

AGENDA ITEM

April 24, 2015

DATE: April 14, 2015

TO: Members, Regulation and Discipline Committee

FROM: Randall Difuntorum, Director, Professional Competence

SUBJECT: Voluntary Survey of State Bar Members on Client Trust Accounting

EXECUTIVE SUMMARY

This item requests that the Regulation and Discipline Committee recommend to the Board of Trustees that it authorize staff to conduct a voluntary survey of randomly selected State Bar members on the subject of client trust accounting. The survey will collect information to be studied by staff and used for enhancing client trust accounting education and regulation.

BACKGROUND

At the Board of Trustees January 23 – 24, 2015 planning meeting, the Board discussed the topic of “Prevention, Education and Proactive Regulation.” Included in this discussion was a preliminary concept paper that described an education initiative for preventing client trust accounting violations. A primary component of this initiative was a proposal to consider a survey of bar members addressing client trust accounting practices.

As conceived, the objective of the survey would be three-fold. First, the survey would be a new tool for gathering reliable information about lawyer trust accounting practices. This information would be studied by a working group comprised of staff from various State Bar offices with the goal of assessing existing client trust accounting education and exploring improvements responsive to the data. Second, the survey would promote compliance by heightening member awareness of the Bar’s focus on trust accounting duties and mandatory recordkeeping standards. Third, the survey itself would be informative to members by including references to State Bar client trust accounting resources presently available. Use of the information collected to initiate potential disciplinary investigations would not be a function of the survey. Instead, the survey would be voluntary and would allow a participant to provide responses anonymously.

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.”

ISSUE

Whether to recommend to the Board of Trustees that it authorize staff to conduct a voluntary survey of randomly selected State Bar members on the subject of client trust accounting.

DISCUSSION

At the February and March meetings of the Regulation and Discipline Committee, staff provided status reports on the development of a client trust accounting survey. Board Committee members provided input on the draft survey and that input has been implemented in the current draft (see attached print out of the current draft survey). Although the draft continues to be refined, the content and format is substantially settled and is ready for Board policy action to authorize staff to conduct a survey of bar members as described below.¹

Content of the Survey: The content of the survey includes questions for lawyers who do not personally handle trust funds and those who do. The bulk of the questions pertain to the latter group. In addition to demographic information, the topics addressed in the survey are the following:

- Establishment of IOLTA Accounts, including Reporting Requirements
- Establishment of Non-IOLTA Accounts
- Information on Trust Account Balances
- Record Keeping, 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

¹ Prior to the anticipated consideration by the full Board in May, the draft survey will continue to be revised. Any such changes would be to clarify and streamline the format and content or to alter it to improve the flow of the survey questions in the intended online environment. Significant material changes are not expected to be made once the Board Committee acts. The survey is posted at: https://fs16.formsite.com/SB_RRC/form77/index.html.

- 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 also provides an open field for entering up to 1000 characters of text for a member to describe significant challenges in the handling of client trust funds. Completing the open field is not required.

In addition, it is anticipated that an incentive for completing the voluntary survey will be offered in the form of a monetary credit that the survey participant could use in purchasing Online CLE from the State Bar, including CLE on client trust accounting programs presented by COPRAC, Sections, and others.

Outreach Plan: To promote necessary awareness of the State Bar's action in surveying the members, staff has developed a communication and outreach strategy that would include, among other activities, the following steps.

- A News Release (after the May Board meeting)
- Story in the June Cal Bar Journal with a link to the survey
- Promotion on the State Bar website and via State Bar social media accounts (Twitter and LinkedIn)
- Notice to Bar Associations via Bar Relations Outreach
- Notice in Sections/CYLA Newsletters in June
- Emails to Targeted Audiences (if needed to increase response rate)
- Follow-up Story and/or President's Column on the Survey Results in the Cal Bar Journal July or August Issue

Assuming that the Board takes action in May to approve the survey, staff would target the month of June for rolling out the survey and the outreach strategy.

Concurrent Education Enhancements: In part as a complement to the survey and outreach activities, several general enhancements to existing client trust accounting resources and education will be implemented. These enhancements include: (1) consolidating trust accounting ethics resources at the Ethics Information Area of the State Bar website, similar to the existing resource areas dedicated for Senior Lawyer Resources and Ethics and Technology; and (2) expanding the distribution of the IOLTA brochure by including it in the application materials provided to members who inquire about State Bar registration as a Professional Law Corporation or a Limited Liability Partnership. Further education improvements are expected to be made after study of the survey data by the staff working group.

CONCLUSION

The content of the survey and the implementation plan has been carefully developed to achieve the objectives discussed by the Board at the January planning meeting. Staff action to conduct a voluntary survey that is not intended to reach all or a substantial number of State Bar members does not require express Board authorization. However, because the proposed client trust accounting survey arises from the Board's planning meeting, Board approval and authorization is being sought to assure that staff's action is in accord with the Board's goals.

FISCAL / PERSONNEL IMPACT

The costs of utilizing an online vendor to host the electronic survey is anticipated to be approximately \$200.00 a month and should be absorbed by the budgeted funds in the Office of Professional Competence or another State Bar office. Although the plan is for a working group of staff to evaluate the information collected, if it is later determined that an outside consultant should be retained to analyze the survey data, then that would be an additional expense.

RULE AMENDMENTS

None.

BOARD BOOK IMPACT

None.

RECOMMENDATION

It is recommended that the Regulation and Discipline Committee recommend that the Board of Trustees authorize staff to conduct a voluntary survey of randomly selected State Bar members on the subject of client trust accounting.

PROPOSED BOARD COMMITTEE RESOLUTION:

Should the Regulation and Discipline Committee agree with the above recommendation, the following resolution would be appropriate:

RESOLVED, that the Regulation and Discipline Committee recommends that the Board of Trustees authorize staff to conduct a voluntary survey of randomly selected State Bar members on the subject of client trust accounting; and it is

FURTHER RESOLVED, that the information to be collected by the survey will be used for enhancing education and regulation and not for disciplinary purposes.