



CTAPP Requirements for IOLTA and Client Trust Accounts

Friday, May 5, 2023

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MCLE: 1.0 Hour of Ethics

Conference Reference Materials

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Presented to CLA Litigation & Appellate
Summit
May 5, 2023



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Accounts

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REMINDER

Apr. 2: CTAPP reporting deadline is the same as paying annual license fees. However, for 2023, the State Bar will not impose penalties for failure to comply with CTAPP requirements until April 2, 2023.

Client Trust Accounting (CTA) Resources



CTA Resources

■ Client Trust Account Protection Program (CTAPP) Resource Page

– <https://calbar.ca.gov/CTAPP>

CTA Resources

■ Client Trust Accounting Handbook

- <https://www.calbar.ca.gov/Portals/0/documents/ethics/Publications/Portals0documentsethicsPublicationsCTA-Handbook.pdf>

– Handbook includes:

- copy of the standards/statutes relating to an attorney's trust accounting requirements;
- Information on the CTAPP;
- Step-by-step description on how to maintain a CTA;
- Index of selected cases and opinions by topic; and
- Sample forms.

CTA Resources

- Ethics hotline: 800-238-4427
- State Bar Ethics Page
 - <http://calbar.ca.gov/ethics>
- State Bar website re Interest On Lawyers' Trust Accounts (IOLTA) accounts
 - <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Client-Trust-Accounting-IOLTA>

CTA Resources

- <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Client-Trust-Accounting-IOLTA/Client-Trust-Accounting-Resources>
 - Rules and statutes
 - Publications and articles
 - Forms
 - Ethics opinions
 - Online audio/video resources
 - FAQ's on CTAs and bank stability concerns
 - Ethics hotline: 800-238-4427 in California

Background on CTA & IOLTA



Background on CTA & IOLTA

- Client Trust Account (CTA)
 - Individual account
 - Interest earned goes to client
- Interest on Lawyers' Trust Accounts (IOLTA)
 - Kept at approved financial institutions
 - Interest earned pooled to benefit nonprofit legal service organizations

Background on CTA & IOLTA

- California Rule of Court (CRC) Rule 9.8.5 & State Bar Rules, title 2, division 1, rule 2.5
 - Requires licensees to register annually all CTAs
 - That includes IOLTA and individual interest-bearing accounts

Background on CTA & IOLTA

Lawyers must:

1. Keep funds (that they hold in trust for clients/other persons) separate from their business/personal accounts.
2. Maintain accurate books and report to their client regarding status of these funds.

Background on CTA & IOLTA

■ Basics of Client Trust Accounting

- Separate clients are separate accounts.
- You can't spend what you don't have.
- Funds that belong to an attorney/firm (e.g., personal or office money, including earned fees/payroll funds), must never be deposited into a CTA.
- Do not commingle. Money becomes yours as soon as your interest in that portion becomes fixed.

Background on CTA & IOLTA

■ Basics of Client Trust Accounting

- There is no such thing as a “negative balance”
- When your client/State Bar asks you how much money you’re holding for each client or what you’ve done with the money, you must tell them.

Background on CTA & IOLTA

- Standards of accounting that licensees must follow
 - Client ledger: include the name of the client, date, amount, source of all funds, date amount, payee, and purpose of each disbursement and the balance.
 - Bank statements & cancelled checks.

Background on CTA & IOLTA

- Standards of accounting that licensees must follow (cont'd)
 - Account journal: set forth the name of the account, the date amount and client affected by each debit and credit, and the current balance in the account.
 - Reconciliation: balance the ledger and journal against bank statements and cancelled checks.

Background on CTA & IOLTA

- Failure to properly maintain a trust account can lead to:
 - Misappropriation
 - Commingling
 - Delays in communicating with clients about funds or the disbursement of funds

Background on CTA & IOLTA

■ Misappropriation

- Discipline may be warranted even if the mismanagement was neither fraudulent nor willful.
- Misappropriation of client trust funds may occur without an intent to commit a conversion of client funds.

Background on CTA & IOLTA

■ Commingling

- Commingling is committed when a client's money is intermingled with that of their attorney and its separate identity lost so that it may be used for the attorney's personal expenses or subjected to claims of the attorney's creditors.

Policy behind CTAPP

Q: Why do we have this new Client Trust Account Protection Program?

A: The State Bar maintains that CTAPP isn't about intentional theft; rather, it is about ensuring adequate controls are in place.

To be sure, the State Bar provides two express reasons re the need to implement CTAPP:

- (1) to strengthen public protection; and
- (2) to better support attorneys in fulfilling their client trust accounting duties.

Policy behind CTAPP: How did we get here?

- In January 2022, the State Bar launched an investigation into whether the State Bar's handling of past discipline complaints against now disbarred attorney Thomas Girardi was affected by his connections to/influence at the State Bar.
- The State Bar released a 5-year plan. Its primary goal being to better protect the public by strengthening the attorney disciplinary system, adopting new standards and operational practices in processing cases, and reducing the backlog of unresolved disciplinary actions.

Policy behind CTAPP: How did we get here?

- Girardi was found to have misappropriated millions of dollars from his clients.
- In June 2021, the State Bar admitted that it had made “mistakes” in handling a number of complaints against Mr. Girardi going back almost 40 years.
- *Los Angeles Times* articles suggested that Mr. Girardi had exercised considerable political influence to escape punishment from the State Bar.

Policy behind CTAPP

- CTAPP also strengthens and clarifies two existing RPC rules:
 - RPC Rule 1.15: governs the safekeeping of client funds and property of clients and other persons.
 - Revised to clarify the process and timeframes to notify a client of any funds received and the disbursement of client funds.
 - RPC Rule 1.4: governs client communication
 - A revised comment to this rule provides that the receipt of funds on a client's behalf is ordinarily a significant development that requires communication with the client

CTAPP phases



CTAPP Phases

- Phase 1: Reporting & account registration
- Phase 2: Compliance Reviews
- Phase 3: [TBD]
 - In development
 - Will be informed by Phases 1 & 2

CTAPP Phases

Phase 1: Focuses on Reporting and Registration.

1. By 2/1/2023 and annually thereafter, attorneys must report to the State Bar if they are responsible for client funds and funds entrusted by others.
2. If so, the attorney/their firm must register each account online through their My State Bar Profile or Agency Billing.

CTAPP Phases

Phase 1 (cont'd): Reporting & Registration

3. Attorneys responsible for client funds/funds entrusted by others must complete an annual self-assessment of their CTA management and take corrective action if necessary.
4. Finally, an attorney must certify that they are knowledgeable about and in compliance with applicable rules/statutes governing CTAs and the safekeeping of funds. Failure to comply with CTAPP requirements may cause you to be assessed fees for non-compliance AND eventually enrolled as involuntarily inactive and unable to practice law.

CTAPP Phases

- Future phases of CTAPP will include
 - Phase 2:
 - Compliance reviews/audits of selected lawyers by certified public accountants to ensure adherence to CTA management requirements.
 - Phase 3:
 - Expanded public outreach and education on the rights of clients and attorney responsibilities; and
 - Enhanced education for attorneys on best practices in CTA management.

CTAPP Requirements



CTAPP Requirements

ALL California lawyers (with VERY limited exception) must now comply with the THREE new requirements under CTAPP:

1. STEP ONE: Register CTAs (including IOLTAs) annually with the State Bar (either individually or through your law firm/organization);
2. STEP TWO: Complete an annual self-assessment of CTA management practices to ensure you are compliance (and take corrective action if necessary); and
3. STEP THREE: Certify with the State Bar that you understand and comply with requirements and prohibitions applicable to the safekeeping of funds and property of clients/others in RPC Rule 1.15.

CTAPP Requirements

STEP ONE: Annual Registration of CTAs/IOLTAs

Starting December 2022:

1. Attorneys can fulfill reporting requirements through their My State Bar Profile on calbar.ca.gov; and
2. Law firms/organizations can provide account information for attorneys through agency billing.
 - A. Agency Billing: The State Bar requires firms/organizations paying for multiple attorneys with a single payment to use the Agency Billing application. Use of the Agency Billing application will ensure compliance with recently modified Rule 2.22 and avoid nonconforming payment penalties.

CTAPP Requirements

STEP ONE: Annual Registration of CTAs/IOLTAs

To register a CTA (including IOLTA) you will need to report the year-end balance on 12/31 of the reporting period.

- Thus, you will not be able to register your trust accounts until after 12/31 annually.
- If you need to register a CTA, you can complete the initial CTA and IOLTA reporting screen, the self-assessment, and Certification of Compliance, but you will not be able to complete your registration and submit the final declaration until after 12/31 each year.
- The State Bar will not impose penalties for failure to comply with 2023 CTAPP requirements until April 3, 2023.

CTAPP Compliance Flowchart

STEP TWO: Annual Self-Assessment

- Preliminary step:
 - Licensee should review the CTAPP rules on the State Bar's CTAPP website and determine whether they are exempt from CTAPP reporting.
 - Recommended CTAPP Rules to Review
 - *NEW* CRC Rule 9.8.5 (Reporting Requirements)
 - *NEW* State Bar Rule 2.5 (CTAPP Procedures)
 - Amendment to RPC Rule 1.4 (Client Communications re Funds)
 - Amendment to RPC Rule 1.15 (Safekeeping/Disbursement of Funds)

CTAPP Requirements

STEP THREE: Annual Self-Assessment

- Final step: Take self-assessment and certify compliance with duties.
 - Complete submission and exit MSBP.

CTAPP Exemptions

- Attorneys who were not on active status at any time during the reporting period.
- Attorneys not entitled to practice law for any reason other than voluntarily inactive enrollment.

CTAPP Requirements

- All licensees who are not exempt from the requirements **MUST** comply with CTAPP.

Who is a licensee responsible for client funds?

- Definition is *broad* and reaches attorneys who are not bookkeepers
 - A lawyer who acts as a signatory/exercises managerial or administrative oversight for a trust account
 - A lawyer who represents a client in a matter in which funds have been received and is responsible for complying with any of the requirements or prohibitions in RPC Rule 1.15. [Safekeeping and Disbursement of Funds]

CTAPP Requirements

- A lawyer who has no responsibilities to comply with any of the requirements/prohibitions of RPC Rule 1.15 can comply with their reporting requirements by answering “no” to the question of whether they maintained any CTAs or had one maintained on their behalf.

Recent Rule Changes



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Recent Rule Changes

- *NEW* CRC Rule 9.8.5 (Reporting Requirements)
- *NEW* State Bar Rule 2.5 (CTAPP Procedures)
- Amendment to RPC Rule 1.4 (Client Communications re Funds)
- Amendment to RPC Rule 1.15 (Safekeeping/Disbursement of Funds)

New CRC Rule 9.8.5

- Sets forth the CTAPP reporting requirements
- Effective 1/1/2023
- www.calbar.ca.gov/Portals/0/documents/rules/ROC_9.8.5.pdf

New State Bar Rule 2.5

- Sets forth the CTAPP procedures.
- Effective 1/1/2023
- [https://www.calbar.ca.gov/Portals/0/documents/rules/SBRule_2.5.pdf?](https://www.calbar.ca.gov/Portals/0/documents/rules/SBRule_2.5.pdf)

Amendment to RPC Rule 1.4

- Concerns client communication.
- Effective 1/1/2023
- https://www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.4.pdf
- Revision to comment 1
 - Expressly states that receiving funds/property is ordinarily a “significant development;”
 - One that requires client communication.

Amendment to RPC 1.15

- Concerns safekeeping funds and property of clients and other persons.
- Effective 1/1/2023.
- www.calbar.ca.gov/Portals/0/documents/rules/Rule_1.15.pdf

Amendment to RPC 1.15

- Funds: all funds received or held for the benefit of client/other person should be in a trust account.
- Deposits: funds that can be deposited into operating account and those that need to be in trust account.
- Notifications: notify client no later than 14 days after receipt of funds. (previously notice requirement was “promptly”) [RPC 1.15(d)(1)]
- Standards: details that records that shall be maintained by lawyers and their firm.

Amendment to RPC Rule 1.15

■ Adds language:

- “...there shall be a rebuttable presumption affecting the burden of proof in a discipline action that there is a violation if the lawyer, absent good cause, fails to distribute undisputed funds or property within 45-days of the date when the funds become undisputed.”

Amendment to RPC Rule 1.15

- Changes clarify the rule and provide examples.
 - Cmt. 4: presumption does not apply to release of a client's file or a refund of a fee paid in advance.
 - Cmt. 5: if the presumption is rebutted, then a violation of (d)(7) must be established by the State Bar.
 - Cmt. 6: lawyers have a general duty to act diligently in resolving disputes that are delaying the distribution.
 - Cmt. 7: examples of disputes that need to be resolved for the clock to start ticking on the 45-day deadline.

Self-Assessment/Application



- The State Bar's short video introducing CTAPP
- <https://www.youtube.com/watch?v=oKJXsNNLvMs>

CTAPP—introductory video

State Bar website has a short primer on CTAPP at:

<https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Client-Trust-Accounting-IOLTA/Client-Trust-Account-Protection-Program>

1. Report whether you are responsible for IOLTA and a CTA

- Remember, the first step is to determine if we are exempt.
- If we are NOT exempt then we must proceed to the next step--accessing our MSBP to report whether we are responsible for any duties in RPC Rule 1.15 concerning trust funds or property.

1. Report whether you are responsible for IOLTA and a CTA (cont'd)

- When logging into MSBP, you will see an alert with a hotlink advising you that, “You have not completed the State Bar Rule 2.5, CTA Reporting Requirements, due by February 1, 2023. Please go to CTA (including IOLTA) to complete this year’s reporting.”
- Click on the “CTA (including IOLTA)” hotlink.

2. Confirm whether you are responsible for an IOLTA and a CTA

- That hotlink will take you to a portion of MSBP entitled “Annual CTA Reporting (CRC, Rule 9.8.5(a)(1))” where you will be asked two questions:
 - 1. For the reporting period of 1/1/22-12/31/22, did you maintain any common interest-bearing CTAs, also known as IOLTAs?
 - 2. For the reporting period of 1/1/22-12/31/22, did you maintain any IOLTAs/CTAs?

2. Confirm whether you are responsible for an IOLTA and a CTA (cont'd)

- Your optional answers for each question:
 - Yes, I maintained an IOLTA/CTA.
 - Yes, a firm/organization maintained an IOLTA/CTA on my behalf. I am currently employed by or in practice with the firm/organization.
 - Yes, a firm/organization maintained an IOLTA/CTA on my behalf. However, I am no longer employed by or in practice with the firm/organization.
 - No, I did not maintain an IOLTA/CTA and no firm/organization maintained an IOLTA/CTA on my behalf.

3. Account registration (CTA/IOLTA)

- If we answer any form of “Yes” for either question, we must then either:
 - register IOLTA/CTA information for each account; or
 - else we must confirm that our firm participates in agency billing and that they will register the information for us.

3. Account registration (CTA/IOLTA)

- TIP: Regardless of who enters the accounts enter the routing number first (not the bank name)
- You must wait until after 12/31 of each year in order to fully complete this section as each account requires a reporting of the Account ending balance as of 12/31 annually (or on the date the account was closed).
 - So for 2023 you have a window of 1/1/23-4/2/23 to complete this information.
 - In future years you will have a shorter window of 1/1-2/1 to complete this information.

4. Self-assessment/Certification

- The final step is to take a self-assessment on MSBP and certify compliance with your duties.

- Self-assessment:

- Reminds you of CRC 9.8.5(a)(3), RPC Rules 1.15, 5.1 & 5.2.
- Has you affirm that any funds held in an IOLTA/CTA are maintained in an IOLTA/CTA-eligible institution identified on the State Bar's website.

4. Self-assessment/Certification

- Certify that you are knowledgeable/compliant.
 - Requires you to certify that you are “knowledgeable about, and in compliance with, applicable rules and statutes governing CTAs and the safekeeping of funds entrusted by clients and others, including RPC Rules 1.4, 1.5, and 1.15 and Bus. & Prof. Code §6210, et seq.”
 - In the alternative, there is a radio button for you to select stating that you are not in compliance with the applicable rules and statutes and you are provided space to explain the same.

4. Self-assessment/Certification

– The final screen is the “Annual CTA Declaration”

- “I am [your name] and I declare under penalty of perjury under the laws of the State of California that the information I provided in response to the Annual CTA Annual Self-Assessment (if applicable), and CTA Annual Certification of Compliance is true and correct.”

Law Firm Reporting



Can my firm register on my behalf?

- Firms/organizations can complete only one portion of the requirements for the attorneys who work for them.
- If an attorney is currently employed by/in practice with a firm/organization that is registered with the State Bar's Agency Billing platform, the firm/organization may register the CTAs on the attorney's behalf.

Can my firm register on my behalf (cont'd)?

- The firm must identify each attorney who is covered by the firm's submission of account information on behalf of the firm's lawyers.
 - **Lawyers should contact their firm/organization administrator to confirm whether the firm/organization will register the CTA information on behalf of the lawyer.**

Can my firm register on my behalf (cont'd)?

- However, all attorneys who maintain a CTA or whose firm/organization maintains one on their behalf must complete the self-assessment and certify their compliance with the requirements and prohibitions of RPC Rule 1.15



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