supreme Court approval (see footnote no. 2); and (2) changes to the standards should follow any Supreme Court action to approve changes to Rule 4-100 itself.
 5. Revise the Handbook on Client Trust Accounting for California Attorneys: Consider authorizing the Office of Professional Competence (and allocate appropriate funds) to retain an outside consultant to serve as a professional writer to evaluate the text of the Handbook on Client Trust Accounting for California Attorneys and prepare revisions in consultation with the client trust accounting working group. A professional writer is needed to satisfy the dual goals of a revised book that will be both technically accurate and complete and also user-friendly to lawyer readers who do not have any accounting background. As an amended Rule 4-100 is anticipate in March 2017, the project to revise the book would be necessary to conform the content to the new rule.

ATTACHMENT(S) LIST

- Attachment A – Survey Questions and Responses
- Attachment B – Summary of Open Field Comments to Survey Question No. 26

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

LIST OF QUESTIONS

1. Are you employed as an attorney?'
2. How many years have you practiced as an attorney?
3. What is the nature of your employment?
4. What is your primary type of practice?
5. What is the size of your office?
6. What area(s) of law do you practice? Please select up to 3 areas of practice.
7. As part of your law practice, do you or your firm receive funds that are held in trust for the benefit of clients or others?
8. Have you or your firm ever opened a trust account established as an Interest on Lawyers' Trust Account ("IOLTA")?
9. Do you or your firm presently have an open IOLTA account?
10. What is the approximate current balance of the IOLTA account?
11. For how many individual client matters are you or your firm presently holding funds in your IOLTA account? (Note: A single client may have multiple client matters for which you are holding funds in your IOLTA account. Each of these matters should be counted separately. Include matters for which you are holding funds as advance fees or advance costs for a client even though the client matter has not yet begun.)
12. State Bar rules require that attorneys must report changes to IOLTA account information, including the opening and closing of an IOLTA account. On at least an annual basis, is the accuracy of your firm's IOLTA information verified and updated by using the State Bar IOLTA Update Form?
13. Have you or your firm ever opened a trust account established as a non-IOLTA client trust account? (e.g., an account with the interest payable to the client)
14. Do you or your firm presently have an open non-IOLTA account?
15. What is the approximate current balance of the non-IOLTA account?
16. How long has this current balance (or a higher balance) been held in the non-IOLTA account?
17. What is the interest rate on the non-IOLTA account?
18. Do you personally maintain or supervise the maintenance of your firm's client trust accounting records?
19. Identify the types of accounting records your firm maintains.
20. How often do you or your firm reconcile your trust accounts?
21. How often do you or your firm provide accountings to clients?

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

22. Identify the types of accounting records retained or archived for a minimum of five years after a client matter is closed.
23. The following are used to maintain our client trust accounting records:
24. Have you ever taken any MCLE course on Client Trust Accounting?
25. Was the MCLE course(s) in-person, online, or self-study?
26. Based on your personal experience, what are the most significant challenges in the handling of client trust funds?
27. Which of the following state bar resources are you familiar with?
28. Based on your personal experience, what are the most significant challenges in the handling of client trust funds?
29. Which of the following State Bar resources are you familiar with?
30. At least one of the signatories on each client trust account is an attorney. (See cases found at page 80 of the State Bar Client Trust Accounting Handbook.)
31. Advance costs are deposited into and maintained in a client trust account. (See California Rule of Professional Conduct 4-100(A).)
32. In at least one instance, my firm or I have been notified by our bank regarding an insufficient funds transaction to our trust account (e.g. a trust account check was presented against insufficient funds in the trust account). (See Business and Professions Code section 6091.1.)
33. My firm has considered the advantages and disadvantages of having some form of overdraft protection for the client trust accounts. (See State Bar Formal Opinion No. 2005-169.)
34. When a client disputes the attorney's fee, which is to be paid from client funds being held in the trust account, the disputed portion of the funds is held in the trust account until the dispute is resolved. (See California Rule of Professional Conduct 4-100(A)(2).)
35. When any proposed disbursement of funds is disputed by the client, steps are taken to resolve the dispute within 30 days. (See *In the Matter of Kaplan* (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 548, summarized at page 77 of the State Bar Client Trust Accounting Handbook.)

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

1. Are you employed as an attorney?

Result Responses Percentage

Yes	1010	89.9%
No	113	10.0%

1123 responses in 1123 results

2. How many years have you practiced as an attorney?

Result Responses Percentage

0-5	139	13.7%
6-10	151	14.9%
11-20	203	20.0%
20+	502	49.7%

995 responses in 1010 results

3. What is the nature of your employment?

Result	Responses	Percentage
Academic	9	7.9%
Law Office Administrator	13	11.5%
Accountant/Bookkeeper	6	5.3%
Paralegal/Law Clerk/Legal Assistant	14	12.3%
Retired	22	19.4%
Unemployed	18	15.9%
Other (e.g., financial advisor, broker, or other non-legal)	31	27.4%

113 responses in 113 results

4. What is your primary type of practice?

Result	Responses	Percentage
Private Law Practice	891	88.2%
Legal Aid or Legal Services Organization	16	1.5%
Prosecutor or Public Defender	24	2.3%
Government Agency or Judiciary	30	2.9%
In-House Counsel	33	3.2%
Law Professor	2	0.1%
Other (e.g., arbitrator, mediator, lobbyist)	14	1.3%

1010 responses in 1010 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

5. What is the size of your office?

Result	Responses	Percentage
Sole practitioner	432	47.6%
2-10 lawyer office	149	16.4%
11-35 lawyer office	24	2.6%
36-100 lawyer office	5	0.5%
101+ lawyer office	3	0.3%

613 responses in 907 results

6. What area(s) of law do you practice? Please select up to 3 areas of practice.

Practice Area 1:

	Result	Responses	Percentage
Bankruptcy		48	5.2%
Business/Contracts		95	10.4%
Civil Rights/Discrimination		16	1.7%
Civil Litigation (Use only if there is not a more specific category that best describes your practice area.)		96	10.5%
Corporate		15	1.6%
Criminal Defense		62	6.8%
Debt/Collections		11	1.2%
Employment/Labor		46	5.0%
Entertainment		9	0.9%
Environmental		8	0.8%
Estate/Trust Planning		139	15.3%
Family		120	13.2%
Immigration		27	2.9%
Intellectual Property/Copyright/Patent		21	2.3%
Insurance		14	1.5%
Landlord/Tenant		12	1.3%
Malpractice/Professional Liability		15	1.6%
Personal Injury		58	6.3%
Real Estate		43	4.7%
Taxation		11	1.2%
Workers Compensation		10	1.1%
Other		23	2.5%

899 responses in 907 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

Practice Area 2:

Result	Responses Percentage	
Bankruptcy	17	1.8%
Business/Contracts	88	9.7%
Civil Rights/Discrimination	17	1.8%
Civil Litigation (Use only if there is not a more specific category that best describes your practice area.)	84	9.2%
Corporate	32	3.5%
Criminal Defense	25	2.7%
Debt/Collections	10	1.1%
Employment/Labor	21	2.3%
Entertainment	2	0.2%
Environmental	2	0.2%
Estate/Trust Planning	56	6.1%
Family	47	5.1%
Immigration	13	1.4%
Intellectual Property/Copyright/Patent	11	1.2%
Insurance	10	1.1%
Landlord/Tenant	20	2.2%
Malpractice/Professional Liability	10	1.1%
Personal Injury	44	4.8%
Real Estate	71	7.8%
Taxation	9	0.9%
Workers Compensation	4	0.4%
Other	31	3.4%

624 responses in 907 results

Practice Area 3:

Result	Responses Percentage	
Bankruptcy	10	1.1%
Business/Contracts	53	5.8%
Civil Rights/Discrimination	6	0.6%
Civil Litigation (Use only if there is not a more specific category that best describes your practice area.)	75	8.2%
Corporate	26	2.8%
Criminal Defense	9	0.9%
Debt/Collections	14	1.5%
Employment/Labor	13	1.4%
Entertainment	6	0.6%

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

	Result	Responses	Percentage
Environmental		2	0.2%
Estate/Trust Planning		27	2.9%
Family		19	2.0%
Immigration		5	0.5%
Intellectual Property/Copyright/Patent		13	1.4%
Insurance		7	0.7%
Landlord/Tenant		16	1.7%
Malpractice/Professional Liability		2	0.2%
Personal Injury		29	3.1%
Real Estate		52	5.7%
Taxation		5	0.5%
Workers Compensation		0	0.0%
Other		36	3.9%

425 responses in 907 results

7. As part of your law practice, do you or your firm receive funds that are held in trust for the benefit of clients or others?

	Result	Responses	Percentage
Yes, I or my firm holds funds in trust for the benefit of clients or others, and I am personally responsible for the trust account.		726	71.1%
Yes, I or my firm holds funds in trust for the benefit of clients or others, but I am not personally responsible for the trust account.		130	12.7%
Neither I nor my firm holds funds in trust for the benefit of clients or others.		164	16.0%

1020 responses in 1020 results

8. Have you or your firm ever opened a trust account established as an Interest on Lawyers' Trust Account ("IOLTA")? (For information, visit the State Bar's IOLTA FAQ.)

Result Responses Percentage

Yes	786	91.8%
No	51	5.9%

837 responses in 856 results

9. Do you or your firm presently have an open IOLTA account?

Result Responses Percentage

Yes	750	95.4%
No	21	2.6%

771 responses in 786 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

10. What is the approximate current balance of the IOLTA account?

Result	Responses Percentage	
0 - \$5,000	295	39.3%
\$5,0001 - \$50,000	251	33.4%
\$50,001 - \$250,000	120	16.0%
\$250,001 - \$1,000,000	31	4.1%
\$1,000,000 or more	4	0.5%
I don't know.	49	6.5%

750 responses in 750 results

11. For how many individual client matters are you or your firm presently holding funds in your IOLTA account? (Note: A single client may have multiple client matters for which you are holding funds in your IOLTA account. Each of these matters should be counted separately. Include matters for which you are holding funds as advance fees or advance costs for a client even though the client’s matter has not yet begun.)

Result	Responses Percentage	
1 - 25	617	82.2%
26 - 100	74	9.8%
101 - 500	11	1.4%
501 or more	6	0.8%
I don't know.	36	4.8%

744 responses in 750 results

12. State Bar rules require that attorneys must report changes to IOLTA account information, including the opening and closing of an IOLTA account. On at least an annual basis, is the accuracy of your firm's IOLTA information verified and updated by using the State Bar IOLTA Update Form?

Result	Responses Percentage	
Yes	447	59.6%
No	151	20.1%
I don't know.	145	19.3%

743 responses in 750 results

13. Have you or your firm ever opened a trust account established as a non-IOLTA client trust account? (e.g., an account with the interest payable to the client)

Result	Responses Percentage	
Yes	157	18.3%
No	605	70.6%
I don't know.	86	10.0%

848 responses in 856 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

14. Do you or your firm presently have an open non-IOLTA account?

Result Responses Percentage

Yes	44	28.0%
No	108	68.7%

152 responses in 157 results

15. What is the approximate current balance of the non-IOLTA account?

Result Responses Percentage

\$500,000 or less	34	77.2%
\$500,001 - \$1,000,000	3	6.8%
\$1,000,000 or more	5	11.3%
I don't know.	2	4.5%

44 responses in 44 results

16. How long has this current balance (or a higher balance) been held in the non-IOLTA account?

Result Responses Percentage

less than 1 year	20	45.4%
1 - 2 years	8	18.1%
3 -5 years	4	9.0%
more than 5 years	10	22.7%
I don't know	2	4.5%

44 responses in 44 results

17. What is the interest rate on the non-IOLTA account?

Result Responses Percentage

less than .05%	12	27.2%
.05% - 1%	16	36.3%
over 1%	3	6.8%
I don't know	13	29.5%

44 responses in 44 results

18. Do you personally maintain or supervise the maintenance of your firm's client trust accounting records?

Result Responses Percentage

Yes	710	82.9%
No	132	15.4%

842 responses in 856 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

19. Identify the types of accounting records your firm maintains. (Check all that apply.)

Result	Responses Percentage	
A written ledger for each client on whose behalf funds are held	585	27.0%
A written journal for each bank account	433	20.0%
All bank statements and cancelled checks for each bank account	633	29.2%
Each monthly reconciliation that balances the written ledgers, written journals, and bank statements	514	23.7%
2165 responses in 710 results		

20. How often do you or your firm reconcile your trust accounts?

Result	Responses Percentage	
Daily	29	4.0%
Weekly	63	8.8%
Monthly	512	72.1%
Quarterly	54	7.6%
Annually	28	3.9%
I don't know.	21	2.9%
707 responses in 710 results		

21. How often do you or your firm provide accountings to clients?

Result	Responses Percentage	
Only upon request by the client.	249	35.0%
Weekly	5	0.7%
Monthly	381	53.6%
Quarterly	22	3.0%
Annually	14	1.9%
I don't know.	21	2.9%
692 responses in 710 results		

22. Identify the types of accounting records retained or archived for a minimum of five years after a client matter is closed. (Check all that apply.)

Result	Responses Percentage	
A written ledger for each client on whose behalf funds are held	541	27.1%
A written journal for each bank account	410	20.5%
All bank statements and cancelled checks for each bank account	604	30.3%
Each monthly reconciliation that balances the written ledgers, written journals, and bank statements	437	21.9%
1992 responses in 710 results		

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

23. The following are used to maintain our client trust accounting records: (check all that apply)

Result	Responses Percentage	
Business Accounting Software (e.g., Quickbooks, or Elite)	487	33.3%
Custom Law Firm Accounting Software (e.g. proprietary software)	141	9.6%
Spreadsheet Application (e.g. Excel)	199	13.6%
Handwritten Ledger/Journal	321	21.9%
Accountant/Bookkeeper	235	16.0%
Other	79	5.4%

1462 responses in 856 results

24. Have you ever taken any MCLE course on Client Trust Accounting?

Result Responses Percentage

Yes	320	28.4%
No	803	71.5%

1123 responses in 1123 results

25. Was the MCLE course(s) in-person, online, or self-study? (Check all that apply.)

Result Responses Percentage

In-Person	178	48.9%
Online	99	27.1%
Self-Study	87	23.9%

364 responses in 320 results

26. Based on your personal experience, what are the most significant challenges in the handling of client trust funds?

(See ATTACHMENT B.)

675 responses in 1123 results

27. Which of the following State Bar resources are you familiar with? (Check all that apply.)

Result	Responses Percentage	
Cal Bar Journal	914	17.8%
State Bar Client Trust Accounting Handbook	368	7.1%
CYLA Opening a Law Office Book	157	3.0%
Compendium on Professional Responsibility	143	2.7%
Ethics Hotline	836	16.3%
Ethics Opinions	576	11.2%
State Bar Ethics School	90	1.7%
State Bar Online CLE	640	12.5%
State Bar Client Trust Accounting School	68	1.3%

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

Result	Responses Percentage	
State Bar Sample Written Fee Agreements	605	11.8%
State Bar Rules of Professional Conduct for Estate Planning, Trust, and Probate	236	4.6%
State Bar Publication 250 (Rules of Professional Conduct, State Bar Act (Bus. & Prof. Code §§ 6000 et seq.), and Selected Statutes)	381	7.4%
State Bar Court Reporter	104	2.0%
5118 responses in 1123 results		

28. At least one of the signatories on each client trust account is an attorney. (See cases found at page 80 of the State Bar Client Trust Accounting Handbook.)

Result Responses Percentage

Yes	982	87.4%
No	13	1.1%
N/A	128	11.3%

1123 responses in 1123 results

29. Advance costs are deposited into and maintained in a client trust account. (See California Rule of Professional Conduct 4-100(A).)

Result Responses Percentage

Yes	864	76.9%
No	59	5.2%
N/A	200	17.8%

1123 responses in 1123 results

30. A client has the option of using a credit card to advance fees to the law firm. (See State Bar Formal Opinion No. 2007-172.)

Result Responses Percentage

Yes	404	35.9%
No	496	44.1%
N/A	223	19.8%

1123 responses in 1123 results

31. Advance fees paid by credit card are deposited into and maintained in a client trust account that holds multiple client funds. (See State Bar Formal Opinion No. 2007-172.)

Result Responses Percentage

Yes	317	78.4%
No	71	17.5%
N/A	16	3.9%

404 responses in 404 results

ATTACHMENT A – SURVEY QUESTIONS AND RESPONSES

32. In at least one instance, my firm or I have been notified by our bank regarding an insufficient funds transaction to our trust account (e.g. a trust account check was presented against insufficient funds in the trust account). (See Business and Professions Code section 6091.1.)

Result Responses Percentage

Yes	123	10.9%
No	817	72.7%
N/A	183	16.2%

1123 responses in 1123 results

33. My firm has considered the advantages and disadvantages of having some form of overdraft protection for the client trust accounts. (See State Bar Formal Opinion No. 2005-169.)

Result Responses Percentage

Yes	238	21.1%
No	625	55.6%
N/A	260	23.1%

1123 responses in 1123 results

34. When a client disputes the attorney's fee, which is to be paid from client funds being held in the trust account, the disputed portion of the funds is held in the trust account until the dispute is resolved. (See California Rule of Professional Conduct 4-100(A)(2).)

Result Responses Percentage

Yes	777	69.1%
No	33	2.9%
N/A	313	27.8%

1123 responses in 1123 results

35. When any proposed disbursement of funds is disputed by the client, steps are taken to resolve the dispute within 30 days. (See In the Matter of Kaplan (Review Dept. 1996) 3 Cal. State Bar Ct. Rptr. 548, summarized at page 77 of the State Bar Client Trust Accounting Handbook.)

Result Responses Percentage

Yes	712	63.4%
No	19	1.6%
N/A	392	34.9%

1123 responses in 1123 results

**ATTACHMENT B – SUMMARY OF OPEN FIELD
COMMENTS TO QUESTION NO. 26**

**Client Trust Accounting Survey
Summary of Open Field Comments for
Survey Question No. 26 by General Topics**

Category	Number of responses	Percentage
Accounting System	3	<1
Accounting/Recordkeeping	106	16
Administration	5	<1
Attorney's Funds	4	<1
Avoiding Commingling	40	6
Bank Issues/Errors	28	4
Clearing Funds	6	<1
Client Requests	2	<1
Closing Accounts	3	<1
Communicating w/Client	6	<1
Court Order	2	<1
Credit Card Payments	14	2
Disbursing Funds	16	2
Education	3	<1
Electronic Banking	7	1
Fees	45	7
Following Rules	46	7
Holding Funds	3	<1
Misc.	31	5
Missing Client	9	1
Misuse of Funds	8	1
Multiple Accounts	8	1
Multiple Clients	7	<1
No Challenges/Issues	89	14
No Experience/Not Responsible for Client Funds	50	7
NSF/Reversed Deposits	2	<1
Reconciliation	55	8
Scams	2	<1
Small Accounts	2	<1
Software	10	1
Supervising Employees	13	1
Timeliness	10	1
Timely Disbursements	12	1
Unused Funds	7	1

*654 Total Responses

**ATTACHMENT B – SUMMARY OF OPEN FIELD
COMMENTS TO QUESTION NO. 26**

**CLIENT TRUST ACCOUNTING SURVEY –
SELECTED RESPONSES TO OPEN FIELD QUESTION NO. 26**

Survey Question No. 26: Based on your personal experience, what are the most significant challenges in the handling of client trust funds?

The following five general topics represent the top categories of issues raised in the open field for question No. 26. Under each topic heading are selected excerpts from the comments entered by survey respondents.

Accounting/Recordkeeping

(106 responses in 654 results)

- “Keeping clear and accurate records of funds belong to each client.”
- “Learning the accounting techniques for trust accounts.”
- “Recordkeeping for IOLTA account with nominal balance.”
- “It is paperwork intensive to keep separate ledgers and balance them with the overall account. . . .”

Reconciliation

(54 responses in 654 results)

- “Reconciliation of the client trust balance to the total trust balance.”
- “Reconciling accounts when the courts are taking up to a year to process post-judgment documents.”
- “Account reconciliation; delay in waiting for funds to clear account before expenses can be paid out.”
- “Accurately recording each client's balance and reconciling it with their billing records.”

Following Rules

(46 responses in 654 results)

- “Too many rules, the violation of each of which is like a landmine. We are lawyers, not accountants. The State Bar doesn't do enough to explain the trust accounting procedures better. At minimum, you should offer software with templates that streamline things (kind of like tax preparation software).”
- “Mastering the dos-n-don't's of the current rules and related caselaw. Too many practicing attorneys run afoul of the requirements unwittingly. . . .”
- “Not violating the rules for deposit items clearing before distributions are made.”
- “Knowing the rules, making sure the bank doesn't screw up by erroneously or mistakenly charging fees; and knowing when the fee should or should not go into a client trust account. . . .”
- “Rules appear to assume that we will be keeping handwritten ledgers, etc., and do not account for the reality of computerized recordkeeping.”

**ATTACHMENT B – SUMMARY OF OPEN FIELD
COMMENTS TO QUESTION NO. 26**

Fees

(45 responses in 654 results)

- “Dealing with costs and filing fees in trust account.”
- “A check bouncing and the bank charging an NSF charge thus affecting others money in the account.”
- “Clients are accustomed to using payment methods, like credit cards, that involve service fees or other fees. Requesting a check for a retainer or advanced expenses is often a major hassle, since clients are accustomed to paying fees otherwise.”
- “Making sure that wire and bank fees are not deducted from trust account when funds are wired in or out.”

Avoiding Commingling

(40 responses in 654 results)

- “Avoiding mingling trust funds and funds earmarked for the practice or the attorney. Handling trust account fees for checks, etc.”
- “Making sure that balances are accurate, that funds are not co-mingled, and that funds are not withdrawn until all prerequisites have been met.”
- “Ensuring that the funds of one client are not mixed with another client. Keeping the money in trust until earned or properly dispersed.”