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RULE CURRENT TO: 2019-01-01

Rule 1.15. Safekeeping Property and Trust Accounts

(a) *Safekeeping property.*

- (1) A lawyer shall hold property of clients or third persons, including prospective clients, that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
- (2) Property, other than funds of clients or third persons, shall be identified as such and appropriately safeguarded.
- (3) Complete records of trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after the termination of the representation or the last contact with a prospective client.
- (4) A lawyer shall maintain on a current basis books and records in accordance with generally accepted accounting practice and comply with any record keeping rules established by law, rule, or court order.
- (5) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person in writing. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full written accounting regarding such property to the client or third persons.
- (6) When in the course of representation a lawyer is in possession of property in which two or more persons (one of whom may be the lawyer) claim interests, the property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the property as to which the interests are not in dispute.

(b) *Trust Accounts: IOLTA trust accounts and non-IOLTA trust accounts.*

- (1) Funds of a client shall be deposited and maintained in one or more separate, clearly identifiable trust accounts in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person.
- (2) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.
- (3) A lawyer may deposit funds belonging to the lawyer or the law firm in a client trust account for the sole purposes of paying bank services charges on that account, or to comply with the minimum balance required for the waiver of bank charges, but only in the amount necessary for those purposes, but not to exceed \$500.00 in any case. Such funds belonging to the lawyer or law firm shall be clearly identified as such in the account records.
- (4) Each trust account referred to in section (b)(1) shall be an interest- or dividend-bearing account held at an eligible institution.

(5) Each such trust account shall provide overdraft notification to the Executive Director of the Office of Professional Conduct for the purpose of reporting whenever any properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution shall report simultaneously with its notice to the lawyer the following information:

- (i) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors;
- (ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the report shall identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment, and the date paid, as well as the amount of overdraft created thereby.

(6) A lawyer who receives client funds which, in the judgment of the lawyer, are nominal in amount, or are expected to be held for such a short period of time that it is not practical to earn and account for income on individual deposits, shall create and maintain an interest-bearing, multi-client trust account ("IOLTA" account) for such funds. The account shall be maintained in compliance with the following requirements:

- (i) The trust account shall be maintained in compliance with sections (b)(1) -(b)(5) of this Rule and the funds shall be subject to withdrawal upon request and without delay;
- (ii) No earnings from the account shall be made available to the lawyer or law firm; and,
- (iii) The interest accruing on this account, net of allowable reasonable fees, shall be paid monthly to the IOLTA Program of the Arkansas Access to Justice Foundation, Inc. All other fees and transaction costs shall be paid by the lawyer or law firm. Payment must be made by Automated Clearing House (ACH) method, wire transfer, or other electronic transfer.

(7) All client funds shall be deposited in the account specified in section (b)(6), unless they are deposited in a separate interest-bearing account ("non-IOLTA" account) for a specific and individual matter for a particular client. There shall be a separate account opened for each such particular client matter. Interest so earned must be held in trust as property of each client in the same manner as is provided in this Rule.

(8) The decision whether to use an "IOLTA" account specified in section (b)(6) or a "non-IOLTA" account specified in section (b)(7) is within the discretion of the lawyer. In making this determination, consideration should be given to the following:

- (i) The amount of interest which the funds would earn during the period they are expected to be deposited; and,
- (ii) The cost of establishing and administering the account, including the cost of the lawyer's or law firm's services.

(9) Every lawyer practicing or admitted to practice in this State shall, as a condition thereof, be conclusively deemed to have consented to the reporting requirements mandated by this rule. All lawyers shall certify annually that they, their law firm or professional corporation is in compliance with all sections and subsections of this Rule.

(10) A lawyer shall certify, in connection with the annual renewal of the lawyer's license, that the lawyer is complying with all provisions of this rule. Certification shall be made on a form provided by and in a manner designated by the Clerk of the Supreme Court.

(11) A lawyer or a law firm may be exempt from the requirements of this rule if the Arkansas Access to Justice Foundation's Board of Directors, on its own motion, has exempted the lawyer or law firm from participation in the IOLTA Program for a period of no more than two years when service charges on the lawyer's or law firm's trust account equal or exceed any interest generated.

(c) Unclaimed or Unidentifiable Trust Account Funds.

(1) When a lawyer, law firm, or estate of a deceased lawyer cannot, using reasonable efforts, identify or locate the owner of funds in its Arkansas IOLTA or non-IOLTA trust account for a period of at least two (2) years, it shall pay the funds to the Arkansas Access to Justice Foundation. At the time such funds are remitted, the lawyer shall submit to the Arkansas Access to Justice Foundation and the Office of the Committee on Professional Conduct the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known; a description of the efforts undertaken to identify or locate the owner; and the amount of any unclaimed or unidentified funds.

(2) If, within two (2) years of making a payment of unclaimed or unidentified funds to the Arkansas Access to Justice Foundation, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, the Arkansas Access to Justice Foundation shall refund the sum to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to the Foundation a verification attesting that the funds have been returned to the owner. The Arkansas Access to Justice Foundation shall maintain sufficient reserves to pay all claims for such funds.

COMMENT

[1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property that is the property of clients or third persons, including prospective clients, must be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (b)(3) provides it is permissible when necessary to pay bank service charges on that account. Accurate records must be kept regarding which part of the trust account funds are the lawyer's.

[3] Lawyers often receive funds from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fee owed. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds must be kept in a trust account and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed of the funds shall be promptly distributed.

[4] Paragraph (a)(6) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

[5] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves only as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction and is not governed by this Rule.

[6] A lawyers' fund for client protection provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer must participate where it is mandatory, and, even when it is voluntary, the lawyer should participate.

HISTORY

Section (c) was added by per curiam order November 30, 2006, effective February 1, 2007; amended by per curiam order September 26, 2013, effective January 1, 2014; amended and effective by per curiam order November 5, 2015.