

Discussion Document

To: Committee on Special Discipline Case Audit

From: Richard Schauffler

Date: 10/20/2021

Re: Proposed Outline for Final Report to Board of Trustees

Below please find a proposed outline for the Final Report of the Committee to the Board of Trustees for your consideration.

I. Charge of the Committee	<ul style="list-style-type: none"> A. Original Charge (from Board resolution) B. Additional issues added to original charge <ul style="list-style-type: none"> i. Identification of patterns of complaints requiring increased scrutiny by State Bar ii. Training of OCTC Managers & Staff iii. Addressing complaints about attorney communication and threats to withdraw representation iv. Increased attorney education on responsibilities for client trust accounting per current requirements v. Modification of rules governing trust account payout vi. Making malpractice insurance mandatory
II. Recommendations	
CTA Audit Program	<p>Short intro to the important of CTA management in the public interest. Purposes of a program: education, deterrence, detection. Recommendations to be described along with rationale for each.</p> <p><i>Table: Recommended Program Elements by Purpose Served</i></p> <ul style="list-style-type: none"> a. Annual Registration b. Annual Certification of Compliance c. Annual Self-Assessment by All Atty Responsible for CTAs d. Compliance Reviews by Outside CPAs of Selected Attorneys <ul style="list-style-type: none"> i. Random ii. Risk-based e. Risk Review and Follow Up Action <ul style="list-style-type: none"> i. File closed: If no deficiencies or minor deficiencies noted and corrected during compliance review

	<ul style="list-style-type: none"> ii. Written statement of minor deficiencies to be corrected within a 45-day deadline; subsequent submission of documentation by the attorney that errors have been corrected; upon receipt of acceptable response, file is closed iii. Referral for administrative supervision of the client trust account, e.g., requiring frequent, detailed monthly reporting for up to 2 years and/or re-enrolling in client trust account CLE iv. Written statement of more serious deficiencies, accompanied by requirement for formal audit within 3 months to ensure that the deficiencies reported by the compliance review have been corrected; upon receipt of acceptable audit findings, file is closed v. Referral for investigation and possibly disciplinary action, for cases that uncover more serious misconduct <p>f. Enhanced State Bar Education and Professional Development</p> <p>g. Public Education and Client Outreach</p>
	<p><i>Implementation Phases:</i></p> <p>Phase I (2022)</p> <ul style="list-style-type: none"> i. Annual Registration ii. Annual Certification of Compliance <p>Phase II (2022)</p> <ul style="list-style-type: none"> i. Enhanced State Bar education and professional development ii. Public education and client outreach <p>Phase III (2023)</p> <ul style="list-style-type: none"> i. Annual self-assessment by all attorneys ii. Annual compliance review by CPAs of selected attorneys iii. Annual risk review and follow up actions (including audits)
Attorney Conduct Issues	TBD
Enhanced Training for OCTC staff and special deputy trial counsel	TBD
Malpractice Insurance for Attorneys	<ul style="list-style-type: none"> a. Mandatory or voluntary? b. Additional study needed? c. Coverages required to best protect the public d. Reporting requirements <ul style="list-style-type: none"> i. To State Bar ii. To public
III. Program Elements Considered but Not Recommended at This Time	<ul style="list-style-type: none"> a. Third party managed accounts
IV. Implementation Requirements	a. Changes to rules and/or statutes needed to effectuate recommendations
	<i>Table: Recommendations by Rule and/or Statute Change</i>
	b. Resources

	<ul style="list-style-type: none"> i. Fiscal impact and revenue offsets ii. Staff—adding audit program staff for reviewing results of CPA compliance reviews and audits iii. IT investment in web-based CTA registration; compliance certification; compliance review report intake and validation; audit report intake and validation iv. Other, TBD
V. Proposed Board Resolutions	<ul style="list-style-type: none"> a. Direct State Bar staff do more work on specific CTA Audit program design elements and implementation b. Direct State Bar staff to work with the Regulation and Discipline Committee to finalize attorney conduct and OCTC/2201 training recommendations c. Solicit finalized recommendations for public comment as needed
Appendices	<ul style="list-style-type: none"> 1. Discussion Document: Management of Client Trust Accounts in the Public Interest <ul style="list-style-type: none"> a. What is a CTA? b. What are the principles of CTA management? c. What are the purposes of proactive management? <ul style="list-style-type: none"> i. Education ii. Deterrence iii. Detection 2. Reference: Client Trust Account Management Programs in Other States (table) 3. Reference: Client Trust Account Programs in Canada (table) 4. Reference: Client Trust Account Program in Victoria, Australia (memo)