M.R. 3140

**IN THE
SUPREME COURT
OF
THE STATE OF ILLINOIS**

Order entered March 1, 2023.

(Deleted material is struck through, and new material is underscored.)

Effective July 1, 2023, Rules 1.5 and 1.15 of the Illinois Rules of Professional Conduct of 2010 are amended, and new Rules 1.15A, 1.15B, and 1.15C are adopted, as follows.

Amended Rule 1.5

RULE 1.5: FEES

(a) A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

(8) whether the fee is fixed, ~~or~~ contingent, or some type of retainer.

(b) The scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, except when the lawyer will charge a regularly represented client on the same basis or rate. Any changes in the basis or rate of the fee or expenses shall also be communicated to the client.

(c) Nonrefundable fees and nonrefundable retainers are prohibited. Any agreement that purports to restrict a client's right to terminate the representation or that unreasonably restricts a client's right to obtain a refund of unearned or unreasonable fees is prohibited.

(d) Common Types of Fee Agreements

(1) Fixed Fees: A fixed fee, also described as a "flat" or "lump-sum" fee, is a sum of money paid by a client to the lawyer to provide a specific service for a fixed amount. The fixed amount

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constitutes complete payment for the performance of the described services and may be paid in whole or in part in advance of the lawyer providing those services. A fixed fee may not be deposited in the lawyer's client trust account.

(2) Contingent Fees: ~~(c)~~A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (c)~~(d)~~ or other law. A contingent fee agreement shall be in a writing signed by the client and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal; litigation and other expenses to be deducted from the recovery; and whether such expenses are to be deducted before or after the contingent fee is calculated. The agreement must clearly notify the client of any expenses for which the client will be liable whether or not the client is the prevailing party. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(3) Engagement Retainers: An engagement retainer, also described as a "general," "classic," or "true" retainer, is a fixed sum of money paid by a client to the lawyer to ensure a lawyer's availability during a specified period of time or for a specified matter. Funds received as an engagement retainer are earned when paid and immediately become property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. A lawyer is compensated separately for any legal services actually rendered by the lawyer. Funds received as an engagement retainer may not be deposited into a client trust account.

(4) Security Retainers: A security retainer, also referred to as a "security payment retainer," describes funds paid to the lawyer intended to secure payment of fees and expenses for future services and costs the lawyer is expected to perform or incur. Funds received as a security retainer remain the property of the client and, therefore, must be deposited in a client trust account and kept separate from the lawyer's own property until the lawyer applies the retainer to charges for services that are actually rendered. The term "security retainer" should be used in any written agreement describing the retainer.

(5) Special Purpose Retainers: A special purpose retainer, also referred to as an "advance payment retainer," describes funds paid to the lawyer intended by the client to be present payment to the lawyer in exchange for the commitment to provide legal services in the future and may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. Ownership of a special purpose retainer passes to the lawyer immediately upon payment and is generally the lawyer's property and, therefore, may not be deposited in the lawyer's client trust account. An agreement for a special purpose retainer shall be in a writing signed by the client that uses the term "special purpose retainer" to describe the retainer, and states the following:

(i) the special purpose for the special purpose retainer and an explanation as to why it is advantageous to the client;

(ii) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;

(iii) the manner in which the retainer will be applied for services rendered and expenses incurred;

(iv) that any portion of the retainer that is not earned or required for expenses will be refunded to the client; and

(v) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving a special purpose retainer, the agreement must so state and provide the lawyer's reasons for that condition.

(e)~~(d)~~ A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(f)~~(e)~~ A division of a fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or if the primary service performed by one lawyer is the referral of the client to another lawyer and each lawyer assumes joint financial responsibility for the representation;

(2) the client agrees to the arrangement, including the share each lawyer will receive, and the agreement is confirmed in writing; and

(3) the total fee is reasonable.

Adopted July 1, 2009, effective January 1, 2010; amended Mar. 1, 2023, eff. July 1, 2023.

Comment

Reasonableness of Fee and Expenses

[1] Paragraph (a) requires that lawyers charge fees that are reasonable under the circumstances. The factors specified in (1) through (8) are not exclusive. Nor will each factor be relevant in each instance. Paragraph (a) also requires that expenses for which the client will be charged must be reasonable. A lawyer may seek reimbursement for the cost of services performed in-house, such as copying, or for other expenses incurred in-house, such as telephone charges, either by charging a reasonable amount to which the client has agreed in advance or by charging an amount that reasonably reflects the cost incurred by the lawyer.

Basis or Rate of Fee

[2] When the lawyer has regularly represented a client, they ordinarily will have evolved an understanding concerning the basis or rate of the fee and the expenses for which the client will be responsible. In a new client-lawyer relationship, however, an understanding as to fees and expenses must be promptly established. Generally, it is desirable to furnish the client with at least a simple memorandum or copy of the lawyer's customary fee arrangements that states the general nature of the legal services to be provided, the basis, rate or total amount of the fee and whether and to what extent the client will be responsible for any costs, expenses or disbursements in the

course of the representation. A written statement concerning the terms of the engagement reduces the possibility of misunderstanding.

[3] Fixed fees are generally not subject to the obligation to refund any portion to the client if the lawyer completes the agreed-upon services; however, fixed fees are subject, like any other fees, to the reasonableness standard of paragraph (a) of this Rule, and when circumstances so warrant, the attorney is obligated to return the portion that is not earned pursuant to Rule 1.16(d).

[4][~~3~~] Contingent fees, like any other fees, are subject to the reasonableness standard of paragraph (a) of this Rule. In determining whether a particular contingent fee is reasonable, or whether it is reasonable to charge any form of contingent fee, a lawyer must consider the factors that are relevant under the circumstances. Applicable law may impose limitations on contingent fees, such as a ceiling on the percentage allowable, or may require a lawyer to offer clients an alternative basis for the fee. Applicable law also may apply to situations other than a contingent fee, for example, government regulations regarding fees in certain tax matters.

[5] In *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007), the Court distinguished different types of retainers. It recognized advance payment retainers (referred to in this Rule as special purpose retainers) and approved their use in limited circumstances where the lawyer and client agree that a retainer should become the property of the lawyer upon payment. Prior to *Dowling*, the Court recognized only two types of retainers. The first, a general retainer (also described as a "true," "engagement," or "classic" retainer) is paid by a client to the lawyer in order to ensure the lawyer's availability during a specific period of time or for a specific matter. This type of retainer is earned when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. The second, a "security" retainer, secures payment for future services and expenses, and must be deposited in a client trust account pursuant to Rule 1.15B(b). Funds in a security retainer remain the property of the client until applied for services rendered or expenses incurred. Any unapplied funds are refunded to the client. Any written retainer agreement should clearly define the kind of retainer being paid. If the parties agree that the client will pay a security retainer, that term should be used in any written agreement, which should also provide that the funds remain the property of the client until applied for services rendered or expenses incurred and that the funds will be deposited in a client trust account. If the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer.

[6] A special purpose retainer, identified in *Dowling* as an advance payment retainer, is a present payment to the lawyer in exchange for the commitment to provide legal services in the future. Ownership of this retainer passes to the lawyer immediately upon payment; and the retainer may not be deposited into a client trust account because a lawyer may not commingle property of a client with the lawyer's own property. However, any portion of a special purpose retainer that is not earned must be refunded to the client. A special purpose retainer should be used sparingly, only when necessary to accomplish a purpose for the client that cannot be accomplished by using a security retainer. A special purpose retainer agreement must be in a written agreement signed by the client that contains the elements listed in paragraph (d)(5). A special purpose retainer is distinguished from a fixed fee (also described as a "flat" or "lump- sum" fee), where the lawyer agrees to provide a specific service (*e.g.*, defense of a criminal charge, a real estate closing, or preparation of a will or trust) for a fixed amount. Unlike a special purpose retainer, a fixed fee is

generally not subject to the obligation to refund any portion to the client, although a fixed fee is subject, like all fees, to the requirement of Rule 1.5(a) that a lawyer may not charge or collect an unreasonable fee.

[7] The type of retainer that is appropriate will depend on the circumstances of each case, and any written retainer agreement should clearly define the kind of retainer being paid. The guiding principle in the choice of the type of retainer is protection of the client's interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, and if the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer. Any unapplied funds of a security retainer are refunded to the client under Rule 1.16(d).

Terms of Payment

~~[4] A lawyer may require advance payment of a fee, but is obliged to return any unearned portion. See Comments [3B] through [3D] to Rule 1.15 and Rule 1.16(d).~~

[8] A lawyer may accept property in payment for services, such as an ownership interest in an enterprise, providing this does not involve acquisition of a proprietary interest in the cause of action or subject matter of the litigation contrary to Rule 1.8 (i). However, a fee paid in property instead of money may be subject to the requirements of Rule 1.8(a) because such fees often have the essential qualities of a business transaction with the client.

[8A]~~[4A]~~ Rule 1.5 allows fee agreements that are not on an hourly rate, for example, fixed fee arrangements, so long as the fee charged or collected is reasonable for the services performed as allowed under Rule 1.5. Where appropriate, lawyers should consider alternative arrangements to deliver affordable representation. In structuring any fee agreement, lawyers should strive to make the cost of legal services transparent and predictable, with the goal of reducing misunderstandings and avoiding fee disputes with clients.

[9]~~[5]~~ An agreement may not be made whose terms might induce the lawyer improperly to curtail services for the client or perform them in a way contrary to the client's interest. For example, a lawyer should not enter into an agreement whereby services are to be provided only up to a stated amount when it is foreseeable that more extensive services probably will be required, unless the situation is adequately explained to the client. Otherwise, the client might have to bargain for further assistance in the midst of a proceeding or transaction. However, it is proper to define the extent of services in light of the client's ability to pay. A lawyer should not exploit a fee arrangement based primarily on hourly charges by using wasteful procedures.

Prohibited Contingent Fees

[10]~~[6]~~ Paragraph (e)~~(d)~~ prohibits a lawyer from charging a contingent fee in a domestic relations matter when payment is contingent upon the securing of a divorce or upon the amount of alimony or support or property settlement to be obtained. This provision does not preclude a contract for a contingent fee for legal representation in connection with the recovery of postjudgment balances due under support, alimony or other financial orders because such contracts do not implicate the same policy concerns.

Division of Fee

[11]~~[7]~~ A division of fee is a single billing to a client covering the fee of two or more lawyers who are not in the same firm. A division of fee facilitates association of more than one lawyer in a matter in which neither alone could serve the client as well, or referral of a matter where appropriate, and often is used when the fee is contingent and the division is between a referring lawyer and a trial specialist. Paragraph (e) permits the lawyers to divide a fee either on the basis of the proportion of services they render or, where the primary service performed by one lawyer is the referral of the client to another lawyer, if each lawyer assumes financial responsibility for the representation as a whole. In addition, the client must agree to the arrangement, including the share that each lawyer is to receive, and the agreement must be confirmed in writing. Contingent fee agreements must be in a writing signed by the client and must otherwise comply with paragraph (d)(2)~~(c)~~ of this Rule. Joint financial responsibility for the representation entails financial responsibility for the representation as if the lawyers were associated in a general partnership. See *In re Storment*, 203 Ill. 2d 378 (2002). A lawyer should only refer a matter to a lawyer whom the referring lawyer reasonably believes is competent to handle the matter. See Rule 1.1.

[12]~~[8]~~ Paragraph (f)~~(e)~~ does not prohibit or regulate division of fees to be received in the future for work done when lawyers were previously associated in a law firm, or payments made pursuant to a separation or retirement agreement.

Disputes over Fees

[13]~~[9]~~ If a procedure has been established for resolution of fee disputes, such as an arbitration or mediation procedure established by law or rule, the lawyer must comply with the procedure when it is mandatory, and, even when it is voluntary, the lawyer should conscientiously consider submitting to it. Law may prescribe a procedure for determining a lawyer's fee, for example, in representation of an executor or administrator, a class or a person entitled to a reasonable fee as part of the measure of damages. The lawyer entitled to such a fee and a lawyer representing another party concerned with the fee should comply with the prescribed procedure.

Adopted July 1, 2009, effective January 1, 2010; amended Dec. 22, 2022; amended Mar. 1, 2023, eff. July 1, 2023.

Amended Rule 1.15

RULE 1.15: GENERAL DUTIES REGARDING SAFEKEEPING PROPERTY

(a) A lawyer must not, even temporarily, use funds or property of clients or third persons for the lawyer's own purposes without authorization.

(b) A lawyer must hold funds or property~~shall hold property~~ of clients or third persons that is in the~~a~~ lawyer's possession in connection with a representation separate from the lawyer's own funds or property. ~~Funds shall~~ All such funds must be deposited in one or more separate and identifiable interest- or dividend-bearing client trust accounts maintained at an eligible financial institution in the state where the lawyer's office is situated, or elsewhere with the informed consent

of the client or third person. ~~For the purposes of this Rule, a~~ A client trust account means an IOLTA account as defined in Rule 1.15C(b), ~~paragraph (j)(2),~~ or a separate, interest-bearing non-IOLTA client trust account established to hold the funds of a client or third person as provided in Rule 1.15C(c). ~~paragraph (f). Funds of clients or third persons shall not be deposited in a non-interest-bearing or non-dividend-bearing account.~~ Other, tangible property ~~shall~~ must be identified as such and appropriately safeguarded. ~~Complete records of client trust account funds and other property shall be kept by the lawyer and shall be preserved for a period of seven years after termination of the representation.~~

~~Maintenance of complete records of client trust accounts shall require that a lawyer:~~

~~(1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited, and the date, payee and purpose of each disbursement;~~

~~(2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited, the date of each deposit, the names of all persons for whom the funds are or were held, the amount of such funds, the dates, descriptions and amounts of charges or withdrawals, and the names of all persons to whom such funds were disbursed;~~

~~(3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;~~

~~(4) maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;~~

~~(5) maintain copies of all retainer and compensation agreements with clients;~~

~~(6) maintain copies of all bills rendered to clients for legal fees and expenses;~~

~~(7) prepare and maintain reconciliation reports of all client trust accounts, on at least a quarterly basis, including reconciliations of ledger balances with client trust account balances;~~

~~(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.~~

~~Records required by this Rule may be maintained by electronic, photographic, or other media provided that printed copies can be produced, and the records are readily accessible to the lawyer.~~

Each client trust account must~~shall~~ be maintained only in an eligible financial institution selected by the lawyer in the exercise of ordinary care~~prudence~~.

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

(d)~~(c)~~ A lawyer must~~shall~~ deposit in a client trust account funds received to secure payment of legal fees and expenses, to be withdrawn by the lawyer only as fees are earned and expenses are incurred. ~~Funds received as a fixed fee, a general retainer, or an advance payment retainer shall be deposited~~ A lawyer must deposit in the lawyer's general account or other account belonging to

the lawyer funds received as a fixed fee, an engagement retainer, or a special purpose retainer, as described in Rule 1.5. ~~An advance payment retainer may be used only when necessary to accomplish some purpose for the client that cannot be accomplished by using a security retainer. An agreement for an advance payment retainer shall be in a writing signed by the client that uses the term "advance payment retainer" to describe the retainer, and states the following:~~

~~(1) the special purpose for the advance payment retainer and an explanation why it is advantageous to the client;~~

~~(2) that the retainer will not be held in a client trust account, that it will become the property of the lawyer upon payment, and that it will be deposited in the lawyer's general account;~~

~~(3) the manner in which the retainer will be applied for services rendered and expenses incurred;~~

~~(4) that any portion of the retainer that is not earned or required for expenses will be refunded to the client;~~

~~(5) that the client has the option to employ a security retainer, provided, however, that if the lawyer is unwilling to represent the client without receiving an advance payment retainer, the agreement must so state and provide the lawyer's reasons for that condition.~~

(e)~~(d)~~ Upon receiving funds or ~~other~~ property in which a client or third person has an interest, a lawyer mustshall 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 mustshall promptly deliver to the client or third person any funds or ~~other~~ property that the client or third person is entitled to receive. Upon ~~and, upon~~ request by the client or third person, a lawyer mustshall promptly render a full accounting regarding such funds or property.

(f)~~(e)~~ When in the course of representation a lawyer is in possession of funds or property in which two or more persons (one of whom may be the lawyer) claim interests, the funds or property mustshall be kept separate by the lawyer until the dispute is resolved. The lawyer mustshall promptly distribute all portions of the funds or property as to which the interests are not in dispute.

(g) Withdrawals from a client trust account must be made only by check payable to a named payee or by electronic transfer and not by cash. No check may be made payable to "cash." No withdrawal of cash may be made from a deposit to a client trust account or by automated teller or cash dispensing machine.

~~(f) All funds of clients or third persons held by a lawyer or law firm which are nominal in amount or are expected to be held for a short period of time, including advances for costs and expenses, and funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm, shall be deposited in one or more IOLTA accounts, as defined in paragraph (j)(2). A lawyer or law firm shall deposit all funds of clients or third persons which are not nominal in amount or expected to be held for a short period of time into a separate interest or dividend bearing client trust account with the client designated as income beneficiary. Funds of clients or third persons shall not be deposited in a non interest bearing or non dividend bearing account. Each IOLTA account shall comply with the following provisions:~~

~~(1) Each lawyer or law firm in receipt of nominal or short term client funds shall establish one or more IOLTA accounts with an eligible financial institution authorized by federal or state law to do business in the state of Illinois and which offers IOLTA accounts within the~~

~~requirements of this Rule as administered by the Lawyers Trust Fund of Illinois.~~

~~(2) Eligible institutions shall maintain IOLTA accounts that pay the highest interest rate or dividend available from the institution to its non-IOLTA account customers when IOLTA accounts meet or exceed the same minimum balance or other account eligibility guidelines, if any. In determining the highest interest rate or dividend generally available from the institution to its non-IOLTA accounts, eligible institutions may consider factors, in addition to the IOLTA account balance, customarily considered by the institution when setting interest rates or dividends for its customers, provided that such factors do not discriminate between IOLTA accounts and accounts of non-IOLTA customers, and that these factors do not include that the account is an IOLTA account.~~

~~(3) An IOLTA account that meets the highest comparable rate or dividend standard set forth in paragraph (f)(2) must use one of the identified account options as an IOLTA account, or pay the equivalent yield on an existing IOLTA account in lieu of using the highest yield bank product:~~

~~(a) a checking account paying preferred interest rates, such as money market or indexed rates, or any other suitable interest bearing deposit account offered by the eligible institution to its non-IOLTA customers.~~

~~(b) for accounts with balances of $100,000 or more, a business checking account with automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities as defined in paragraph (h).~~

~~(c) for accounts with balances of $100,000 or more, a money market fund with, or tied to, check writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million.~~

~~(4) As an alternative to the account options in paragraph (f)(3), the financial institution may pay a "safe harbor" yield equal to 70% of the Federal Funds Target Rate or 1.0%, whichever is higher.~~

~~(5) Each lawyer or law firm shall direct the eligible financial institution to remit monthly earnings on the IOLTA account directly to the Lawyers Trust Fund of Illinois. For each individual IOLTA account, the eligible financial institution shall provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent; the account number; the remittance period; the rate of interest applied; the account balance on which the interest was calculated; the reasonable service fee(s) if any; the gross earnings for the remittance period; and the net amount of earnings remitted. Remittances shall be sent to the Lawyers Trust Fund electronically unless otherwise agreed. The financial institution may assess only allowable reasonable fees, as defined in paragraph (j)(8). Fees in excess of the earnings accrued on an individual IOLTA account for any month shall not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.~~

~~(g) A lawyer or law firm should exercise reasonable judgment in determining whether funds of a client or third person are nominal in amount or are expected to be held for a short period of time. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's or law firm's exercise of reasonable judgment under this rule or decision to place client~~

funds in an IOLTA account or a non-IOLTA client trust account on the basis of that determination. Ordinarily, in determining the type of account into which to deposit particular funds for a client or third person, a lawyer or a law firm shall take into consideration the following factors:

(1) the amount of interest which the funds would earn during the period they are expected to be held and the likelihood of delay in the relevant transaction or proceeding;

(2) the cost of establishing and administering the account, including the cost of the lawyer's services;

(3) the capability of the financial institution, through subaccounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client.

(h) All trust accounts, whether IOLTA or non-IOLTA, shall be established in compliance with the following provisions on dishonored instrument notification:

(1) A lawyer shall maintain trust accounts only in eligible financial institutions that have filed with the Attorney Registration and Disciplinary Commission an agreement, in a form provided by the Commission, to report to the Commission in the event any properly payable instrument is presented against a client trust account containing insufficient funds, irrespective of whether or not the instrument is honored. 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 Commission. The Commission shall annually publish a list of financial institutions that have agreed to comply with this rule and shall establish rules and procedures governing amendments to the list.

(2) The overdraft notification agreement shall provide that all reports made by the financial institution shall be in the following format:

(a) 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; and

(b) 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. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(3) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing herein shall preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by paragraph (h) of this Rule. Fees charged for the reasonable cost of producing the reports and records required by paragraph (h) are the sole responsibility of the lawyer or law firm, and are not allowable reasonable fees for IOLTA accounts as those are defined in paragraph (j)(8).

(i) A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts

~~to identify and return the funds to the rightful owner. If after 12 months of the discovery of the unidentified funds the lawyer determines that ascertaining the ownership or securing the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. No charge of ethical impropriety or other breach of professional conduct shall attend to a lawyer's exercise of reasonable judgment under this paragraph (i).~~

~~A lawyer who either remits funds in error or later ascertains the ownership of remitted funds may make a claim to the Lawyers Trust Fund, which after verification of the claim will return the funds to the lawyer.~~

~~(j) Definitions~~

~~(1) "Funds" denotes any form of money, including cash, payment instruments such as checks, money orders or sales drafts, and electronic fund transfers.~~

~~(2) "IOLTA account" means a pooled interest or dividend bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of nominal or short term funds of clients or third persons as defined in paragraph (f) and from which funds may be withdrawn upon request as soon as permitted by law.~~

~~(3) "Eligible financial institution" is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open end investment company registered with the Securities and Exchange Commission that agrees to provide dishonored instrument notification regarding any type of client trust account as provided in paragraph (h) of this Rule; and that with respect to IOLTA accounts, offers IOLTA accounts within the requirements of paragraph (f) of this Rule.~~

~~(4) "Properly payable" refers to an instrument which, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.~~

~~(5) "Money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.~~

~~(6) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.~~

~~(7) "Safe harbor" is a yield that if paid by the financial institution on IOLTA accounts shall be deemed as a comparable return in compliance with this Rule. Such yield shall be calculated as 70% of the Federal Funds Target Rate as reported in the Wall Street Journal on the first business day of the calendar month.~~

~~(8) "Allowable reasonable fees" for IOLTA accounts are per check charges, per deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment ("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non IOLTA depositors. All other fees are the~~

~~responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.~~

~~(9) "Unidentified funds" are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.~~

~~(k) In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15 if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:~~

~~(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or~~

~~(2) has met the "good funds" requirements. The good funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits: (a) a certified check, (b) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States, (c) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government, (d) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state, (e) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA, (f) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2, (g) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent. Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.~~

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015; amended Mar. 1, 2023, eff. July 1, 2023.

Comment

[1] An attorney's unauthorized use of another's funds is called conversion. The Illinois Supreme Court has drawn a distinction between the common-law tort of conversion and the conduct by an attorney that warrants the imposition of discipline, noting that "[a] typical, although not necessarily exclusive, type of conversion by an attorney which warrants discipline involves the conversion of funds that have been deposited or received by an attorney for a specific purpose

or for the use of another." *In re Thebus*, 108 Ill. 2d 255, 264 (1985). Conversion of trust funds occurs when a lawyer uses those funds for a purpose other than that for which they were delivered. Conversion is typically proven when the client trust account is either overdrawn or when the lawyer allows the balance in the client trust account to become less than the sum total of all client and/or third person funds the lawyer is required to maintain in trust. *In re Ushijima*, 119 Ill. 2d 51, 58 (1987); *In re Cheronis*, 114 Ill. 2d 527 (1986).

[2] Funds of clients and third persons include amounts received by a lawyer to secure payment of legal fees and expenses and to be withdrawn by the lawyer only as fees are earned and expenses incurred; funds belonging in part to a client or third person and in part presently or potentially to the lawyer or law firm; and funds in which two or more persons (one of whom may be the lawyer) claim interests.

[3] 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 client trust accounts. Client trust accounts should be made identifiable through their designation as "client trust account" or "client funds account" or words of similar import indicating the fiduciary nature of the account. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities. ~~A lawyer should maintain on a current basis complete records of client trust account funds as required by paragraph (a), including subparagraphs (1) through (8). These requirements articulate recordkeeping principles that provide direction to a lawyer in the handling of funds entrusted to the lawyer by a client or third person. Compliance with these requirements will benefit the attorney and the client or third party as these fiduciary funds will be safeguarded and documentation will be available to fulfill the lawyer's fiduciary obligation to provide an accounting to the owners of the funds and to refute any charge that the funds were handled improperly.~~

[4]~~[2]~~ While normally it is impermissible to commingle the lawyer's own funds with client funds, paragraph (c)~~(b)~~ provides that it is permissible when necessary to pay bank service charges or to meet minimum balance requirements on that account. The lawyer must keep accurate~~Accurate~~ records ~~must be kept~~ regarding which part of the funds belong to the lawyer.~~ are the lawyer's.~~

[5] A lawyer who receives funds or property by any means must take reasonable steps to safeguard and segregate client and third-person funds and property pursuant to Rule 1.15. Lawyers using an electronic payment method, including credit cards, ACH transfers (Automated Clearing House electronic funds transfers), and online payment systems, to accept the payment of client or third-person funds must take reasonable steps to ensure that the use of such a method does not result in any commingling with the funds of the lawyer, does not risk the loss of any client or third-person funds, and does not compromise the identity of any client or third-person funds. A lawyer also must take reasonable steps to ensure that client or third-person funds accepted through an electronic payment method are transferred immediately to an IOLTA account or non-IOLTA client trust account maintained by the lawyer.

[6] In addition to the steps described in Comment [5], lawyers have an obligation to make a reasonable investigation into the reliability, stability, and viability of an electronic payment

method or system to determine whether the method or system takes appropriate measures to segregate, safeguard, and ensure the prompt transfer of client funds. Rule 1.1 governs a lawyer's duty to understand the benefits and risks of relevant technology. Rule 1.6 governs a lawyer's duty to maintain confidentiality of information relating to a representation.

[7] Paragraph (d) relates to legal fees and expenses that have been paid in advance. The types of fee agreements are described, and the reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.

[8]~~[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 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 must be kept in a trust account, and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds mustshall be promptly distributed. Specific guidance concerning client trust accounts is provided in the Client Trust Account Handbook published by the Illinois Attorney Registration and Disciplinary Commission and available on its website (www.iardc.org).~~as well as on the website of the Illinois Attorney Registration and Disciplinary Commission.~~

~~[3A] Paragraph (c) relates to legal fees and expenses that have been paid in advance. The reasonableness, structure, and division of legal fees are governed by Rule 1.5 and other applicable law.~~

~~[3B] Paragraph (c) must be read in conjunction with *Dowling v. Chicago Options Associates, Inc.*, 226 Ill. 2d 277 (2007). In *Dowling*, the Court distinguished different types of retainers. It recognized advance payment retainers and approved their use in limited circumstances where the lawyer and client agree that a retainer should become the property of the lawyer upon payment. Prior to *Dowling*, the Court recognized only two types of retainers. The first, a general retainer (also described as a "true," "engagement," or "classic" retainer) is paid by a client to the lawyer in order to ensure the lawyer's availability during a specific period of time or for a specific matter. This type of retainer is earned when paid and immediately becomes property of the lawyer, regardless of whether the lawyer ever actually performs any services for the client. The second, a "security" retainer, secures payment for future services and expense, and must be deposited in a client trust account pursuant to paragraph (a). Funds in a security retainer remain the property of the client until applied for services rendered or expenses incurred. Any unapplied funds are refunded to the client. Any written retainer agreement should clearly define the kind of retainer being paid. If the parties agree that the client will pay a security retainer, that term should be used in any written agreement, which should also provide that the funds remain the property of the client until applied for services rendered or expenses incurred and that the funds will be deposited in a client trust account. If the parties' intent is not evident, an agreement for a retainer will be construed as providing for a security retainer.~~

~~[3C] An advance payment retainer is a present payment to the lawyer in exchange for the commitment to provide legal services in the future. Ownership of this retainer passes to the lawyer immediately upon payment; and the retainer may not be deposited into a client trust account because a lawyer may not commingle property of a client with the lawyer's own property. However, any portion of an advance payment retainer that is not earned must be refunded to the client. An advance payment retainer should be used sparingly, only when necessary to accomplish~~

~~a purpose for the client that cannot be accomplished by using a security retainer. An advance payment retainer agreement must be in a written agreement signed by the client that contains the elements listed in paragraph (c). An advance payment retainer is distinguished from a fixed fee (also described as a "flat" or "lump-sum" fee), where the lawyer agrees to provide a specific service (*e.g.*, defense of a criminal charge, a real estate closing, or preparation of a will or trust) for a fixed amount. Unlike an advance payment retainer, a fixed fee is generally not subject to the obligation to refund any portion to the client, although a fixed fee is subject, like all fees, to the requirement of Rule 1.5(a) that a lawyer may not charge or collect an unreasonable fee.~~

~~[3D] The type of retainer that is appropriate will depend on the circumstances of each case. The guiding principle in the choice of the type of retainer is protection of the client's interests. In the vast majority of cases, this will dictate that funds paid to retain a lawyer will be considered a security retainer and placed in a client trust account, pursuant to this Rule.~~

[9]~~[4]~~ Paragraph (f)~~(e)~~ 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 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.

~~[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] Paragraphs (a), (f) and (g) requires that nominal or short-term funds belonging to clients or third persons be deposited in one or more IOLTA accounts as defined in paragraph (j)(2) and provides that the interest earned on any such accounts shall be submitted to the Lawyers Trust Fund of Illinois. The Lawyers Trust Fund of Illinois will disburse the funds so received to qualifying organizations and programs to be used for the purposes set forth in its by-laws. The purposes of the Lawyers Trust Fund of Illinois may not be changed without the approval of the Supreme Court of Illinois. The decision as to whether funds are nominal or short-term shall be in the reasonable judgment of the depositing lawyer or law firm. Client and third-person funds that are neither nominal or short-term shall be deposited in separate, interest- or dividend-bearing client trust accounts for the benefit of the client as set forth in paragraphs (a) and (f).~~

~~[7] Paragraph (h) requires that lawyers maintain trust accounts only in financial institutions that have agreed to report trust account overdrafts to the ARDC. The trust account overdraft notification program is intended to provide early detection of problems in lawyers' trust accounts, so that errors by lawyers and/or banks may be corrected and serious lawyer transgressions pursued.~~

~~[8] Paragraph (i) applies when accumulated balances in an IOLTA account cannot be documented as belonging to an identifiable client or third party, or to the lawyer or law firm. This paragraph provides a mechanism for a lawyer to remove these funds from an IOLTA account~~

~~when, in the lawyer's reasonable judgment, further efforts to account for them after a period of 12 months are not likely to be successful. This procedure facilitates the effective management of IOLTA accounts by lawyers; addresses situations where an IOLTA account becomes the responsibility of a lawyer's successor, law partner, or heir; and supports the provision of civil legal aid in Illinois.~~

~~The Lawyers Trust Fund of Illinois will publish instructions for lawyers remitting unidentified funds. Proceeds of unidentified funds received under paragraph (i) will be distributed to qualifying organizations and programs according to the purposes set forth in the by-laws of the Lawyers Trust Fund. When a lawyer learns that funds have been remitted in error or later identifies the owner of remitted funds, the lawyer may make a claim to the Lawyers Trust Fund for the return of the funds. After verification of the claim, the Lawyers Trust Fund will return the funds to the lawyer who then ensures the funds are restored to the owner.~~

~~Paragraph (i) relates only to unidentified funds, for which no owner can be ascertained. Unclaimed funds in client trust accounts—funds whose owner is known but have not been claimed—should be handled according to applicable statutes including the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025 et seq.).~~

~~[9] Paragraph (j) provides definitions that pertain specifically to Rule 1.15. Paragraph (1) defines expansively the meaning of "funds," to include any form of money, including electronic fund transfers. Paragraph (2) defines an IOLTA account and paragraph (3) defines an eligible financial institution for purposes of the overdraft notification and IOLTA programs. Paragraph (4) defines "properly payable," a term used in the overdraft notification provisions in paragraph (h)(1). Paragraphs (5) through (8) define terms pertaining to IOLTA accounts. Paragraph (9) defines "unidentified funds" as that term is used in paragraph (i).~~

~~[10] Paragraph (k) applies only to the closing of real estate transactions and adopts the "good funds" doctrine. That doctrine provides for the disbursement of funds deposited but not yet collected if the lawyer has already established an appropriate Real Estate Funds Account and otherwise fulfills all of the requirements contained in the Rule.~~

Adopted July 1, 2009, effective January 1, 2010; amended July 1, 2011, effective September 1, 2011; amended April 7, 2015, eff. July 1, 2015; amended Mar. 1, 2023, eff. July 1, 2023.

New Rule 1.15A

RULE 1.15A: REQUIRED RECORDS

(a) For each client matter, complete records of client trust account funds and other property must be kept by the lawyer and must be preserved for a period of seven years after termination of the representation.

(b) Maintenance of complete records of client trust accounts requires that a lawyer:

(1) prepare and maintain receipt and disbursement journals for all client trust accounts required by this Rule containing a record of deposits to and withdrawals from client trust accounts specifically identifying the date, source, and description of each item deposited and the date, payee, client matter, and purpose of each disbursement. In addition, for each

electronic transfer, the journals should include the name of the person authorizing transfer and the financial institution and account number to or from which funds were transferred;

(2) prepare and maintain contemporaneous ledger records for all client trust accounts showing, for each separate trust client or beneficiary, the source of all funds deposited; the date of each deposit; the names of all persons for whom the funds are or were held; the amount of such funds; the dates, descriptions, and amounts of charges or withdrawals; and the names of all persons to whom such funds were disbursed;

(3) maintain copies of all accountings to clients or third persons showing the disbursement of funds to them or on their behalf, along with copies of those portions of clients' files that are reasonably necessary for a complete understanding of the financial transactions pertaining to them;

(4) maintain all client trust account checkbook registers, check stubs, bank statements, records of deposit, and checks or other records of debits;

(5) maintain copies of all retainer and compensation agreements with clients;

(6) maintain copies of all bills rendered to clients for legal fees and expenses;

(7) prepare and maintain three-way reconciliation reports of all client trust accounts on at least a quarterly basis; and

(8) make appropriate arrangements for the maintenance of the records in the event of the closing, sale, dissolution, or merger of a law practice.

Records required by this Rule may be maintained by electronic, photographic, or other media provided that printed copies can be produced and the records are readily accessible to the lawyer.

(c) A three-way reconciliation consists of the following steps:

(1) The first step is to take the balance in the checkbook register at the end of the reconciliation period and compare it with the adjusted bank statement balance for that period. The bank statement balance is adjusted by adding deposits not yet credited and subtracting any checks or other debits not yet posted to the account.

(2) The second step in the reconciliation is to add together the ending balances of all client ledgers.

(3) The third step in the reconciliation is to subtract the disbursements journal balance from the receipts journal balance by (i) taking the ending figure calculated for the previous period, (ii) adding the receipts journal balance for the period in question, and (iii) subtracting the disbursements journal balance for that period.

All three balances (figures from the check register, client ledgers, and receipts/disbursement journals) must agree with the adjusted bank statement balance.

Adopted Mar. 1, 2023, eff. July 1, 2023.

Comment

[1] A lawyer must maintain on a current basis complete records of client trust account funds, including transfers made electronically, as required by paragraph (b), subparagraphs (1) through (8). These are minimum requirements, which articulate recordkeeping principles that provide direction to a lawyer in the handling of funds entrusted to the lawyer by a client or third person. Compliance with these requirements will benefit the lawyer and the client or third person, as these funds will be safeguarded and documentation will be available to fulfill the lawyer's obligation to

provide an accounting to the owners of the funds and to refute any charge that the funds were handled improperly.

[2] A three-way reconciliation is a comparison of the bank statement balance with the balances in the lawyer's records to determine that the figures in the lawyer's records are accurate and in agreement with the bank's figures. The three-way reconciliation report amount must always equal the total sum belonging to all clients and third persons whose money the lawyer is holding in trust. While a lawyer must prepare and maintain three-way reconciliation reports of all trust accounts on at least a quarterly basis, lawyers should note that banks may allow only 30 days from statement date to notify the bank of errors.

[3] If the balances in a three-way reconciliation do not agree, records should be reviewed for entries that do not match or for any addition or subtraction errors, until all three figures are the same. For a more detailed discussion, see the Client Trust Account Handbook published by the Illinois Attorney Registration and Disciplinary Commission and available on its website (www.iardc.org).

New Rule 1.15B

RULE 1.15B: TRUST ACCOUNTS AND OVERDRAFT NOTIFICATION

(a) **Use of IOLTA Accounts.** A lawyer must deposit all funds belonging to a client or third person into an IOLTA account unless the funds can otherwise earn net income for the client or third person. Net income means interest that exceeds the costs incurred to secure such interest. A lawyer must deposit client or third-person funds that can earn net income for the benefit of the client or third person in a separate, interest- bearing non-IOLTA client trust account, with the client or third person designated as the recipient of net interest generated on that account. A lawyer must not deposit any client or third-person funds into an account that does not bear interest or pay dividends.

(b) **Account Determination.** A lawyer must consider the following factors in determining whether the client or third-person funds can earn net income for the benefit of the client or third person:

(1) The amount of client or third-person funds to be deposited;

(2) The expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held;

(3) The rate of interest at the financial institution where the funds are to be deposited;

(4) The cost of establishing and administering a non-IOLTA client trust account for the benefit of the client, including the cost of the lawyer's services, financial institution fees and service charges, and the cost of preparing tax reports;

(5) The capability of the financial institution, through sub-accounting, to calculate and pay interest earned by each client's funds, net of any transaction costs, to the individual client; and

(6) Any other circumstances that affect the ability of the client's funds to earn net interest for the client.

The lawyer must review the lawyer's IOLTA account(s) at reasonable intervals to determine whether changed circumstances require further action regarding the deposited client or third-person funds. A lawyer who exercises reasonable judgment in determining whether to deposit

client or third-person funds into an IOLTA account or a non-IOLTA client trust account pursuant to this rule will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination.

(c) Eligible Financial Institutions.

(1) A lawyer must use an IOLTA account established at an eligible financial institution that is authorized by federal or state law to do business in the state of Illinois; that has complied with the Overdraft Notification provisions of Rule 1.15B(e); and that offers IOLTA accounts within the comparable rate, remittance, and reporting requirements of this paragraph (c) as administered by the Lawyers Trust Fund of Illinois.

(2) To be eligible to hold IOLTA funds deposited by Illinois lawyers, a financial institution must offer IOLTA accounts that pay no less than the highest interest rate or dividend generally available from the institution to its non-IOLTA account customers when the IOLTA account meets or exceeds the same minimum balance or other account eligibility guidelines.

(3) To meet the requirements of paragraph (c)(2), an eligible financial institution must offer one or more of the account product options identified in this paragraph (c)(3). For all account product options, IOLTA funds must be subject to withdrawal upon request and without delay as soon as permitted by law.

(i) An eligible financial institution may hold IOLTA funds in a checking account paying preferred interest rates, such as money market or indexed rates.

(ii) An eligible financial institution may use alternative account products for IOLTA accounts with higher balances, including:

(A) A government (such as for municipal deposits) checking account;

(B) A business checking account with an automated investment feature, such as an overnight sweep and investment in repurchase agreements fully collateralized by U.S. Government securities;

(C) A money market fund with, or tied to, check-writing capacity, that must be solely invested in U.S. Government securities or securities fully collateralized by U.S. Government securities, and that has total assets of at least $250 million; or

(D) Any other suitable interest-bearing deposit account offered by the eligible financial institution to its non-IOLTA customers.

(iii) An eligible financial institution may pay on its existing IOLTA accounts the highest rates it offers on the account product options in paragraph (c)(3)(ii) in lieu of moving the funds into those products.

(iv) As an alternative to the account product options in paragraph (c)(3)(i-iii), an eligible financial institution may pay on IOLTA deposits a "safe harbor" yield equal to 70% of the current Federal Funds Target Rate, or a rate of 1.0% (100 basis points), whichever is higher. An eligible financial institution that pays the safe harbor yield must agree to pay the rate and then ensure that the monthly IOLTA interest it remits to the Lawyers Trust Fund meets the safe harbor threshold.

(v) An eligible financial institution periodically may be required to certify to the Lawyers Trust Fund that the rates it pays on IOLTA deposits, regardless of account type, meet the requirements of this paragraph (c).

(4) An eligible financial institution must remit monthly earnings on each IOLTA account directly to the Lawyers Trust Fund.

(i) For each individual IOLTA account, the eligible financial institution must provide: a statement transmitted with each remittance showing the name of the lawyer or law firm directing that the remittance be sent, the account number, the remittance period, the rate of interest applied, the account balance on which the interest was calculated, the reasonable service fee(s) if any, the gross earnings for the remittance period, and the net amount of earnings remitted.

(ii) Remittances must be sent to the Lawyers Trust Fund electronically unless otherwise agreed.

(iii) The financial institution may assess only allowable reasonable fees, as defined in Rule 1.15C(i). Fees in excess of the earnings accrued on an individual IOLTA account for any month must not be taken from earnings accrued on other IOLTA accounts or from the principal of the account.

(d) Unidentified Funds. A lawyer who learns of unidentified funds in an IOLTA account must make periodic efforts to identify and return the funds to the rightful owner. If, after 12 months from the discovery of the unidentified funds, the lawyer determines that further efforts to ascertain the ownership or secure the return of the funds will not succeed, the lawyer must remit the funds to the Lawyers Trust Fund of Illinois. A lawyer who remits funds in error or subsequently identifies the owner of the remitted funds may make a claim for a refund to the Lawyers Trust Fund. The Lawyers Trust Fund will return the funds to the lawyer after verifying the claim. A lawyer who exercises reasonable judgment in making a determination under this paragraph will not be subject to a charge of ethical impropriety or other breach of professional conduct on the basis of that determination.

(e) Overdraft Notification. All trust accounts, whether IOLTA or non-IOLTA, must be established in compliance with the following provisions on overdraft notification:

(1) A lawyer must maintain a client trust account only at an eligible financial institution that has agreed to notify the Attorney Registration and Disciplinary Commission in the event any properly payable instrument is presented against a client trust account containing insufficient funds, irrespective of whether or not the instrument is honored. The financial institution must file an agreement using a form provided by the ARDC. Any such agreement must apply to all branches of the financial institution and must not be canceled except upon advance notice of 30 days or more made in writing to the ARDC. The ARDC must annually publish a list of financial institutions that have agreed to comply with this paragraph and shall establish rules and procedures governing amendments to the list.

(2) The overdraft notification agreement must provide that all reports made by the financial institution to the ARDC will be in the following format:

(i) In the case of a dishonored instrument, the financial institution's report must 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; and

(ii) In the case of instruments that are presented against insufficient funds but which instruments are honored, the financial institution's report must identify the financial institution, the lawyer or law firm, the account number, the date of presentation for payment

and the date paid, and the amount of the resulting overdraft. Such reports shall be made simultaneously with, and within the time provided by law for, notice of dishonor, if any. If an instrument presented against insufficient funds is honored, then the report shall be made within five banking days of the date of presentation for payment against insufficient funds.

(3) Every lawyer admitted to practice in this jurisdiction is conclusively deemed to have consented to the reporting and production requirements mandated by this Rule.

(4) Nothing in this paragraph (e) may preclude a financial institution from charging a particular lawyer or law firm for the reasonable cost of producing the reports and records required by this paragraph. Fees charged for the reasonable cost of producing the reports and records required by paragraph (e) are the sole responsibility of the lawyer or law firm and are not allowable reasonable fees for IOLTA accounts as those are defined in Rule 1.15C(i).

(f) Disbursement of Real Estate Transaction Funds. In the closing of a real estate transaction, a lawyer's disbursement of funds deposited but not collected shall not violate his or her duty pursuant to this Rule 1.15B if, prior to the closing, the lawyer has established a segregated Real Estate Funds Account (REFA) maintained solely for the receipt and disbursement of such funds, has deposited such funds into a REFA, and:

(1) is acting as a closing agent pursuant to an insured closing letter for a title insurance company licensed in the State of Illinois and uses for such funds a segregated REFA maintained solely for such title insurance business; or

(2) has met the "good-funds" requirements. The good-funds requirements shall be met if the bank in which the REFA was established has agreed in a writing directed to the lawyer to honor all disbursement orders drawn on that REFA for all transactions up to a specified dollar amount not less than the total amount being deposited in good funds. Good funds shall include only the following forms of deposits:

(i) a certified check;

(ii) a check issued by the State of Illinois, the United States, or a political subdivision of the State of Illinois or the United States;

(iii) a cashier's check, teller's check, bank money order, or official bank check drawn on or issued by a financial institution insured by the Federal Deposit Insurance Corporation or a comparable agency of the federal or state government;

(iv) a check drawn on the trust account of any lawyer or real estate broker licensed under the laws of any state;

(v) a personal check or checks in an aggregate amount not exceeding $5,000 per closing if the lawyer making the deposit has reasonable and prudent grounds to believe that the deposit will be irrevocably credited to the REFA;

(vi) a check drawn on the account of or issued by a lender approved by the United States Department of Housing and Urban Development as either a supervised or a nonsupervised mortgagee as defined in 24 C.F.R. § 202.2;

(vii) a check from a title insurance company licensed in the State of Illinois, or from a title insurance agent of the title insurance company, provided that the title insurance company has guaranteed the funds of that title insurance agent.

Without limiting the rights of the lawyer against any person, it shall be the responsibility of the disbursing lawyer to reimburse the trust account for such funds that are not collected and for any fees, charges and interest assessed by the paying bank on account of such funds being uncollected.

Adopted Mar. 1, 2023, eff. July 1, 2023.

Comment

[1] Paragraph (a) requires that a lawyer deposit client or third-person funds that cannot earn net interest for an individual client or third person into one or more IOLTA accounts as defined in Rule 1.15C(b), with the interest earned on any such accounts remitted to the Lawyers Trust Fund of Illinois. Paragraph (b) identifies the factors a lawyer must consider when making the determination about whether client or third-person funds should be deposited into an IOLTA or non-IOLTA client trust account. The lawyer should exercise reasonable judgement in making this determination.

[2] The Lawyers Trust Fund of Illinois will use the interest remitted from IOLTA accounts for the purposes set forth in its bylaws, including financial support to Illinois legal aid organizations. The purposes of the Lawyers Trust Fund of Illinois may not be changed without the approval of the Supreme Court of Illinois.

[3] Paragraph (c) requires that lawyers maintain IOLTA accounts only at an eligible financial institution that pays interest rates on IOLTA accounts that are comparable to those it pays on non-IOLTA accounts. An eligible financial institution may use one or more of the account products or alternatives described in paragraph (c) for the deposit of IOLTA funds. To assist lawyers in identifying eligible financial institutions, the Lawyers Trust Fund maintains a periodically updated list of such financial institutions on its website (www.ltf.org).

[4] Paragraph (d) applies when a lawyer cannot document accumulated balances in an IOLTA account as belonging to an identifiable client or third person, or to the lawyer or law firm. Paragraph (d) provides a mechanism for a lawyer to remove these funds from an IOLTA account when, in the lawyer's reasonable judgment, further efforts to account for them after a period of 12 months are not likely to be successful. This procedure facilitates the effective management of IOLTA accounts by lawyers; addresses situations where an IOLTA account becomes the responsibility of a lawyer's successor, law partner, or heir; and supports the provision of civil legal aid in Illinois. Paragraph (d) relates only to unidentified funds, for which no owner can be ascertained. Unclaimed funds in client trust accounts—funds whose owner is known but that have not been claimed—should be handled according to applicable statutes including the Uniform Disposition of Unclaimed Property Act (765 ILCS 1025 *et seq.*).

[5] The Lawyers Trust Fund of Illinois will publish instructions for lawyers remitting unidentified funds. Proceeds of unidentified funds received under paragraph (d) will be distributed to qualifying organizations and programs according to the purposes set forth in the bylaws of the Lawyers Trust Fund.

[6] Paragraph (e) requires that lawyers maintain trust accounts only in financial institutions that have agreed to report trust account overdrafts to the ARDC. The trust account overdraft

notification program is intended to provide early detection of problems in lawyers' trust accounts, so that errors by lawyers and/or banks may be corrected and serious lawyer transgressions pursued.

[7] Paragraph (f) applies only to the closing of real estate transactions and adopts the "good-funds" doctrine. That doctrine provides for the disbursement of funds deposited but not yet collected if the lawyer has already established an appropriate Real Estate Funds Account and otherwise fulfills all of the requirements contained in the Rule.

New Rule 1.15C

RULE 1.15C: DEFINITIONS FOR RULES 1.15, 1.15A, AND 1.15B

(a) "Funds" denotes any form of money, including cash; payment instruments such as checks, money orders, or sales drafts; and electronic fund transfers.

(b) "IOLTA account" means a pooled interest- or dividend-bearing client trust account, established with an eligible financial institution with the Lawyers Trust Fund of Illinois designated as income beneficiary, for the deposit of client or third-person funds as provided in Rule 1.15B(a) and from which funds may be withdrawn upon request as soon as permitted by law.

(c) "Non-IOLTA client trust account" means a separate and identifiable interest- or dividend-bearing client trust account established to hold the funds of a client or third person as provided in Rule 1.15B(a). This type of client trust account is not pooled, and the client or third person for whom it is established should be designated as the income beneficiary.

(d) "Eligible financial institution" is a bank or a savings bank insured by the Federal Deposit Insurance Corporation or an open-end investment company registered with the Securities and Exchange Commission that agrees to provide overdraft notification regarding any type of client trust account as provided in Rule 1.15B(e) and that, with respect to IOLTA accounts, offers IOLTA accounts within the requirements of Rule 1.15B(c).

(e) "Properly payable" refers to an instrument that, if presented in the normal course of business, is in a form requiring payment under the laws of this jurisdiction.

(f) "Money market fund" is an investment company registered under the Investment Company Act of 1940, as amended, that is qualified to hold itself out to investors as a money market fund or the equivalent of a money market fund under Rules and Regulations adopted by the Securities and Exchange Commission pursuant to said Act.

(g) "U.S. Government securities" refers to U.S. Treasury obligations and obligations issued by or guaranteed as to principal and interest by any AAA-rated United States agency or instrumentality thereof. A daily overnight financial repurchase agreement ("repo") may be established only with an institution that is deemed to be "well capitalized" or "adequately capitalized" as defined by applicable federal statutes and regulations.

(h) "Safe harbor" is a yield that, if paid by the financial institution on IOLTA accounts, will be deemed as a comparable return in compliance with Rule 1.15B. The safe harbor yield must be calculated as 70% of the Federal Funds Target Rate or a rate of 1.0% (100 basis points), whichever is higher. When the Federal Funds Target Rate is expressed as a range, the point of reference for the safe harbor yield should be the top of that range.

(i) "Allowable reasonable fees" for IOLTA accounts are per-check charges, per-deposit charges, a fee in lieu of a minimum balance, federal deposit insurance fees, automated investment

("sweep") fees, and a reasonable maintenance fee, if those fees are charged on comparable accounts maintained by non-IOLTA depositors. All other fees are the responsibility of, and may be charged to, the lawyer or law firm maintaining the IOLTA account.

(j) "Unidentified funds" are amounts accumulated in an IOLTA account that cannot be documented as belonging to a client, a third person, or the lawyer or law firm.

Adopted Mar. 1, 2023, eff. July 1, 2023.

Comment

[1] Rule 1.15C provides definitions that pertain specifically to Rule 1.15, Rule 1.15A, and Rule 1.15B. Paragraph (a) defines expansively the meaning of "funds," to include any form of money, including electronic funds. Paragraphs (b) and (c) define an IOLTA account and a non-IOLTA client trust account, respectively. Paragraph (d) defines an eligible financial institution for purposes of the overdraft notification and IOLTA programs. Paragraph (e) defines "promptly payable," a term used in the overdraft notification provisions in Rule 1.15B(e). Paragraphs (f) through (i) define terms pertaining to IOLTA accounts. Paragraph (j) defines "unidentified funds" as that term is used in Rule 1.15B(d).