

Discussion Document

To: Committee on Special Discipline Case Audit

From: Richard Schauffler

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Re: Designing a Client Trust Account Management Program

This memo provides to the Committee a summary in outline form of the key elements of client trust account (CTA) management programs. Variations of each element are offered to facilitate discussion. At the Committee's next meeting I will walk you through an exercise to review each element and to begin to make decisions regarding the design of a California program based on the options presented. Any program will of course also require a strategy for development and rollout, which is not included in the scope of this document, but which will be important for program success.

What makes California different is the scale of the legal profession, which comprises about 15% of all attorneys in the US. If California were to audit 2% of its attorneys (as other states with audit programs do), that would result in about 4,000 audits annually. That is about 9 times the number of annual audits conducted by New Jersey (9 FTE staff (6 auditors, a Certified Public Accountant, a Certified Fraud Examiner) and a program manager); audits average 1 day in length). The scale is a key factor in designing both a program and its implementation strategy.

1. Registration of Client Trust Accounts/Certification of Compliance

A. Annual registration by every attorney of client trust accounts as part of State Bar licensing renewal process. Requires attorneys to report if they have client trust accounts (CTAs), and if so, the account detail (e.g., account number, financial institution, client name).

B. Registration as above, **along with designation** by any law office employing more than 1 attorney **of a single Responsible Attorney** who has overarching responsibility for CTAs.

C. Registration as per (a) above, **along with statement of Compliance** with Rules and Statutes (specified) pertaining to CTAs.

D. Registration and certification as per (a) or (c) above, along with a law firm plan (similar to that required in Florida by Rule 5.1-2(c): a written plan must include the names of all lawyers who sign trust account checks for the law firm and review all trust account checks, the names of the lawyers who are responsible for oversight of reconciliation of the law firm's trust account or accounts, both monthly and annually, and the names of the lawyers who are responsible for answering any questions that lawyers in the firm may have about the firm's trust account or accounts. (summary of Florida Rule 5-1.2(c)

E. Annual re-registration of Client Trust Accounts: As part of (A) above, attorneys must register every CTA every year that it is active.

2. Client Trust Account Audits

A. Type of Audit

1. Universal audit of every account: Every year, every account must be audited.
2. Universal, audit of every account over a period of X years, along with risk-based
3. Random audit, based on sampling strategy designed to select a meaningful sample of attorneys.
4. Risk-based audit: Annual audit of attorneys/law firms based on assessment of the probability of CTA error and degree of harm.¹

B. Frequency of Audit

1. **Annual** (if selected)
2. **Annual, with exemption** if randomly audited by State Bar within the last X years.
3. **Annual, with exemption of X months or years if law firm engages an independent accountant** to conduct an audit using guidelines determined by the State Bar.

C. Provider of Audit Services

1. **State Bar** audit staff
2. **Certified Public Accountants**, using agreed upon procedures and rules as determined by the State Bar.

¹ The issues related to possible State Bar use of risk-based regulation are discussed in detail in the July 2020 [Governance in the Public Interest Task Force Report](#).

3. Analysis and Action Based on Audit Findings

A. Review of audit findings (individually and collectively)

1. By State Bar staff?
2. By accounting firm?
3. Determination of level of correction/sanction/discipline appropriate in each audit.
4. Identification of patterns, both of individual attorneys/firms and statewide across all attorneys/firms audited (to determine risk as well as training/education needs)

B. System of Graduated Corrections/Sanctions (elements to be selected/combined)

1. Real-time error correction during audit
2. Written statement of error correction to be completed within X days and subsequent submission of documentation that errors have been corrected.
3. Probation, with deferral of sanction pending completion of a remedial program (e.g., requiring frequent, detailed monthly CTA reporting for up to 2 years and/ or required CLE)
4. Disciplinary action, for cases in which audit uncovers more serious misconduct.

4. Support for Attorneys Managing CTAs

A. CLE courses specific to Client Trust Accounts.²

B. Presentations to local bar associations, law schools, accountants re CTA account management.

C. Use of multiple channels (e.g., video, podcast, newsletter, website, print, social media) to disseminate tips and highlight issues.

D. Self-assessment tools (e.g., checklists) to allow attorneys to review their practices.

² The *Plan for Preventative Education for Attorneys* presented by the Office of Professional Competence to the Board of Trustees at the July 2021 meeting includes a propose CLE course on Client Trust Accounts (see page 5). The course is to be designed consistent with the self-assessment checklist being developed by the same Office on this topic. See Item 703 here
<https://board.calbar.ca.gov/Agenda.aspx?id=16294&tid=0&show=100030118&s=true#10037720>

E. **Remedial programs** to mentor, educate, oversee attorneys.

5. Support for Clients

A. **Educational material** to inform clients of their rights, responsibility of attorney to communicate timely, report on changes in funds, and account for client funds.

1. Distributed by State Bar
2. Distributed by Attorneys to clients with CTAs

6. Utilization of Information Technology

A. **Online forms:** whatever process of registration and/or compliance certification is recommended by the Committee, that information should be collected online and maintained in a database. Audit findings report could be designed as an online record as well with dedicated fields for specific findings. This would make analysis of error possible, to identify patterns within and across attorney records.

B. **Linking Records:** Records of attorney profile, CTA responsibility, audit findings, complaints and disciplinary outcomes could be linked by a unique identifier (e.g., attorney bar number). This would allow analysis of patterns by integrating these data.

C. **Automated Red Flag Identification:** Once the State Bar accumulates sufficient data and analyzes that data to determine patterns, the process of calling out specific attorneys/firms for repeat audit or for further scrutiny could be automated.

D. **Automated upload of complete CTA data in lieu of audit:** Alberta, Canada provides an alternative model to U.S. audit programs, in which complete account data from each client trust account can be uploaded by one of eight Law Society-approved accounting software packages through a secure portal. An accounting firm is contracted to conduct automated review and analysis and report to the Law Society on accounts requiring further examination, based on errors and patterns detected in the data.