



January 22, 2025

VIA HAND DELIVERY

The Honorable Barry Usher
Chairman, Senate Judiciary Committee
Members of the Senate Judiciary Committee
Montana State Senate
P.O. Box 201706
Helena, MT 59620-1706

RE: Senate Bill 31

Dear Chairman Usher and Members of the Senate Judiciary Committee:

We write today on behalf of the State Bar of Montana in opposition to Senate Bill 31.

Regulation of the practice of law in Montana is controlled by the Montana Supreme Court under its inherent and expressed authority under Article VII, Section 2 of the Montana Constitution. “Even before the adoption of article VII, Section 2, clause 3 [of the 1972 Montana Constitution], we had held that admission and regulation of attorneys in Montana is a matter peculiarly within the inherent power of this court.” *Kradolfer v. Smith*, 246 Mont 210, 213-14, 805 P.2d 1266, 1268 (1990).

The Montana Rules of Professional Conduct, successor to the earlier Code of Professional Responsibility, govern the conduct of all Montana attorneys, who take an oath to abide by them and may be disciplined for failure to do so. Those rules set forth specific provisions for handling of client funds and the maintenance of trust accounts, including specific rules concerning Montana’s Interest on Lawyers Trust Account program.¹ See Rules 1.15 and Rule 1.18, Montana Rules of Professional Conduct; see also Montana Supreme Court Trust Account Overdraft Notification Rule, revised February 7, 1995. Mishandling of client trust funds and violation of those rules may result in the disbarment of a lawyer. See, e.g., *In re Doud*, 2024 MT 29, ¶ 50, 415 Mont. 171, ¶ 50, 543 P.3d 586, ¶ 50 (disbarring an attorney for, among other reasons, serious violations of Rules 1.15 and 1.18).

The specific handling of client funds and trust account maintenance are all matters within the constitutional authority of the Montana Supreme Court and the court has unequivocally rejected

¹ IOLTA programs exist in all jurisdictions in the United States. See <https://iolta.org/what-is-iolta/iolta-basics/>.

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attempts to subsume its constitutional authority by legislative enactment in the same area. *See In re Senate Bill 630*, 164 Mont. 366, 523 P.2d 484 (1974) (rejecting a legislative attempt to amend statute to establish its own regulations for the admissions of attorneys); *accord In re McCabe*, 168 Mont. 334, 340, 544 P.2d 825, 829 (1976) (“If the doctrine of separation of powers, which is specifically embodied in the 1972 Montana Constitution, is to mean anything, then even according to petitioners, this Court must have the authority to control the practice of law.”); *see also Coate v. Omholt*, 203 Mont. 488, 504, 662 P.2d 591, 600 (1983) (striking down a legislative enactment aimed at a core judicial function; “[T]he challenged statutes constitute a direct infringement on the functional and constitutional integrity of the judiciary as a separate branch of government, and therefore that the statutes violate the separation of powers clause (Art. III, Sec. 1) of our State Constitution.”).

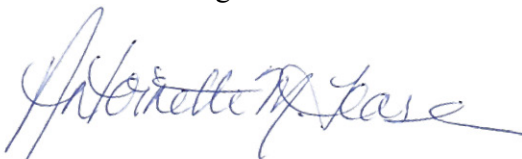
SB 31 attempts to alter the trust account obligations of Montana attorneys through a legislative enactment which contradicts the existing Rules of Professional Conduct. And much like the effort to legislatively enact rules for bar admission discussed in *In re Senate Bill 630* and *In re McCabe*, SB31 violates the separation of powers doctrine.

As noted, the Montana Rules of Professional Conduct are, from time to time, amended through petition to the Montana Supreme Court through judicial rulemaking. That process provides an opportunity for input from the bar and from members of the public and it is the appropriate forum to address any desired changes to the Montana Rules of Professional Conduct and the IOLTA program.

Sincerely,

THE STATE BAR OF MONTANA

BY: The undersigned members of its Executive Committee



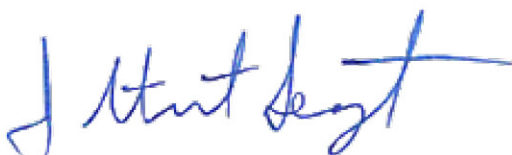
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