

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2012

In the Matter of the Amendments to)
Rules 1.15 and 1.15A of the)
Wyoming Rules of Professional Conduct for)
Attorneys at Law)

**ORDER *NUNC PRO TUNC* AMENDING RULES 1.15 AND 1.15A OF THE
RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW**

The Officers and Commissioners of the Wyoming State Bar have recommended that this Court amend Rules 1.15 and 1.15A of the Rules of Professional Conduct for Attorneys at Law. This Court finds that it should adopt the recommended amendments. It is, therefore,

ORDERED that the amendments to Rules 1.15 and 1.15A of the Rules of Professional Conduct for Attorneys at Law, attached hereto, be, and hereby are, adopted by the Court to be effective September 1, 2012; and it is further

ORDERED that this order and the attached amendments be published in the advance sheets of the Pacific Reporter; the attached amendments be published in the Wyoming Court Rules Volume; and that this order and the attached amendments be made available online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments shall thereafter be spread at length upon the journal of this Court; and it is further

ORDERED that this Court's June 12, 2012, "Order Amending Rules 1.15 and 1.15A of the Rules of Professional Conduct for Attorneys at Law" shall be removed from the Wyoming Judicial Branch's website and is of no further effect.

DATED this 16th day of August, 2012.

BY THE COURT:

/s/

MARILYN S. KITE
Chief Justice

RULES OF PROFESSIONAL CONDUCT FOR ATTORNEYS AT LAW

Rule 1.15. Safekeeping property.

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in either an "IOLTA Program Account" or "Non-IOLTA Program Account." ~~A lawyer may elect not to maintain an IOLTA Program Account by following the procedure set forth in Rule 1.15A subsection (f).~~ Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.

(1) "IOLTA Program Account" refers to ~~an~~ a trust account at an "IOLTA-Eligible Institution" (*see* Rule 1.15A) from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA Program Account shall include only client or third-person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a non-IOLTA Program Account. ~~A member may place an IOLTA Program Account only in an IOLTA-Eligible Institution. An IOLTA-Eligible Institution is a bank, savings and loan association, or credit union deemed by the Wyoming State Bar Foundation to meet the requirements of Rules 1.15 and 1.15A of the Wyoming Rules of Professional Conduct. The Wyoming State Bar Foundation will maintain and regularly publish a list of IOLTA-Eligible Institutions currently holding IOLTA Program Accounts and shall provide the list upon request.~~

(2) "Non-IOLTA Program Account" refers to a trust account from which funds may be withdrawn upon request as soon as permitted by law ~~in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Wyoming, the deposits of which are insured by an agency of the federal government.~~ Any net interest or dividend earned on such an account shall be paid to the client or third person. Such an account shall be established as:

- (i) A separate client trust account for the particular client or matter; or
- (ii) A pooled client trust account with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.

~~(3) In determining whether client or third person funds should be deposited in an IOLTA Program Account or a Non-IOLTA Program Account, a lawyer shall consider the following factors:~~

- ~~(i) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited;~~

~~(ii) the cost of establishing and administering Non-IOLTA Program Accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;~~

~~(iii) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and~~

~~(iv) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.~~

~~(3)~~ (4) A lawyer's good-faith decision regarding the deposit or holding of all client or third person funds in an IOLTA Program Account versus a Non-IOLTA Program Account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA Program Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non-IOLTA Program Account.

(b) Any ~~such~~ trust account shall comply with the following provisions:

(1) The account shall be with a bank or savings and loan association that is authorized by federal or state law to do business in Wyoming, is located or has a branch located in Wyoming, and is covered by insurance administered by the Federal Deposit Insurance Corporation or its successor.

~~(2)~~ (4) The account shall include all client or third party funds except those funds deposited pursuant to the written instructions of the client or third party in a special interest bearing account with the interest being paid pursuant to the written instructions of the client or third party.

~~(3)~~ (2) No interest from the account shall be made available to a lawyer or law firm.

~~(4)~~ (3) 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, provided however, notification to interested parties whose funds are nominal in amount or to be held for a short period of time is not required. The determination of whether the funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each lawyer or law firm.

~~(5)~~ (4) The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a "trust account." The lawyer must be able to write checks or make disbursements directly from the account.

~~(5) The depository institution holding such accounts must be a depository bank or savings and loan association or credit union authorized by federal or state law to do business in Wyoming, whose deposits are insured by an agency of the federal government, or any open end investment company registered with the Securities and Exchange Commission and authorized by federal or state law to do business in Wyoming. In addition, a depository institution must either (i) maintain a physical office in the state of Wyoming or (ii) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally insured depository bank or savings and loan association or credit union maintains a physical office in the state of Wyoming.~~

~~(6) The account shall be an "Interest or Dividend Bearing Account" unless the lawyer elects not to maintain an IOLTA Program Account by following the procedure set forth in Rule 1.15A subsection (f) and such funds are either nominal in amount or to be held for a short period of time such that the funds cannot earn income in excess of the costs to secure that income. "Interest or Dividend Bearing Account" means: (i) an interest bearing checking account; (ii) a checking account paying preferred interest rates, such as money market or~~

~~indexed rates; (iii) a government interest-bearing checking account such as accounts used for municipal deposits; (iv) a business checking account with an automated investment sweep feature which is a daily (overnight) financial repurchase agreement or an open end money market fund; or (v) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers. A daily financial institution repurchase agreement must be fully collateralized by securities, of which at least 80% shall be U.S. Government Securities, and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are defined by applicable federal statutes and regulations. An open end money market fund must be comprised of at least 80% U.S. Government Securities, (or repurchase agreements fully collateralized by securities, of which at least 80% shall be U.S. Government Securities), must hold itself out as a "money market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. United States Government Securities are defined to include debt securities of Government Sponsored Enterprises, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.~~

(c) A lawyer may deposit the lawyer's own funds in a ~~client~~ trust account for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose.

(d) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance. The lawyer may withdraw those funds only as fees are earned or expenses incurred.

(e) 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 accounting regarding such property. Complete records of such accounting shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

(f) 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 in dispute shall be kept in trust 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.

(g) A lawyer shall keep complete and current records of the trust account funds. These records shall be preserved for a period of five years after termination of the representation. Specifically, the following records must be maintained:

(1) a receipt and disbursement journal showing a running balance and identifying all deposits in and withdrawals from the account, including:

- (i) the dates of the deposits and withdrawals,
- (ii) from whom the deposits were received, and
- (iii) for whom the withdrawals were made;

(2) a separate accounting ~~page or column~~ record for each client or third person for whom funds are held showing a running balance and identifying all receipts and disbursements as described in subsection (1) above;

(3) at least quarterly a written reconciliation of trust account journals, ledgers, and bank statements;

(4) all checkbooks, bank statements, and copies or originals of the canceled or voided checks.

~~(h) This rule does not apply to any member of the Wyoming State Bar, who, (1) is not engaged in the practice of law in Wyoming; (2) is employed on a full-time basis by any governmental agency or subdivision and is not engaged in the private practice of law; or (3) is employed on a full-time basis by any corporation or association which does not provide legal services to the public and who is not otherwise engaged in the private practice of law. A trust account complying with this rule is required for funds of clients or third persons coming into a lawyer's possession in the course of legal representation for which membership in the Wyoming State Bar is required. Members of the Wyoming State Bar who, because of the nature of their practice, do not, in the course of providing legal representation requiring membership in the Wyoming State Bar, receive funds of clients or third persons need not maintain a trust account in compliance with this rule.~~

(i) Each active member of the Wyoming State Bar who practices within the state shall certify each year upon making payment of annual license fees that the member has and intends to keep in force in the State of Wyoming a separate bank account or accounts for the purpose of keeping money in trust for clients or third persons, which account conforms to the requirements of this rule, or that because of the nature of the member's practice no client or third person funds are received. Certification shall be upon a form to be provided by the Wyoming State Bar and shall include the following: (1) the name and address of the lawyer or law firm filing the certification; (2) the name and address of each financial institution in which the account or accounts are maintained; (3) the number of each account maintained pursuant to this rule; (4) the dates covered by the certification; and (5) the signature, under penalty of perjury, of the lawyer making the certification.

(j) If the owner of property being held in trust by a member of the Wyoming State Bar cannot be located after reasonable efforts, such property shall be remitted to the Wyoming State Treasurer pursuant to the Wyoming Uniform Unclaimed Property Act, W.S. § 34-24-101 et seq.

Rule 1.15A. Interest on lawyers trust accounts program.

(a) Lawyers may only place their IOLTA Program Accounts in IOLTA Eligible Institutions. IOLTA Eligible Institutions are depository institutions which voluntarily offer IOLTA Program Accounts and meet the requirements of this rule. The Wyoming State Bar Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Program Accounts, and will provide the list upon request.

(b) (a) The depository institution holding an IOLTA Program Account An IOLTA Eligible Institution shall:

(1) ensure that each IOLTA Program Account receives the highest interest rate that the depository institution pays other customers when the IOLTA Program Account meets the same minimum balance or other requirements. IOLTA Eligible Institutions may elect to pay higher rates than required;

(2) deduct only allowable reasonable fees from IOLTA interest, defined as per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a reasonable IOLTA Program Account administrative or maintenance

fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA Program Account. Fees or charges in excess of the interest or dividends earned on the account for any month or quarter shall not be taken from interest or dividends earned on other IOLTA Program Accounts or from the principal of the account. IOLTA Eligible Institutions may elect to waive any or all fees on IOLTA Program Accounts;

~~(3)~~ (4) remit, each month, interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, to the Wyoming State Bar Foundation, a tax exempt entity; and

~~(4)~~ (2) transmit with each remittance to the Wyoming State Bar Foundation, in an electronic format to be specified by the Wyoming State Bar Foundation, a statement which shall include the following: (a) identifying each lawyer or law firm for whose IOLTA Program Account the remittance is sent, the name of the member or the member's law firm for whom the remittance is sent, (b) the account number of each account, (c) the amount of the remittance attributable to each IOLTA Program Account, the rate and type of interest or dividends the rate of interest applied, (d) the amount of interest or dividends remitted, (e) the amount and type of charges or fees deducted, if any, and (f) the average account balance for the period in which the report is made; no trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be canceled except upon 30 days' notice in writing to the Wyoming State Bar Foundation; and

~~(3)~~ transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Wyoming State Bar Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

~~(c)~~ (b) The Wyoming State Bar Foundation shall maintain records of each remittance and statement received from depository institutions for a period of at least three years and shall, upon request, promptly make available to a lawyer or law firm the records and statements pertaining to that lawyer's or law firm's account.

~~(d)~~ (e) All interest transmitted to the Wyoming State Bar Foundation shall be distributed by the entity for the purposes of providing legal services to the poor of Wyoming, who would otherwise be unable to obtain legal assistance; providing public education projects which promote a knowledge and awareness of the law; providing projects which improve the administration of justice; or providing for the reasonable costs of administration of interest earned on accounts under this rule. Subject to the fulfillment of fund purposes, the Wyoming State Bar Foundation shall have the sole discretion of allocation, division, and distribution of funds. ÷

~~(1)~~ providing legal services to the poor of Wyoming, who would otherwise be unable to obtain legal assistance;

~~(2)~~ providing public education projects which promote a knowledge and awareness of the law;

~~(3)~~ providing projects which improve the administration of justice; or

~~(4)~~ providing for the reasonable costs of administration of interest earned on accounts under this rule. Subject to the fulfillment of fund purposes, the Wyoming State Bar Foundation shall have the sole discretion of allocation, division, and distribution.

~~(e)~~ (d) Lawyers, by maintaining either an IOLTA Program Account or Non-IOLTA Program Account, are deemed to consent to the reporting requirements required by these rules.

~~(f) (e)~~ The Wyoming State Bar Foundation shall have authority to promulgate administrative policies and rules consistent with this rule, subject to the approval of the Supreme Court.

~~(f)~~ A lawyer or law firm that elects to decline to maintain the required account as an IOLTA program account shall submit a Notice of Declination in writing to the Executive Director of the Wyoming State Bar by October 1 of the year preceding that to which the Notice of Declination will apply.

~~(1)~~ Notwithstanding the foregoing, any lawyer or law firm may petition the Wyoming State Bar at any time and for good cause shown for leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

~~(2)~~ A lawyer or law firm that does not file with the Executive Director of the Wyoming State Bar a Notice of Declination in accordance with the provisions of this rule shall be required to maintain the required account as an IOLTA Program Account in accordance with subsection (b) of this Rule.

~~(g)~~ All interest transmitted to the Wyoming State Bar Foundation shall be distributed by the entity for the purposes of:

~~(1)~~ providing legal services to the poor of Wyoming, who would otherwise be unable to obtain legal assistance;

~~(2)~~ providing public education projects which promote a knowledge and awareness of the law;

~~(3)~~ providing projects which improve the administration of justice; or

~~(4)~~ providing for the reasonable costs of administration of interest earned on client's trust accounts under this rule.

~~Subject to the fulfillment of fund purposes, the Wyoming State Bar Foundation shall have the sole discretion of allocation, division, and distribution.~~

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 which is the property of clients or third persons should 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] *Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.*

[3] *Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.*

[4] *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 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.

[5] A "client's security fund" 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 should participate.

[6] In determining whether client or third person funds should be deposited in an IOLTA Program Account or a Non-IOLTA Program Account, a lawyer shall consider the following factors:

(i) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited;

(ii) the cost of establishing and administering Non-IOLTA Program Accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;

(iii) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and

(iv) any other circumstances that affect the ability of the funds to earn a net return for the client or third person.