

IN THE SUPREME COURT, STATE OF WYOMING

April Term, A.D. 2016

In the Matter of Amendments to the)
Rules of Professional)
Conduct for Attorneys at Law)

**ORDER AMENDING RULE 1.15 OF THE RULES OF PROFESSIONAL
CONDUCT FOR ATTORNEYS AT LAW**

The Officers and Commissioners of the Wyoming State Bar have recommended that the Wyoming Supreme Court amend Rule 1.15 of the Rules of Professional Conduct for Attorneys at Law. The Court, having carefully reviewed the proposed amendments, finds that the proposed amendments should be adopted. It is, therefore,

ORDERED that the amendments to Rule 1.15 of the Rules of Professional Conduct for Attorneys at Law, attached hereto, be, and hereby are, adopted by the Court to be effective October 1, 2016; and it is further

ORDERED that this order and the amendments be published in the advance sheets of the Pacific Reporter; the amendments be published in the Wyoming Court Rules Volume; and that this order and the amendments be published online at the Wyoming Judicial Branch's website, <http://www.courts.state.wy.us>. The amendments to the Rules of Professional Conduct for Attorneys at Law shall thereafter be recorded in the journal of this Court.

DATED this 7th day of September, 2016.

BY THE COURT:

/s/

E. JAMES BURKE
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." ~~(or accounts).~~ Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.

(1) "IOLTA Program Account" refers to a trust account; at an "IOLTA-Eligible Institution" ~~(see Rule 1.15A)~~ from which funds may be withdrawn upon request as soon as permitted by law.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 is a pooled interest-bearing account that 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. The Equal Justice Wyoming Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Program Accounts and shall provide the list upon request.

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

(A) 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;

(B) the cost of establishing and administering Non-IOLTA 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;

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

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

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

(iii) An IOLTA Eligible Institution shall:

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

(B) 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 Account administrative or maintenance fee. All other fees are the responsibility of, and may be charged to, the lawyer maintaining the IOLTA 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 Accounts or from the principal of the account. IOLTA Eligible Institutions may elect to waive any or all fees on IOLTA Accounts;

(C) 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 Equal Justice Wyoming Foundation, a tax exempt entity;

(D) transmit with each remittance to the Equal Justice Wyoming Foundation, in an electronic format to be specified by the Equal Justice Wyoming Foundation, a statement which shall include the following: (1) the name of the member or the member's law firm for whom the remittance is sent, (2) the account number of each account, (3) the rate of interest applied, (4) the amount of interest or dividends remitted, (5) the amount and type of charges or fees deducted, if any, and (6) the average account balance for the period in which the report is made; and

(E) transmit to the depositing lawyer a report in accordance with normal procedures for reporting to its depositors.

(iv) All interest transmitted to the Equal Justice Wyoming Foundation shall be distributed by the Equal Justice Wyoming Foundation for the purposes of providing legal services to the indigent 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 Equal Justice Wyoming Foundation shall have the sole discretion of allocation, division, and distribution of funds.

(v) The Equal Justice Wyoming Foundation shall have authority to promulgate administrative policies and rules consistent with this Rule, subject to the approval of the Supreme Court.

(2) "Non-IOLTA ~~Program~~ Account" refers to a trust account, from which funds may be withdrawn upon request as soon as permitted by law. 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) 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 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, regulated financial institution that is located or has a branch located in Wyoming, and is covered by insurance administered by the Federal Deposit Insurance Corporation or its successor the deposits of which are insured by an agency of the federal government and which has been approved by the Wyoming State Bar to serve as a depository for lawyer trust accounts.

(i) To apply for approval, financial institutions shall file with the Wyoming State Bar an overdraft notification agreement, in a form provided by the Wyoming State Bar, to report to the Office of Bar Counsel, Wyoming State Bar, in the event any properly payable trust account instrument is presented against insufficient funds or when any other debit to such account would create a negative balance in the lawyer trust account, whether or not the instrument or other debit is honored and irrespective of any overdraft protection or other similar privileges that may attach to such account. Such agreement shall apply to all branches of the financial institution and shall not be canceled except on 120 days' notice in writing to the Wyoming State Bar. Upon notice of cancellation or termination of the agreement, a financial institution must notify all holders of trust accounts subject to the provisions of this rule at least 90 days before termination of approved status that the financial institution will no longer be approved to hold such trust account.

(ii) The Wyoming State Bar, in consultation with the Office of Bar Counsel, shall establish guidelines regarding the process of approving and terminating "approved status" for financial institutions, and for other operational procedures to effectuate this rule. The Wyoming State Bar shall periodically publish a list of approved financial institutions. No trust account shall be maintained in any financial institution that has not been so approved. Approved status under this section does not substitute for "IOLTA-Eligible Institution" status under Rule 1.15(a)(1).

(iii) The overdraft notification agreement shall further provide that all reports made by the financial institution shall be in the following format: (1) in the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor; (2) in the case of an instrument that is presented against insufficient funds but which instrument is 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 the overdraft created thereby. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor. If an instrument presented against insufficient funds is honored, then the report shall be made within five business days of the date of presentation for payment against insufficient funds.

(iv) The overdraft notification agreement must provide that a financial institution is not prohibited from charging the lawyer for the reasonable cost of providing the reports and records required by this rule, but those costs may not be charged against principal, nor against interest earned on trust accounts, including earnings on IOLTA

Accounts payable to the Equal Justice Wyoming Foundation. Such costs, if charged, shall not be borne by clients.

(v) Each financial institution must cooperate with the Office of Bar Counsel and produce any trust account records on receipt of a subpoena in accordance with any proceeding pursuant to the Rules of Disciplinary Procedure.

(vi) Every lawyer or law firm maintaining a trust account in accordance with this Rule shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements by financial institutions mandated by this Rule, and shall be deemed to have consented under applicable privacy laws to the reporting of information required by this Rule.

(vii) A financial institution shall be immune from suit arising out of its actions or omissions in reporting overdrafts or insufficient funds or producing documents under this Rule.

(viii) The agreement required by this Rule shall not be deemed to create a duty to exercise a standard of care and shall not constitute a contract for the benefit of any third parties that may sustain a loss as a result of lawyers overdrawing trust accounts.

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

~~(4) 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.~~ Trust accounts shall be managed as follows:

(i) Debit cards or automated teller machine cards shall not be used to withdraw funds from a trust account.

(ii) Client or third party funds received shall be deposited intact and records of deposit should be sufficiently detailed to identify each item.

(iii) All trust account withdrawals and transfers shall be made only by a lawyer admitted to practice law in Wyoming or by a person supervised by such lawyer and may be made only by authorized bank or wire transfer or by check payable to a named payee.

(iv) Cash withdrawals and checks made payable to "Cash" are prohibited.

(v) A lawyer shall request that the lawyer's trust account bank return to the lawyer, photo static or electronic images of canceled checks written on the trust account. If the bank provides electronic images, the lawyer shall either maintain paper copies of the electronic images or maintain the electronic images in readily obtainable format.

(vi) Only a lawyer admitted to practice law in Wyoming or a person supervised by such lawyer shall be an authorized signatory on a trust account.

(5) 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.

(c) A lawyer may deposit the lawyer's own funds in a trust account solely to satisfy the bank's minimum deposit requirement or for the sole purpose of paying bank service charges on that account, but only in an amount necessary for that purpose such purposes.

(d) A lawyer shall deposit into a client trust account legal fees that have been paid but not yet earned and expenses that have been paid in advance are anticipated but have not yet been incurred. The lawyer may withdraw those funds such advance payments only as fees are earned or expenses incurred.

(e) 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. 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 maintain~~ maintain current trust account 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: and shall retain the following records for a period of five years after termination of the representation.~~

(1) Receipt and disbursement journals containing a record of deposits to and withdrawals from client trust accounts, specifically identifying the date, payor, and description of each item deposited, as well as the date, payee and purpose of each disbursement; 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) Ledger records for all trust accounts showing, for each separate client, the payor of all funds deposited, the names of all persons for whom the funds are or were held, the amount of such funds, the descriptions and amounts of charges or withdrawals, and the names of all persons or entities to whom such funds were disbursed a separate accounting 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~~ At least quarterly a written reconciliation of trust account journals, ledgers, and bank statements;

(4) The physical or electronic equivalents of all checkbooks registers, bank statements, records of deposit, and ~~copies or originals of the canceled or voided checks;~~

(5) Records of all electronic transfers from trust accounts, including the name of the person authorizing the transfer, the date of transfer, the name of the recipient and confirmation from the financial institution of the trust account number from which money was withdrawn and the date and the time the transfer was completed; and

(6) Copies of those portions of client files that are reasonably related to trust account transactions.

Records required by this Rule may be maintained in electronic, photographic, or other media provided that they otherwise comply with these Rules and that printed copies can be produced. These records shall be readily accessible to the lawyer.

(h) 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 account 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.*

(k) Upon dissolution of a law firm or of any legal professional corporation, the partners shall make reasonable arrangements for the maintenance of client trust account records specified in this Rule.

(l) Upon the sale of a law practice, the seller shall make reasonable arrangements for the maintenance of records specified in this Rule.

~~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 Equal Justice Wyoming Foundation will maintain a list of IOLTA Eligible Institutions currently holding IOLTA Program Accounts, and will provide the list upon request.~~

~~(b) 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) 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) transmit with each remittance to the Equal Justice Wyoming Foundation, in an electronic format to be specified by the Equal Justice Wyoming Foundation, a statement which shall include the following: (a) 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 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.~~

~~(e) The Equal Justice Wyoming 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) All interest transmitted to the Equal Justice Wyoming 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 Equal Justice Wyoming Foundation shall have the sole discretion of allocation, division, and distribution of funds.~~

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

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. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. 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. Paragraph (f) 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 the 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~~

[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 and is not governed by this Rule.

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

~~[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.~~
