



The State Bar of California

Minutes

Committee on Special Discipline Case Audit

September 27, 2021

11:00 a.m.–1:00 p.m.

Zoom Webinar

Time meeting commenced: 11:04 a.m.
Time meeting adjourned: 12:41 p.m.
Chair: José Cisneros
Members present at roll call: Mark Broughton, Hailyn Chen Ruben Duran, Sean SeLegue,
Members absent at roll call: Melanie Shelby
Also present: Melanie Lawrence, Richard Schauffler, Leah Wilson
Committee coordinator: Louisa Ayrapetyan

I. CHAIR'S REPORT

A. Roll Call

Chair, José Cisneros called the meeting to order a 11:04 a.m. Roll call was taken, and a quorum was established.

B. Call for Public Comment

Chair, José Cisneros called for public comment, inquiring as to whether there were person(s) in attendance who wished to comment on any agenda item. There were no members of the public in attendance who wished to speak on any agenda item.

Closed Session

Chair, José Cisneros stated that pursuant to Government Code section 11126(a)(1) and 11126(c)(2) the committee will move into closed session to discuss audit of closed Office of Chief Trial Counsel files. The committee returned to open session and reported that there was no action to report. The committee continued their discussion in open session regarding client trust account program elements and design.

II. APPROVAL OF MINUTES OF SEPTEMBER 2, 2021 AND SEPTEMBER 9, 2021 MEETINGS

A motion was made by Ruben Duran, seconded by Mark Broughton, that the September 2, 2021, and September 9, 2021, meeting minutes be approved.

Ayes: (4) Broughton, Chen, Duran, Cisneros

Noes: (0)

Absent: (1) Melanie Shelby

Due to technical difficulties, Sean SeLeague was unable to vote on the meeting minutes. Committee member Melanie Shelby had not yet joined the meeting when voting took place.

III. BUSINESS

A. Discussion Regarding the Study and the Development of Recommendations to Regulate Attorney Client Trust Accounts

Mr. Schauffler reminded the committee of the discussions that the members had at the last meetings about the characteristics of programs from different states and state bar equivalents from other countries, such as Australia and Canada. He then began his presentation and in detail described each key element of the program. The key elements presented are the following:

1. Registration
2. Certification
3. Audits
4. Analysis and Action
5. Attorney Support
6. Client Support
7. Utilization of Information Technology

After the presentation, the committee members engaged in a lengthy discussion about the registration and certification of accounts element. Committee members commented on the idea of an automated solution. They noted that it would be worth looking into this as a possible solution which would be a significant deterrent if attorneys were required to submit information knowing that it could be audited at any time. It was also suggested to engage a forensic auditor to advise the State Bar on the how to effectively root out misconduct and negligence.

One possible approach the committee considered was to focus on the initial key elements to decide if these fundamental components presented to the committee provide a safe oversight of client trust accounts.

1. Annual registration of all accounts
2. Designation of responsibility within a firm
3. Acknowledgment of compliance with the rules and procedures for managing these accounts

Ms. Wilson stated that a modified approach would be to do an informal solicitation to get ideas from potential vendors as to how they might be able to implement this program. Regarding designation of a responsible attorney by firm and a law firm

plan, it would be helpful to understand better how it works in those law firms that manage client trust accounts.

The committee also discussed reviewing the Rules of Professional Conduct that touch on the issue of managing client trust accounts.

Next, the committee discussed how selection is made for auditing and how frequently. An annual audit would keep attorneys in line but a less frequent audit with more severe penalties could also serve the same deterrent effect. There was further discussion on a funding model and the possibility of requiring attorneys who need to be audited to hire a CPA approved by the State Bar. There are three possible options for who conducts an audit: (1) State Bar, (2) CPA firm(s), or (2) State Bar-certified CPA firms. Mr. Schauffler provided several examples of different states and their methods of auditing. Some states have an internal audit staff, and others hire a CPA firm to do their auditing.

Mr. Schauffler provided an overview of the analysis and action element and provided examples of different ways that analysis is conducted. For example, when State Bar staff conducts the audit, the same team would do the analysis. However, if an outside firm conducts the audit, they would provide the State Bar with the analysis, and staff would score those audits to determine remedial action or sanction.

Next Meeting

Ms. Wilson stated that staff will focus on the Alberta Canada program for the meeting on October 12, 2021. She also noted that staff will gather more information about the attorney population and the operation of law firms and will include a new topic on malpractice insurance for discussion at the next meeting.

ADJOURN