

[date], 2016

Ms. Audrey Hollins  
Office of Professional Competence, Planning and Development  
State Bar of California  
180 Howard Street  
San Francisco, CA 94105-1639

Re: Proposed Rules of Professional Conduct 1.15 [4-100]  
Safe Keeping Funds and Property of Clients and Other Persons

Dear Ms. Hollins:

The Professional Responsibility and Ethics Committee of the Los Angeles County Bar Association (“PREC”) appreciates the opportunity to comment on the draft rules of conduct (the “Proposed Rules”) proposed by the State Bar’s Commission for the Revision of the Rules of Professional Conduct (the “Rules Revision Commission”). Please see our letter dated [date], 2016, describing PREC and praising the efforts of the Rules Revision Commission.

Paragraph (a) of Proposed Rule 1.15 [Safe Keeping Funds and Property of Clients and Other Persons (current Rule 4-100)] provides in part as follows (emphasis added):

“All funds received or held by a lawyer or law firm for the benefit of a client, or other person to whom the lawyer owes a contractual, statutory, or other legal duty, including advances for *fees*, costs and expenses, shall be deposited in one or more identifiable bank accounts labelled ‘Trust Account’ . . . .”

PREC takes exception to the addition of the word “fees,” which is not included in our current Rule 4-100. The proposed requirement that fees paid in advance (as distinguished from advances for costs and expenses, which are included in the current rule) would mandate that all routine retainers (which are customarily required as advance deposits on fees for a new client engagement) be deposited into a trust account.

While we appreciate that there may be reported instances where retainers deposited in an attorney’s or law firm’s general account have been mismanaged (and, as a result, not available to be repaid in the event not earned), this simple change could potentially have a dramatic impact on the day-to-day practices of many attorneys throughout the state. This rule as so modified would extend to many well-intentioned attorneys (including those who have not even needed to maintain a trust account due to the nature of their practices), who will risk being made subject to discipline merely because they continue long-standing practice.

If, notwithstanding this concern, such a rule is adopted, we strongly urge the Rules Revision Commission to consider delaying the implementation of this rule so as to ensure that attorneys throughout the state are given fair and adequate advance warning of this change. Further, this rule (because it extends to “funds received *or held*”) should specifically address whether or not fees that have already been advanced prior to the effective date of the rule will

need to be moved from a general account to a trust account. In order to avoid further disruption, we strongly urge that fees so advanced prior to the effective date of the change be excluded from the application of the rule.

Thank you again for the opportunity to comment on the Proposed Rules.

Very Truly Yours,