

Discussion Document

To: Committee on Special Discipline Case Audit

From: Richard Schauffler

Date: 10/19/2021

Re: Non-Client Trust Account Solutions for Protecting Client Funds

Alternative Approaches to Client Trust Account Protection

In addition to the established framework of Client Trust Accounts (CTA) and Interest On Lawyer Trust Accounts (IOLTA), alternative approaches to the protection have been designed in several jurisdictions. The following examples are illustrative (but not exhaustive) and are provided to convey a descriptive sense of the range of current alternatives to client trust account protection.

Pilot Programs Exploring Alternatives to Client Trust Accounts in the United States

Utah Pilot Program

In early 2021, the Utah Supreme Court authorized a pilot program through which lawyers can partner with a third party (Xira Connect, Inc.) to provide client trust fund accounting services through a software platform. This use is permitted through the mechanism of a regulatory “sandbox,” through which the traditional implementation of the provisions of Utah’s Rule 1.15 is waived, while lawyers are still obligated by the rules of professional conduct.¹

Two main features of the 24-month pilot program are 1) billing and collecting client legal fees, and charging lawyers a percentage fee for doing so, and 2) holding retainer fees and other fees paid in advance by clients to hire lawyers. Xira is not a financial institution; funds are held in a “major national bank.” Xira’s service is functionally equivalent to an escrow account. As proposed and approved, this arrangement does not include other funds such as settlements. The program is aimed at (and restricted to) consumer law areas, including civil, criminal, family law, probate, housing, immigration, and other case categories.

¹ For the Supreme Court of Utah’s order and description of the program, see <https://utahinnovationoffice.org/wp-content/uploads/2021/04/Auth-Packet-Xira.pdf>.

Third Party Managed Accounts (TPMA)

A Third Party Managed Account (TPMA) is an account held by a third party institution that holds money on behalf of two or more transacting parties. Unlike more familiar real estate escrow institutions, the TPMA in a legal services context does not have a stake in some other transaction (e.g., issuing a loan/holding a mortgage).

Among the described advantages are the reduction of risk in the management of client funds (and thus the reduction of risk of regulatory audit, investigation and discipline), the reduction of the cost of professional indemnity insurance, and, some jurisdictions, elimination of the obligation to contribute to the client security fund. Use of a TPMA also removes the issue of residual or undistributed balances in accounts by providing a clear and discrete accounting.

United Kingdom

Solicitors

Solicitors are courtroom advocates and legal advisors, regulated by the Solicitors Regulation Authority. With the adoption of Rule 11 of the Accounts Rules for solicitors in November 2019, use of a TPMA was authorized. The TPMA is an alternative to the traditional client trust account, although client trust accounts may still be used. A TPMA may be established for the life of a case, or for a specific (large) transaction within a case, such as a settlement.

Solicitors are required to notify the Solicitors Regulation Authority (a division of the Law Society) when they open or close a TPMA, reporting the dates and name of the institution providing the TPMA. The institution holding the TPMA does the accounting and issues statements. The solicitor is responsible to ensure that the client understands the terms of the agreement with the TPMA, in particular the fees and who is responsible for paying them.

Barristers

Barristers are legal advisors, courtroom advocates, and providers of specific legal services., regulated by the Bar Standards Board. While they may directly receive client funds for their services, funds such as those for alternative dispute resolution, disbursement, and settlements, are held by BARCO, a third party institution owned and operated by the Bar Council.²

France

In France, client funds are held by a local CARPA (Caisse des Règlements Pécuniaires des Avocats or Fund for Lawyers' Pecuniary Settlements), the use of which was established in 1957

² See [https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=\(sc.Default\)&firstPage=true#co_anchor_a240770](https://uk.practicallaw.thomsonreuters.com/7-633-7078?transitionType=Default&contextData=(sc.Default)&firstPage=true#co_anchor_a240770), accessed on October 14, 2021.

and made mandatory in 1986.³ The CARPA is an institution owned and controlled by each local bar in France; there are over 180 local bars, most of which are small. CARPAs are not financial institutions but work with banks to provide independent oversight and management of client funds. Each law firm has an account, and within that each client has a subaccount. The CARPA system is self-financed through the interest earned on accounts; interest above and beyond expenses is used to fund legal aid.

³ See the discussion of CARPA at <https://www.lawgazette.co.uk/analysis/compensation-fund-can-we-learn-from-france/51762.article>, accessed October 14, 2021.