

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.