IF THE CALL COMES, WILL YOU BE IN COMPLIANCE?

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"Hello, this is Attorney Journey's office, Sue speaking, how may I be of assistance?"

"This is the Disciplinary Board of the PA Supreme Court. We were notified by the IOLTA Board that there is an investigation started regarding Attorney Journey's trust account. We'll be joining in the on the investigation. We're calling to make an appointment. Tomorrow would be preferable."

And so it begins.

Law firms large and small receive these calls day in and day out. Most often the calls are initiated based on some event. It might be a client complaint to the Disciplinary Board. It could be a mandatory notification from the firm's bank to the IOLTA Board that a deposited check was returned or the account is overdrawn.

Sometimes the calls are based on nothing more than simple bad luck: a certain number of firms selected at random for a compliance audit that includes your firm. If you're a solo or small firm, your odds of being selected increase. Why, you wonder, would that be so? You have far less money in total and far fewer transactions than big firms. Why pick on you?

The simple truth is that the smaller the firm, the greater the risk for fraud, or simple error. Larger firms have enough people to properly segregate duties, such that the person who handles money coming in is different from the person who handles money going out. Plus, procedures are generally well written, well taught and consistently enforced and followed. Larger firms are also more likely to use software that provides the reporting and reconciliation required by R.P.C. 1.15 [Safekeeping Property].

I typically receive a call on the hotline every month or two, from a solo or small firm attorney who has received such a call and is contacting me because the situation has snowballed. First, let me reassure you, there are plenty of attorneys who receive the call and never need to contact me. Those are the ones who are fully in compliance. There is a particular event which triggers the call. The firm responds promptly, with a comprehensive explanation, along with substantiating evidence, to explain the event.

In many cases, the matter may be closed at this point. Sometimes, there is an additional step, in which something else is requested to further reveal whether the firm has good compliance procedures. It could be a request to see the recent months of the firm's three-way reconciliations. It might be a request to see the engagement letter. It might be a request to view the trust transaction ledger for particular client(s), to determine whether the firm's timing for disbursing funds is when the deposited money is "cleared" instead of when the money is "available." It might be to see whether the firm promptly takes its fees when earned. Deferring income from one tax period to another is a common misuse of the trust account. Doing so also creates a violation by creating a "commingling" of funds.

It is usually in this second step of the review process that firms mess up. Then they wind up calling me, bewildered about how it got to that point. Despite an endless number of seminar presentations on my part on the proper handling of trust funds, started when R.P.C. 1.15 was revised in 2018, to the present, I find that a surprisingly large number of solo to midsize firms are still not in compliance. And most don't even realize it: hence, the bewilderment.

Let's get proactive about this. If you are not sure your firm is in compliance, find out. My webinar on the topic: "Handling Entrusted Funds" is in the Pennsylvania Bar Institute on-demand library. You can earn an ethics credit and know for sure. If you're a PBA member, you can arrange a call with me, and I can determine your audit readiness after a brief question and answer session. Just send an email request to lawpractice@pabar.org with subject line "IOLTA Q&A". Include your full name, phone number, county, and member ID number. (All hotline calls are confidential.)

Maybe you would like me to provide the information as an educational event at your local county bar, so you can ask questions. Let your bar's executive director or an officer know, and I will be happy to add your county to my schedule. PBA members can also send an email request for my "IOLTA Information Resource." Remember to include your full name, phone number, county, and member ID number.

If you are manually managing your IOLTA bookkeeping, I will tell you right away it is unlikely you are compliant with the record-keeping requirements of 1.15. But it's possible, and I would love your firm to be the one to prove me wrong!

If you accept my challenge and lose, you have the opportunity to make it right before anything actually happens. So, you're a winner. The time to find out whether you're in or out of compliance is not when the Disciplinary Board comes knocking! (That's like locking the barn after the cow is stolen, ground up, cooked and eaten!)

Think about it this way: is the right time to install malware avoidance software *before* you've been hacked, thereby possibly preventing it, or *after*? That's a pretty obvious answer. This is a comparable risk with the same answer.

Here's another "if" for you. If you (or your bookkeeper) do not understand what the term "three-way reconciliation" means, you are not in compliance.

As an example, the most recent call to the hotline involved a typical innocuous event. The attorney was able to quickly explain the goof to the Disciplinary Board and provide sufficient documentation.

Round two was a relatively low-key request for evidence of the firm's three-way reconciliations for the past few months. And that's when my phone rang. The attorney did not know what "three-way reconciliations" were and was not performing the required monthly balancing required under 1.15. The attorney had no idea it was a requirement. The attorney had only 10 days to produce the requested reports, before a temporary emergency suspension of license would result.

Fortunately, the attorney was using a popular time & billing / practice management program, and I knew the reports could be created and produced quickly. And they were: mission accomplished. The appropriate response was made in a timely fashion. The matter was concluded. Phew! I can tell you from experience that had the matter not been satisfactorily concluded by Step 2, the disruption and examination process could have continued for months, and months.

My mission, day in and day out, is to make sure no attorney on my watch gets in trouble because of a lack of understanding of how to properly run the business aspects of the practice. Don't hesitate to ask for help.

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