

RULE 1.15. SAFEKEEPING PROPERTY

Oklahoma Rules of Professional Conduct

Chapter 1, App. 3-A

Client-Lawyer Relationship

Rule 1.15. Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the written consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of five years after termination of the representation.

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

(c) A lawyer shall deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred.

(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

(e) When in connection with a representation, a lawyer possesses funds or other property in which both the lawyer and another person claim interests, the funds or other property shall be kept separate by the lawyer until there is an accounting and severance of their interests. If a dispute arises concerning their respective interests, the portion in dispute shall be kept separate by the lawyer until the dispute is resolved, and the undisputed portion of the funds shall be promptly distributed.

(f) Where funds or other items of property entrusted to a lawyer have been impressed with a specific purpose as to their use, they shall retain that specific character unless otherwise authorized by a client or third person or prohibited by law. Where funds are impressed with a specific purpose, a lawyer may not subject them to a counterclaim, set off for fees, or subject them to a lien.

(g) Effective January 1, 2009, all members of the Bar who are required under the Oklahoma Rules of Professional Conduct, to maintain a trust account for the deposit of clients' funds entrusted to said lawyer, shall do so and furnish information regarding said account(s) as hereinafter provided. Each member of the Bar shall provide the Oklahoma Bar Association with the name of the bank or banks in which the lawyer carries any trust account, the name under which the account is carried and the account number. The lawyer or law firm shall provide such information within thirty (30) days from the date that said account is opened, closed, changed, or

modified. The Oklahoma Bar Association will provide on-line access and /or paper forms for members to comply with these reporting requirements. Provision will be made for a response by lawyers who do not maintain a trust account and the reason for not maintaining said account. Information received by the Association as a result of this inquiry shall remain confidential except as provided by the Rules Governing Disciplinary Proceedings. Failure of any lawyer to respond giving the information requested by the Oklahoma Bar Association, Oklahoma Bar Foundation or the Office of the General Counsel of the Oklahoma Bar Association will be grounds for appropriate discipline.

(h) A lawyer or law firm that holds funds of clients or third parties in connection with a representation shall create and maintain an interest-bearing demand trust account and shall deposit therein all such funds to the extent permitted by applicable banking laws, that are nominal in amount or to be held for a short period of time in compliance with the following provisions:

(1) the account may be established with any bank or savings and loan association authorized by federal or state law to do business in Oklahoma and insured by the Federal Deposit Insurance Corporation;

(2) the rate of interest payable on the account shall not be less than the rate paid by the depository institution to regular, non-lawyer depositors. Higher rates offered by the institution to customers whose deposits exceed certain time or quantity minimums, such as those offered in the form of certificates of deposit, may be obtained by a lawyer or law firm so long as there is no impairment of the right to withdraw or transfer principal immediately (except as accounts generally may be subject to statutory notification requirements), even though interest may be sacrificed thereby;

(3) the depository institution shall be directed:

(i) to remit interest or dividends, as the case may be, on the average monthly balance in the account, at least quarterly, to the Oklahoma Bar Foundation, Inc. ("Foundation"); and

(ii) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or the law firm for whom the remittance is sent, the account number, the period of time covered by the statement, the rate of interest applied and the average daily balance of the account;

(4) the lawyer or law firm shall not deposit funds belonging to the lawyer or law firm in the account, except that funds necessary to comply with the depository institution's minimum balance requirements for the maintenance of the account or funds needed to pay applicable fees and service charges may be deposited therein;

(5) in determining whether to use the interest-bearing account herein specified, the lawyer shall consider whether the funds to be invested could be utilized to provide a positive net return to the client, taking into consideration the following factors:

(i) the amount of interest that the funds would earn during the period they are expected to be deposited;

(ii) the cost of establishing and administering the account, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to a client's benefit; and

(iii) the capability of financial institutions to calculate and pay interest to individual clients;

(6) in the event that any client asserts a claim against a lawyer based upon such lawyer's determination to place client advances in the account because such balance is nominal in amount or to be held for a short period of time, the Foundation shall, upon written request by such lawyer, review such claim and either:

(i) approve such claim (if such balances are found not to be nominal in amount or short in duration) and remit directly to the claimant any sum of interest remitted to the Foundation on account of such funds; or

(ii) reject such a claim (if such balances are found to be nominal in amount or short in duration) and advise the claimant in writing of the grounds therefor. In the event of any subsequent litigation involving such a claim, the Foundation shall interplead any such sum of interest and shall assume the defense of the action;

(7) The requirements of subparagraph (h) shall not apply if:

(i) it is not feasible for the lawyer or law firm to establish an interest-bearing trust account for reasons beyond the control of the lawyer or law firm, such as the unavailability of a financial institution which offers such an account in the community where the principal office of the lawyer or law firm is situated, or

(ii) those financial institutions which offer such an account in the community where the principal office of the lawyer or law firm is situated impose fees and service charges that routinely exceed the interest generated by the account; and

(8) Information necessary to determine compliance or justifiable reason for noncompliance with the requirements of subparagraph (h) shall be included in the reporting required by subparagraph (g) of this rule. If it appears that a lawyer or law firm has not complied where it is feasible to do so, the matter may be referred to the office of the General Counsel of the Oklahoma Bar Association for appropriate investigation and proceedings.

(i) When a lawyer receives funds subject to this rule that are not required to be deposited in an interest bearing account payable to the Oklahoma Bar Foundation pursuant to (h), the lawyer may create and maintain either an interest bearing or a noninterest bearing account, provided that any interest earned by the funds belongs to the client, shall be distributed according to the client's instructions, and shall not be used by the lawyer for any purpose without the client's express consent.

(j) Beginning January 1, 2008 and in addition to the requirements previously set forth in this Rule, lawyers trust accounts shall be maintained only in financial institutions approved by the Office of the General Counsel. The Office shall establish rules governing approval and termination of approved status for financial institutions, and shall annually publish a list of approved financial institutions.

(k) A financial institution may be approved as a depository for lawyer trust accounts if it files with the Office of the General Counsel an agreement, a Trust Account Overdraft Reporting Agreement (TAORA) form provided by the Office, to report to the Office in the event any

properly payable instrument is presented against a lawyer trust account containing insufficient funds, irrespective of whether or not the instrument is honored. No trust account shall be maintained in any financial institution which does not agree to make such reports. Any such agreement shall apply to all branches of the financial institution and shall not be cancelled except upon thirty (30) days notice in writing to the Office.

(l) The Trust Account Overdraft Reporting Agreement shall provide that all reports made by the financial institution shall be in the following format:

(1) In the case of a dishonored instrument, the report shall be identical to the overdraft notice customarily forwarded to the depositor, and should include a copy of the dishonored instrument, if such a copy is normally provided to depositors.

(2) 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.

(3) 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 (5) banking days of the date of presentation for payment against insufficient funds.

(m) Every lawyer practicing or admitted to practice in this jurisdiction shall be deemed to have consented to the reporting and production requirements mandated by this rule.

(n) 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 this rule.

(o) Definitions

"Financial Institution" – includes banks, savings and loan associations, savings banks and any other business or person which accepts for deposit funds held in trust by lawyers.

"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.

"Notice of dishonor" – refers to the notice, which a financial institution is required to give, under the laws of this jurisdiction, upon presentation of an instrument, which the institution dishonors.

Amended by order of the Supreme Court, SCBD No. 3490; effective January 1, 2009.

