



PENNSYLVANIA BAR ASSOCIATION
LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY COMMITTEE

MAY 2016

REVISED FORMAL OPINION 2016-100

**FINANCIAL DATA QUESTIONS ON PENNSYLVANIA DISCIPLINARY BOARD'S
ATTORNEY'S ANNUAL REGISTRATION FORM**

The Pennsylvania Bar Association's Legal Ethics and Professional Responsibility Committee ("the Committee") has received numerous inquiries about what financial information attorneys are required to disclose on the Pennsylvania Disciplinary Board's ("Board") Attorney Annual Fee Form ("Form"). Therefore, the Committee issues the following Formal Opinion to assist Pennsylvania attorneys in completing the Form.

I. Issue

The Form requests the lawyer to identify the name of each financial institution, account number and location (by state) of:

- A) Every account within or outside of PA in which I or my employer/law firm held my client or third-party funds subject to PA.R.P.C. 1.15;
- B) Every account holding funds of a client or third party (whether or not subject to PA.R.P.C. 1.15) over which I had sole or shared signature authority or authorization to transfer funds to or from the account; and
- C) Every business/operating account maintained or used by me in the practice of law. See PA.R.D.E. 219(d)(1)(iii)-(v).

II. Conclusion

In the Committee's view, an attorney is required to disclose: (1) all accounts holding funds **received** by the attorney in the capacities listed herein under Section IV; (2) all accounts **holding** funds of a client or third person over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account; and (3) all business operating accounts maintained or utilized by the attorney in the practice of law. The attorney is not required to disclose accounts containing only the attorney's personal funds or custodial accounts

for a minor or dependent relative unless the source of the funds is other than the attorney or his or her spouse.

III. Discussion

The question of what a lawyer is required to disclose on the Form implicates Pennsylvania Rule of Disciplinary Enforcement 219 which provides in relevant part:

Rule 219. Annual registration of attorneys.

(d) On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:

(1) The form shall set forth:

...

(iii) The name of each Financial Institution, as defined in Pa.R.P.C. 1.15(a)(4), within or outside this Commonwealth in which the attorney, from May 1 of the previous year to the date of the filing of the annual fee form, held funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. The form shall include the name and account number for each account in which the attorney held such funds, and each IOLTA Account shall be identified as such. The form provided to a person holding a Limited In-House Corporate Counsel License or a Foreign Legal Consultant License need not request the information required by this subparagraph.

IV. Disclosure of Accounts Holding Rule 1.15 Funds

Accounts which must be disclosed are accounts that hold funds of a client or a third person subject to Rule 1.15 of the Pennsylvania Rules of Professional Conduct. Rule 1.15 Funds are funds that belong to a client or third person and that an attorney **receives**:

- in connection with a client-lawyer relationship, or as
- an escrow agent,
- a settlement agent,
- a representative payee,
- a personal representative,
- a guardian,
- a conservator,
- a receiver,
- a trustee,

- an agent under a durable power of attorney, or other similar fiduciary position,
- as an agent, having been designated as such by a client or having been so selected as a result of a client-lawyer relationship or the lawyer's status as such, or
- in connection with nonlegal services that are not distinct from legal services (See PA RPC 5.7),
- in connection with nonlegal services that are distinct from legal services, and the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship, or
- as an owner, controlling party, employee, agent, or as one who is otherwise affiliated with an entity providing nonlegal services and the attorney knows or reasonably should know that the recipient of the service might believe that the recipient is receiving the protection of a client-lawyer relationship.

Thus, for example, a lawyer who is serving as executor of the estate of a relative in the lawyer's personal capacity must report the estate account because the account is holding funds belonging to a third person which have been received in the lawyer's capacity as a Fiduciary.

V. Disclosure of Accounts Over Which Attorney Had Sole or Shared Signature Authority

Rule 219(d)(1)(iv) of the Rules of Disciplinary Enforcement requires the attorney to disclose every account that held funds of a client or a third person, and over which the attorney had sole or shared signature authority or authorization to transfer funds to or from the account. For example, a lawyer who is treasurer of the board of a charitable organization in the lawyer's personal capacity (not as a lawyer) and who has sole or shared signature authority on the organization's account is required to report this account even if the lawyer has not **received** the funds held in that account.

VI. Disclosure of Business Operating Accounts

Rule 219(d)(1)(v) of the Rules of Disciplinary Enforcement requires the attorney to disclose every business operating account maintained or utilized by the attorney in the practice of law. For each business operating account, the attorney shall provide the name of the financial institution, location and account number.

VII. Accounts That Need Not Be Disclosed

The Notes to Rule 219(d)(1) exclude from disclosure an attorney's personal account held jointly and a custodial account for a minor or dependent relative if the source of any account funds is the attorney or his or her spouse.

If an attorney employed by a law firm receives fiduciary funds from or on behalf of a client and deposits or causes the funds to be deposited into a law firm account, the attorney must report the account of deposit under PA.R.D.E. 219(d)(1)(iii).

VIII. Updates to Attorney's Annual Fee Form

In the event that an attorney has filed the Form for the current term and has either failed or forgot to report any account or accounts that are required to be reported, the attorney should promptly amend the attorney's current Form to include those accounts. An attorney should visit the Disciplinary Board's website to access instructions on how to amend a registration form if a required account was omitted or incorrectly reported.

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CAVEAT: THE FOREGOING OPINION IS ADVISORY ONLY AND IS NOT BINDING ON THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA OR ANY COURT. THIS OPINION CARRIES ONLY SUCH WEIGHT AS AN APPROPRIATE REVIEWING AUTHORITY MAY CHOOSE TO GIVE IT.