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Also, a note about the draft of 1.15 in the materials that Lauren forwarded with the agenda -- unless I am missing something, the redline does not match the clean draft version of the rule.

May 23, 2016 Difuntorum Email to Inlender, cc Mohr, McCurdy & Lee::

Thanks Tobi. We will look into the 1.15 drafts.

May 23, 2016 Marlaud Email to Drafting Team, cc Chair, Difuntorum, Mohr, McCurdy & Lee:

Please see attached OCTC memo with comments concerning ABA MR 1.15. Please consider these comments in preparation for the June meeting.

Attached:

RRC2 - [4-100][3-400][3-410][3-700][[1.8.5A][6.1][1.10][1.18][2.3][3.9][4.1][4.4][5.7][8.3] - 05-19-16 OCTC Memo to RRC2.pdf

May 19, 2016 OCTC Memo [Dresser] to RRC2:

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D. Rule 4-100 [Preserving Identity of Funds and Property of a Client]]

Please see OCTC's March 25, 2016 comment.

March 25, 2016 OCTC Email to RRC2:

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K. Rule 4-100 [Preserving Identity of Funds and Property of a Client]

The question of whether advance attorney fees must be maintained in trust until earned is an unsettled issue in California. (Compare *T&R Foods, Inc. v. Rose* (1996) 47 Cal.App. 4th Supp. 1, 6-7, [advanced fees are funds received or held for the benefit of the client and, therefore, must be deposited into a trust account] and *Barnowski v. State Bar* (1979) 24 Cal.3d 153, 164, where the court declined to resolve the issue.) The California Practice Guide: Professional Responsibility, sections 9:108-109, states that the issue is unresolved, but finds that the language of the rule “seems broad enough to cover fees paid in advance” and that “prudence dictates treating such funds as the client’s property and keeping them in a trust account until fixed or earned.” Many jurisdictions have found that advance fees must be deposited into a client trust account until earned and fixed. (See *Iowa Supreme Court Board of Professional Ethics and Conduct v. Apland* (Iowa 1998) 577 N.W.2d 50, 55 [majority of authorities now agree advance fees must be deposited into trust account]; *In re Sather* (Colo 2000) 3 P.3d 403, 409; and *In re Mance* (D.C. 2009) 980 A.2d 1196, 1203.) A revision of rule 4-100 expressly resolving this question would be of benefit to the membership.

It would also be advisable for subsection (B)(3) of the rule to clarify that the accounting required under that rule be provided to the client in writing. Oral accountings are fleeting. Clients should not be expected to retain an accounting in their heads. (See *Chambers v. Kay* (2002) 29 Cal.4th 142, 157 [a client should not be expected to mentally retain fee sharing agreement information throughout the pendency of the case].) Further, clients should be able to take an accounting home and carefully review it, potentially with another trusted person. A written accounting protects the client.

May 25, 2016 Eaton Email to Difuntorum, Mohr & McCurdy:

Thanks for your creativity in balancing the interests at stake in the deposit of advance fees. I believe that the client should have some right to revoke the client's consent to having the advance fee deposited in the operating account rather than the trust account and that paragraph b should be modified accordingly. I have not thought through whether there should be any limit to this right based on the passage of time or the phase of the matter, but I think this concept should be there somewhere. Please consider including such a right to revoke consent in 1.15(b).