

Ethics & Issues

Certification Reminder

Attorneys are reminded that as with the annual Attorney Registration Statement, care must be taken in completing the IOLTA Compliance and Certification (Hawaii Justice Foundation ("HJF")) and Notice Form for Financial Institutions. Each attorney signing a Certification is attesting that the information provided is true and correct. Thus, each Certification must be signed and complete information provided.

The Certification requires that all active attorneys in private practice complete the form. Each attorney must certify whether or not they (or their firm) have established an IOLTA client trust account pursuant to the parameters of RSCH 11 set forth in the form.

For attorneys who have established IOLTA client trust accounts for nominal or short term client deposits with interest payable to HJF, the most common problem revealed by the Certification and/or Notice is either not labeling this client trust account "client trust account" or mislabeling the account (attorney or firm name only or any other variation of "client trust account"). Both the Certification and the Notice ask for the "account name." The "account name" should be the name of the attorney, partnership of attorneys, or the professional corporation or entity of which the attorney is a member or by whom employed and "client trust account." HRPC 1.15(a) and (b).

This "account name" problem often prompts reminder letters from this office to correct the labeling so that the attorney can avert an ethical issue

should the matter be discovered later on in the context of a disciplinary investigation.

HRPC 1.15(b) states that each trust account, as well as deposit slips and checks drawn thereon, shall be prominently labeled "client trust account." While additional descriptive designations for a specific trust account are permitted by the Supreme Court's rule (such as "IOLTA"), no variation on "client trust account" is permitted. While such violations are minor when isolated, the Supreme Court's rule is strict, specific, and detailed, and compliance with HRPC 1.15 is mandatory. Office of Disciplinary Counsel v. Lau, 85 Haw. 212, 216 (1997).

Less often, but more serious problems revealed by the Certification include the depositing of IOLTA trust funds into the wrong institutions and having non-attorney signatories on client trust accounts. HRPC 1.15(a); HRPC 1.15(e).

IOLTA client trust accounts must be maintained in banks in Hawaii, never in credit unions or out-of-state banks. According to the HJF, accounts may only be maintained at the following seven banks: American Savings Bank; Bank of Hawaii; Bank of the Orient; Central Pacific Bank; First Hawaiian Bank; Hawaii National Bank; and Home Street Bank.

Only an attorney admitted to practice in Hawaii can be an authorized signatory on a client trust account. HRPC 1.15(e). Non attorney office managers, secretaries, legal assistants, etc. may not sign client trust account checks or bank transfers.

Attorneys should scrutinize their Certifications and Notifications to

ensure that they are in compliance with HRPC 1.15, and if not in compliance, immediately remedy the situation.

Discipline Notice

EDWIN L. BAKER (attorney number 3816, admitted 1985) of Honolulu was suspended from the practice of law for 18 months effective July 24, 2006, by the Hawaii Supreme Court Order filed on July 24, 2006, following a stipulation. Baker had been suspended since April 19, 2004, for his failure to cooperate in ethics investigations. This suspension was based on Baker's misconduct in four cases.

In the first case, Baker was appointed to represent as successor counsel a defendant convicted of burglary. In 2002, after filing a motion for reduction of sentence and obtaining an extension of time to file his client's opening brief, Baker mailed the brief to the Supreme Court for filing; however, the Court did not receive it. The Court directed that the brief be filed, and issued an order to show cause. After Baker filed a declaration, the Court ordered that he file the brief in person which Baker failed to do. Instead, he filed a notice of appeal after the motion for reduction of sentence was granted. The Court issued another order to show cause regarding the opening brief, and Baker filed another declaration. The Court eventually sanctioned Baker, and removed him from the case. During the disciplinary investigation, Baker insisted he did not receive the Office of Disciplinary Counsel's ("ODC") requests for information and that his

relative failed to deliver his response and his former client's file to successor counsel. The file was lost, and ODC finally had to subpoena Baker several times to obtain information. The Court eventually suspended Baker for his failure to cooperate in the investigation in this and two other cases.

In summary, Baker failed to: file a motion to stay appellate proceedings or notify the Supreme Court that a judgment might not be final due to a motion for reduction of sentence; file an opening brief in person as directed by Court order; safeguard and deliver his client's file after his representation was terminated and ensure that his agent had done so; and submit a requested written response during the investigation and ensure that his agent had delivered it. Baker's conduct violated: HRPC 1.1 (a lawyer shall provide competent representation to a client) (twice); HRPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client) (twice); HRPC 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the legitimate interest of the client) (twice); HRPC 5.3(b) (a lawyer having direct supervisory authority over a non-lawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer) (twice); HRPC 8.1(b) (a lawyer in connection with a disciplinary matter shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority); HRPC 8.4(d) (it is professional misconduct for a lawyer to fail to cooperate during the course of an ethics investigation); HRPC 1.15(f)(4) (a

lawyer shall promptly deliver to the client, as requested by the client, properties in the possession of the lawyer which the client is entitled to receive); HRPC 1.15(d) (upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as surrendering papers and property to which the client is entitled); and HRPC 8.4(a) (it is professional misconduct for a lawyer to violate the rules of professional conduct) (four times - one for each count).

In the second case, Baker was appointed in 2001 to represent as successor counsel a defendant convicted of several sexual assaults. Baker failed to file his client's opening brief, and the Supreme Court issued an order to show cause. Although he filed a declaration, Baker still failed to file the brief or request an extension of time. The Court sanctioned Baker and again ordered him to file the brief. Baker eventually filed the brief. During the disciplinary investigation, Baker insisted he did not receive ODC's requests for information. The Court eventually suspended Baker for his failure to cooperate in the investigation in this and two other cases.

Baker's conduct violated: HRPC 1.1; HRPC 1.3; HRPC 3.2; HRPC 3.4(e) (a lawyer shall not knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists); HRPC 8.1(b); HRPC 8.4(d); and HRPC 8.4(a) (twice - one for each count).

In the third case, Baker was appointed in 1998 to represent as

successor counsel a defendant convicted of, inter alia, attempted murder. While Baker notified the Supreme Court clerk and the Department of the Prosecuting Attorney that his client would not file a reply brief, he failed to confirm this in writing pursuant to HRAP 28(d). Baker's client complained about post-conviction proceedings, and during the disciplinary investigation, Baker insisted he did not receive ODC's requests for information. The Court eventually suspended Baker for his failure to cooperate in the investigation in this and two other cases.

Baker's conduct violated: HRPC 3.4(e); HRPC 8.1(b); HRPC 8.4(d); and HRPC 8.4(a) (twice - one for each count).

In the last case, Baker failed to file and serve an affidavit in compliance with RSCH 2.16(d) after his April 19, 2004 suspension, and he failed to respond to requests for information from ODC resulting in the issuance of a subpoena to compel a response. Baker's conduct violated HRPC 3.4(e) and HRPC 8.4(a).

As conditions of any reinstatement, Baker must reimburse the Disciplinary Board of the Hawaii Supreme Court for the costs incurred in bringing this proceeding, and complete the Practicing Attorneys Liability Management Society's practice management/law office audit program at his own expense.

Baker, 50, is a graduate of the Hastings College of Law.