

SAFEKEEPING OF PROPERTY AND TRUST ACCOUNT OVERDRAFT NOTIFICATION

Amendments to Michigan Rule of Professional Conduct 1.15 and 1.15A

Issue

Should Michigan Rules of Professional Conduct 1.15 and 1.15A and accompanying commentary be amended to clarify the requirements for attorneys managing client trust accounts, as provided in Attachment A?

Proponent

The State Bar of Michigan Standing Committee on Professional Ethics

Synopsis

MRPC 1.15 and 1.15A are confusing, vague, and do not provide lawyers adequate guidance with regard to their ethical obligations of safeguarding client or third-party property and managing client trust accounts. This has led to lawyers frequently raising questions to the State Bar Ethics Helpline, to the Michigan Bar Foundation, and at ethics seminars. The Professional Ethics Committee sought to clarify and modernize the rules and respond to gaps in the current rules to help ensure that attorneys within our jurisdiction have a clear understanding of their ethical duties as it relates to managing client and third-party property and funds.

Background

The State Bar of Michigan's Ethics Helpline and the Michigan Bar Foundation regularly receive questions from attorneys about how to properly safekeep clients' property and administer IOLTA trust accounts. While MRPC 1.15 and 1.15A govern these issues, the rules are convoluted and difficult to understand.¹

To help address this problem, the Standing Committee on Professional Ethics formed a subcommittee to conduct a wholesale review of these rules with the goal of clarifying the rules².

As part of their review process, the subcommittee reviewed the ABA Model Rules and rules from all other jurisdictions and identified four main categories of information that should be covered in these rules:

1. MRPC 1.15: Identifying what must be held in an attorney trust account
2. MRPC 1.15A: Describing the types of attorney trust accounts
3. MRPC 1.15B: Identification of records that must be maintained
4. MRPC 1.15C: Setting forth the Trust Account Overdraft Notification requirements

¹ MRPC 1.15 was last substantially amended in 1990; MRPC 1.15A was enacted in 2010 and has not been amended since.

² The subcommittee included Brian Einhorn, Jim Vlasic, Dina Dajani (formerly AGC Liaison), Mark Armitage (ADB Liaison), Robinjit Eagleson (SBM Liaison), and Alecia Chandler (SBM Liaison).

The subcommittee then looked to rules in other jurisdiction to help organize the information currently contained in MRPC 1.15 and 1.15A into these four categories. While many of the proposed amendments merely reorganize the information and provide clarification to the language, the subcommittee made a number of more substantive changes in the proposal. After a detailed review and discussion, the Professional Ethics Committee unanimously approved the subcommittee's recommendations.

The full proposal is attached hereto as Attachment A. The remainder of this proposal will highlight the more substantive changes in the rule proposal.

MRPC 1.15(c) and Comments: Unearned Fees and Disbursing Earned Fees

During ethics seminars and Ethics Helpline calls, lawyers often raise questions about the treatment of unearned fees and the ethical disbursement of earned fees.

Currently, the rules provide inadequate guidance to attorneys. MRPC 1.15(f) provides that a "lawyer may deposit the lawyer's own funds in a client trust account only in an amount reasonably necessary to pay financial institution service charges or fees or obtain a waiver of service charges or fees," and MRPC 1.15(g) provides that "[l]egal fees and expenses that have been paid in advance shall be deposited in a client trust account and may be withdrawn only as fees are earned or expenses incurred."

The State Bar Client Protection Fund has received a number of complaints concerning attorneys misappropriating unearned fees. [Ethics Opinion RI-69](#) provides that unearned fees, regardless of how titled, must remain in a trust account until earned. Despite this, many lawyers believe that if a fee is titled a "fixed" or "flat" fee that it need not be deposited into a trust account. This is not accurate; only nonrefundable fees are excepted from this requirement. See Ethics Opinions [RI-10](#), [R-7](#), and [R-21](#).

Further, attorneys have questions about when they should disburse earned fees out of the trust account. Indeed, an attorney was recently found to commit professional misconduct by leaving funds in her IOLTA for a period longer than permitted by the rules. *Grievance Administrator v Lisa Jeanne Peterson*, 20-51-GA (ADB 2021).

The committee determined that additional guidance is needed for lawyers to understand the ethical obligations regarding unearned fees and disbursing fees from trust accounts. The committee proposes amending section (g), which is section (c) under the proposal, to allow lawyers a reasonable time to disburse earned fees and expenses:

A lawyer must deposit into a client trust account legal fees and expenses that have been paid in advance of services rendered, to be withdrawn by the lawyer only as fees are earned or expenses incurred. Funds belonging to the lawyer must be disbursed to the lawyer within a reasonable time after the fee is earned or the expense paid and the client has been billed, has had an opportunity to dispute the disbursement, or otherwise has agreed to the disbursement.

The comments clarify that, regardless of how they are titled, "a flat fee, fixed fee, retainer, or other title, if the funds are not yet earned, the funds must be deposited into an IOLTA or non-IOLTA." The comments also clarify that 30 days is presumed reasonable for a lawyer to

disburse earned fees: “Depending on the circumstances, disbursement of earned fees from the trust account within a period of thirty-days is presumed to be reasonable under paragraph (c).”

MRPC 1.15(d) and Comments: Safekeeping of Property

The State Bar Ethics Helpline has received numerous questions from attorneys about what client property must be held in a trust account. The current version of MRPC 1.15(d) provides that “lawyer[s] shall hold property of clients or third persons ***in connection with a representation*** separate from the lawyer’s own property. All client or third person funds shall be deposited in an IOLTA or non-IOLTA account. Other property shall be identified as such and appropriately safeguarded.” (Emphasis added).

After in-depth discussion and debate, the subcommittee determined that “in connection with a representation” was vague and could be misinterpreted to cover matters completely unrelated to the practice of law; for example, if acting as a fiduciary for a soccer team, those funds should not be held in an attorney trust account. Therefore, the committee recommends that the comments be amended to clarify that “[t]he obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services.” This clarification in the commentary would assist in the meaning behind the phrase “in connection with a representation.”

MRPC 1.15 Comments: Inability to Locate Rightful Owner

Frequently, lawyers ask questions about what to do with property when they are unable to locate the rightful owner. The comments to MRPC 1.15 incorporate the language in [RI-38](#) and explain that “[i]f the lawyer is unable to locate the rightful owner of funds held in the lawyer’s trust account after making reasonable efforts to locate the owner, the lawyer must comply with the Michigan Uniform Unclaimed Property Act . . .”

MRPC 1.15A Comments: Electronic Transfers

The committee proposes modernizing the rule to include electronic transfers of funds by providing that a “lawyer may accept the electronic transfer of money for services if appropriate safeguards to protect confidentiality and client property are employed.”

MRPC 1.15A Comments: Approved Financial Institution and Eligible Institution

The committee proposes moving provisions concerning Approved Financial Institution and Eligible Institution that are currently in the rules to the comments of the rules. The Michigan Rules of Professional Conduct provide guidance to attorneys on their own ethical conduct. These provisions do not create authority over the financial industry, but instead the requirements for banking activities are contained in contracts that the financial institutions enter into with the State Bar and the Michigan State Bar Foundation. Moreover, the Court approves the Michigan State Bar Foundation IOLTA Handbook, setting forth the requirements for financial institutions to hold IOLTAs.

MRPC 1.15B Lawyer Trust Account Records

This section is entirely new and provides needed guidance on trust account records – consistent with the ethical guidance already provided in Ethics Opinion R-7 – to help lawyers understand what is expected to avoid discipline and be prepared in the event of a request for production of records in the grievance process.

Rule 1.15C Trust Account Overdraft Notification (currently MRPC 1.15A)
Proposed MRPC 1.15C clarifies and reorganizes what is currently in MRPC 1.15A concerning trust account overdraft notifications.

Opposition

None known at this time.

Prior Action by Representative Assembly

April 16, 2005

The Assembly unanimously supported MRPC 1.15(c) (Safekeeping Property) such that nonrefundable fees comply with the factors set forth in the Assembly's recommendation regarding MRPC 1.5(f).

September 14, 2006

Timothy O'Sullivan, Executive Director of the New York State Lawyers Fund for Client Protection introduced the proposed Rule for Trust Overdraft Notification, MRPC 1.15(A). After discussion a motion was made and seconded. The Assembly approved the proposal and authorized the State Bar of Michigan to make any subsequent editorial, clerical, or technical language changes to the proposed rule and comments that may assist in effecting the intent of the proposal after discussion with Michigan financial institutions and others prior to submitting the rule to the Michigan Supreme Court.

Fiscal and Staffing Impact on State Bar of Michigan

None.

STATE BAR OF MICHIGAN POSITION
By vote of the Representative Assembly on April 9, 2022

Should Michigan Rules of Professional Conduct 1.15 and 1.15A and accompanying commentary be amended to clarify the requirements for attorneys managing client trust accounts, as provided in Attachment A?

- (a) Yes
- or
- (b) No

1 **MRPC 1.15 Safekeeping of Property**

2 (a) A lawyer must hold property of clients or third persons that is in a lawyer's
3 possession in connection with a representation separate from the lawyer's own property.

4 All client or third person funds must be kept in a trust account in accordance with MRPC
5 1.15A. Other property must be identified as such and appropriately safeguarded.

6 Complete records of such account funds and other property must be kept by the lawyer
7 and must be preserved in accordance with MRPC 1.15B.

8 (b) Except as otherwise provided herein, only client or third-party funds may be held in a
9 trust account. A lawyer may deposit or retain the lawyer's own funds in a client trust
10 account for the sole purpose of paying or avoiding a financial institution's service
11 charges on that account, but only in an amount reasonably necessary for that purpose.

12 (c) A lawyer must deposit into a client trust account legal fees and expenses that have
13 been paid in advance of services rendered, to be withdrawn by the lawyer only as fees
14 are earned or expenses incurred. Funds belonging to the lawyer must be disbursed to
15 the lawyer within a reasonable time after the fee is earned or the expense paid and the
16 client has been billed, has had an opportunity to dispute the disbursement, or otherwise
17 has agreed to the disbursement.

18 (d) Upon receiving funds or other property in which a client or third person has an
19 interest, a lawyer must promptly notify the client or third person. Except as stated in this
20 rule or otherwise permitted by law or by agreement with the client, a lawyer must

21 promptly deliver to the client or third person any funds or other property that the client
22 or third person is entitled to receive. Upon request by the client or third person, the
23 lawyer must promptly render a full accounting regarding such property.

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

29

30 *MRPC 1.15 Comments:*

31 **Fiduciary Capacity.** The obligations of a lawyer under this Rule are independent of
32 those arising from activity other than rendering legal services. For example, a lawyer
33 who serves only as an escrow agent is governed by the applicable law relating to
34 fiduciaries even though the lawyer does not render legal services in the transaction and
35 is not governed by this Rule. Separate trust accounts may be warranted when
36 administering estate funds or acting in similar fiduciary capacities.

37 **Fiduciary Obligation.** A lawyer must hold property of others with the care required of a
38 professional fiduciary. All property belonging to a client or a third person must be kept
39 separate from the lawyer's business and personal property and, if funds, must be kept in
40 one or more trust accounts. See MRPC 1.15A(a).

41 **Reasonable Time for Disbursing Earned Fees.** Depending on the circumstances,
42 disbursement of earned fees from the trust account within a period of thirty days is
43 presumed to be reasonable under paragraph (c).

44 **Recordkeeping.** A lawyer must maintain, on a regular basis, books, and records in
45 accordance with MRPC 1.15B.

46 **Minimum Balance.** A lawyer may maintain funds in the account to maintain a minimum
47 balance or pay financial institution service charges on that account. Accurate records
48 must be kept regarding which part of the funds are the lawyer's funds.

49 **Disputed Funds.** A third person, such as a client's creditors, may have a just claim
50 against funds or other property in a lawyer's custody. A lawyer may have a duty under
51 applicable law to protect such a third-party claim against wrongful interference by the
52 client, and accordingly may refuse to surrender the property to the client. However, a
53 lawyer should not unilaterally assume to arbitrate a dispute between the client and the
54 third person. The disputed portion of the funds must be held in the trust account and
55 the lawyer should suggest means for prompt resolution of the dispute, such as
56 arbitration. The undisputed portion of the funds or other property must be promptly
57 distributed.

58 **Disputed Other Property.** The lawyer should keep separate all other property held in
59 safekeeping for which the ownership is in dispute and suggest means for prompt
60 resolution of the dispute.

61 **Fees Paid in Advance.** Whether titled a flat fee, fixed fee, retainer, or other title, if the
62 funds are not yet earned, the funds must be deposited into an IOLTA or non-IOLTA. If a
63 lawyer-client relationship is terminated before all services are rendered but after
64 payment of a fixed fee, the lawyer shall refund any portion of the fee which has not
65 been earned. *Plunkett v Capitol Bancorp*, 212 Mich App 325 (1995). An agreement for
66 delivery of legal services for a fixed fee may provide that certain portions of the fee are
67 earned by the lawyer based upon the passage of time, the completion of certain tasks,
68 or any other basis mutually agreed upon by the lawyer and client.

69 **Inability to Locate Rightful Owner.** If the lawyer is unable to locate the rightful owner
70 of funds held in the lawyer's trust account after making reasonable efforts to locate the
71 owner, the lawyer must comply with the Michigan Uniform Unclaimed Property Act, MCL
72 567.221, *et seq.*

73 **MRPC 1.15A Lawyer Trust Accounts**

74 (a) Type of Account. All client or third person funds in connection with a representation
75 must be deposited in a client trust account, which is either an Interest on Lawyer Trust
76 Account (IOLTA) or non-IOLTA.

77 (1) "IOLTA" refers to an interest- or dividend-bearing account, as defined by the
78 Michigan State Bar Foundation, held at an eligible and approved financial
79 institution, from which funds may be withdrawn upon request as soon as
80 permitted by law, and interest is paid to the Michigan State Bar Foundation. An
81 IOLTA may only hold client or third person funds that cannot earn income for the
82 client or third person in excess of the costs incurred to secure such income while
83 the funds are held.

84 (2) "Non-IOLTA" refers to an interest- or dividend-bearing account held at an
85 approved financial institution, from which funds may be withdrawn upon request
86 as soon as permitted by law. A non-IOLTA must be:

87 (A) a separate client trust account for the particular client or matter on
88 which the net interest or dividend will be paid to the client or third person,
89 or

90 (B) a pooled client trust account with subaccounting by the financial
91 institution or by the lawyer, which provides for computation of net interest

92 or dividend earned by each client or third person's funds and the payment
93 of interest or dividend to the client or third person.

94 (b) In determining whether client or third person funds should be deposited in an IOLTA
95 or a non-IOLTA, a lawyer must consider the following factors:

96 (1) the amount of interest or dividends the funds would earn during the
97 period that they are expected to be deposited in light of

98 (A) the amount of the funds to be deposited;

99 (B) the expected duration of the deposit, including the likelihood of delay
100 in the matter for which the funds are held; and

101 (C) the rates of interest or yield at financial institutions where the funds are
102 to be deposited;

103 (2) the cost of establishing and administering non-IOLTAs for the client or
104 third person's benefit, including service charges or fees, the lawyer's services,
105 preparation of tax reports, or other associated costs;

106 (3) the capability of the financial institution or lawyer to calculate and pay
107 income to individual clients or third persons; and

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

110 (c) A lawyer's good-faith decision, after considering the factors set forth in paragraph
111 (b), regarding the deposit or holding of such funds in an IOLTA or non-IOLTA is not
112 reviewable by a disciplinary body.

113 (d) Interest or dividends from any client trust account cannot be available to the lawyer.

114

115 *Comments to MRPC 1.15A:*

116 **Review of Accounts.** A lawyer must review the IOLTA at reasonable intervals to
117 determine whether changed circumstances require the funds to be deposited
118 prospectively in a non-IOLTA.

119 **Electronic Transfers.** A lawyer may accept the electronic transfer of money for services
120 if appropriate safeguards to protect confidentiality and client property are employed.

121 **Approved Financial Institution.** A bank, credit union, or savings and loan association
122 authorized by federal or state law to do business in Michigan, the deposits of which are
123 insured by an agency of the federal government; or an open-end investment company
124 registered with the Securities and Exchange Commission authorized by federal or state
125 law to do business in Michigan. The State Bar of Michigan is authorized to approve
126 financial institutions that have agreed to the Overdraft Notification Agreement and
127 requirements required in MRPC 1.15D. The State Bar of Michigan has established
128 guidelines regarding the process of approving and terminating "approved status" for
129 financial institutions, and for other operational procedures to effectuate this rule in

130 consultation with the Grievance Administrator. The State Bar of Michigan must
131 periodically publish a list of approved financial institutions. A lawyer may not maintain a
132 trust account at a financial institution that has not been approved.

133 **Eligible Institution.** An approved financial institution that is deemed eligible to hold
134 IOLTAs by the Michigan State Bar Foundation. Eligibility is determined based upon
135 factors, including reporting requirements, remittance requirements, and comparable
136 rate requirements, set forth in the Michigan State Bar Foundation IOLTA Handbook, as
137 adopted by the Michigan Supreme Court. The financial institution may charge
138 reasonable fees on IOLTA, including per transaction charges, per deposit charges, a fee
139 in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a
140 reasonable IOLTA administrative or maintenance fee. All other fees are the
141 responsibility of the lawyer maintaining the IOLTA and cannot be charged to the client.
142 Fees or charges in excess of the interest or dividends earned on the account for any
143 month or quarter must not be taken from interest or dividends earned on other IOLTA
144 or from the principal of the account.

145 The Michigan State Bar Foundation must periodically publish a list of eligible
146 institutions. A lawyer may not maintain an IOLTA at a financial institution that is not
147 eligible.

148 **MRPC 1.15B Lawyer Trust Account Records**

149 (a) A lawyer has a duty to maintain ongoing and complete records of client trust accounts,
150 for a period of five years after termination of the representation, including

151 (1) a record of deposits and withdrawals from client trust accounts specifically
152 identifying the date, source, and description of each item deposited, as well as the
153 date, the payee, and purpose of each disbursement.

154 (2) for each separate trust client or third party,

155 (A) the source of all funds deposited;

156 (B) the date of each deposit;

157 (C) the names of all persons for whom the funds are or were held;

158 (D) the amount of such funds;

159 (E) the dates, descriptions, and amounts of charges or withdrawals; and

160 (F) the names of all persons or entities to whom funds were disbursed.

161 (3) copies of all accountings provided to clients or third persons showing the
162 disbursement of funds to them or on their behalf, along with copies of those
163 portions of client files that are reasonably necessary for a complete understanding
164 of the financial transactions pertaining to them.

165 (4) where applicable, all client trust account checkbook registers, check stubs,
166 account statements, records of deposit, electronic transfer documents, and checks
167 or other records of debits.

168 (5) all retainer and compensation agreements with clients.

169 (6) all bills rendered to clients for legal fees and expenses.

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

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

175

176 **Rule 1.15C Trust Account Overdraft Notification**

177 (a) Scope. Lawyers who practice law in this jurisdiction must deposit all funds held in
178 connection with a representation in trust, IOLTA or non-IOLTA, in accordance with Rule
179 1.15 and Rule 1.15A.

180 (b) Requirements. Lawyers must only hold trust accounts, IOLTA or non-IOLTA, in an
181 approved financial institution and comply with the following:

182 (1) For any trust account, the lawyer must complete and submit the applicable
183 notice to financial institution form drafted and published by the Michigan State
184 Bar Foundation or State Bar of Michigan, which constitutes notice to the
185 depository institution that the account is subject to this rule.

186 (2) Lawyers must clearly identify any accounts in which funds are held in trust as
187 "trust account," "escrow account," or "IOLTA".

188 (c) Overdraft Reports. The overdraft notification agreement must provide that all reports
189 made by the financial institution contain the following information in a form acceptable
190 to the Attorney Grievance Commission:

191 (1) The identity of the financial institution;

192 (2) The identity of the account holder;

193 (3) The account number;

194 (4) Information identifying the transaction item; and

195 (5) The amount and date of the overdraft and either the amount of the returned
196 instrument or other dishonored debit to the account and the date returned or
197 dishonored, or the date of presentation for payment and the date paid. The
198 financial institution must provide the information required by the notification
199 agreement within five business days after the date the item was paid or returned
200 unpaid.

201 (d) Costs. The overdraft notification agreement must provide that a financial institution
202 may charge the lawyer for the reasonable cost of providing the reports and records
203 required by this rule, but those costs may not be charged against principal, nor against
204 interest or dividends earned on trust accounts, including earnings on IOLTAs payable to
205 the Michigan State Bar Foundation under Rule 1.15A. Such costs, if charged, shall not be
206 borne by clients.

207 (e) Notification by Lawyers. Every lawyer who receives notification that any instrument
208 presented against the trust account was presented against insufficient funds or that any
209 other debit to such account would create a negative balance in the account (overdraft
210 notification), whether or not the instrument or other debit was honored, must, upon
211 receipt of a request for information or investigation from the Grievance Administrator,
212 provide the Grievance Administrator, in writing, within 21 days after issuance of such
213 request, a full and fair explanation of the cause of the overdraft and how it was
214 corrected.

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

ATTACHMENT A - STRIKEOUT VERSION

1 Rule 1.15. Safekeeping Property.

2 (a) Definitions:

3 ~~(1) “Allowable reasonable fees” for IOLTA accounts are per check charges, per deposit~~
4 ~~charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a~~
5 ~~reasonable IOLTA account administrative or maintenance fee. All other fees are the~~
6 ~~responsibility of, and may be charged to, the lawyer maintaining the IOLTA account. Fees or~~
7 ~~charges in excess of the interest or dividends earned on the account for any month or~~
8 ~~quarter shall not be taken from interest or dividends earned on other IOLTA accounts or~~
9 ~~from the principal of the account.~~

10 ~~(2) An “eligible institution” for IOLTA accounts is a bank, credit union, or savings and loan~~
11 ~~association authorized by federal or state law to do business in Michigan, the deposits of~~
12 ~~which are insured by an agency of the federal government, or is an open-end investment~~
13 ~~company registered with the Securities and Exchange Commission authorized by federal or~~
14 ~~state law to do business in Michigan. The eligible institution must pay no less on an IOLTA~~
15 ~~account than the highest interest rate or dividend generally available from the institution to~~
16 ~~its non-IOLTA customers when the IOLTA account meets the same minimum balance or~~
17 ~~other eligibility qualifications. Interest or dividends and fees shall be calculated in accordance~~
18 ~~with the eligible institution’s standard practice, but institutions may elect to pay a higher~~
19 ~~interest or dividend rate and may elect to waive any fees on IOLTA accounts.~~

20 ~~(3) “IOLTA account” refers to an interest or dividend-bearing account, as defined by the~~
21 ~~Michigan State Bar Foundation, at an eligible institution from which funds may be~~
22 ~~withdrawn upon request as soon as permitted by law. An IOLTA account shall include only~~
23 ~~client or third person funds that cannot earn income for the client or third person in excess~~
24 ~~of the costs incurred to secure such income while the funds are held.~~

25 ~~(4) “Non-IOLTA account” refers to an interest or dividend-bearing account from which~~
26 ~~funds may be withdrawn upon request as soon as permitted by law in banks, savings and~~
27 ~~loan associations, and credit unions authorized by federal or state law to do business in~~
28 ~~Michigan, the deposits of which are insured by an agency of the federal government. Such an~~
29 ~~account shall be established as:~~

30 ~~(A) a separate client trust account for the particular client or matter on which the net~~
31 ~~interest or dividend will be paid to the client or third person, or~~

32 ~~(B) a pooled client trust account with subaccounting by the bank or savings and loan~~
33 ~~association or by the lawyer, which will provide for computation of net interest or~~
34 ~~dividend earned by each client or third person’s funds and the payment thereof to~~
35 ~~the client or third person.~~

36 ~~(5) “Lawyer” includes a law firm or other organization with which a lawyer is professionally~~
37 ~~associated.~~

38 ~~(b) A lawyer shall:~~

39 ~~(1) promptly notify the client or third person when funds or property in which a client or~~
40 ~~third person has an interest is received;~~

41 ~~(2) preserve complete records of such account funds and other property for a period of five~~
42 ~~years after termination of the representation; and~~

43 ~~(3) promptly pay or deliver any funds or other property that the client or third person is~~
44 ~~entitled to receive, except as stated in this rule or otherwise permitted by law or by~~
45 ~~agreement with the client or third person, and, upon request by the client or third person,~~
46 ~~promptly render a full accounting regarding such property.~~

47 ~~(c) When two or more persons (one of whom may be the lawyer) claim interest in the property, it~~
48 ~~shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute~~
49 ~~all portions of the property as to which the interests are not in dispute.~~

50 ~~(d)~~ A lawyer ~~shall~~must hold property of clients or third persons that is in a lawyer's possession in
51 connection with a representation separate from the lawyer's own property. All client or third person
52 funds shall~~must~~ be deposited in an IOLTA or non-IOLTA account~~kept in a trust account in~~
53 accordance with MRPC 1.15A. Other property ~~shall~~must be identified as such and appropriately
54 safeguarded. Complete records of such account funds and other property must be kept by the
55 lawyer and must be preserved in accordance with MRPC 1.15B.

56 ~~(e) In determining whether client or third person funds should be deposited in an IOLTA account~~
57 ~~or a non-IOLTA account, a lawyer shall consider the following factors:~~

58 ~~(1) the amount of interest or dividends the funds would earn during the period that they are~~
59 ~~expected to be deposited in light of~~

60 ~~(a) the amount of the funds to be deposited;~~

61 ~~(b) the expected duration of the deposit, including the likelihood of delay in the~~
62 ~~matter for which the funds are held; and~~

63 ~~(c) the rates of interest or yield at financial institutions where the funds are to be~~
64 ~~deposited;~~

65 ~~(2) the cost of establishing and administering non-IOLTA accounts for the client or third~~
66 ~~person's benefit, including service charges or fees, the lawyer's services, preparation of tax~~
67 ~~reports, or other associated costs;~~

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

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

72 ~~(fb) Except as otherwise provided herein, only client or third-party funds may be held in a trust~~
73 ~~account. A lawyer may deposit or retain the lawyer's own funds in a client trust account for the sole~~
74 ~~purpose of paying or avoiding a financial institution's only in an amount reasonably necessary to pay~~
75 ~~financial institution service charges or fees or to obtain a waiver of service charges on that account,~~
76 ~~but only in an amount reasonably necessary for that purpose or fees.~~

77 ~~(c) A lawyer must deposit into a client trust account legal fees and expenses that have been paid in~~
78 ~~advance of services rendered, to be withdrawn by the lawyer only as fees are earned or expenses~~
79 ~~incurred. Funds belonging to the lawyer must be disbursed to the lawyer within a reasonable time~~
80 ~~after the fee is earned or the expense paid and the client has been billed, has had an opportunity to~~
81 ~~dispute the disbursement, or otherwise has agreed to the disbursement.~~

82 ~~(d) Upon receiving funds or other property in which a client or third person has an interest, a lawyer~~
83 ~~must promptly notify the client or third person. Except as stated in this rule or otherwise permitted~~
84 ~~by law or by agreement with the client, a lawyer must promptly deliver to the client or third person~~
85 ~~any funds or other property that the client or third person is entitled to receive. Upon request by the~~
86 ~~client or third person, the lawyer must promptly render a full accounting regarding such property.~~

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

91 ~~(g) Legal fees and expenses that have been paid in advance shall be deposited in a client trust~~
92 ~~account and may be withdrawn only as fees are earned or expenses incurred.~~

93 ~~(h) No interest or dividends from the client trust account shall be available to the lawyer.~~

94 ~~(i) The lawyer shall direct the eligible institution to:~~

95 ~~(1) remit the interest and dividends from an IOLTA account, less allowable reasonable fees,~~
96 ~~if any, to the Michigan State Bar Foundation at least quarterly;~~

97 ~~(2) transmit with each remittance a report that shall identify each lawyer for whom the~~
98 ~~remittance is sent, the amount of remittance attributable to each IOLTA account, the rate~~
99 ~~and type of interest or dividends applied, the amount of interest or dividends earned, the~~
100 ~~amount and type of fees deducted, if any, and the average account balance for the period in~~
101 ~~which the report is made; and~~

102 ~~(3) transmit to the depositing lawyer a report in accordance with normal procedures for~~
103 ~~reporting to its depositors.~~

104 ~~(j) A lawyer's good faith decision regarding the deposit or holding of such funds in an IOLTA~~
105 ~~account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA account at~~
106 ~~reasonable intervals to determine whether changed circumstances require the funds to be deposited~~
107 ~~prospectively in a non-IOLTA account.~~

108 **Comments:**

109 **Fiduciary Capacity.** The obligations of a lawyer under this Rule are independent of those arising
110 from activity other than rendering legal services. For example, a lawyer who serves only as an escrow
111 agent is governed by the applicable law relating to fiduciaries even though the lawyer does not
112 render legal services in the transaction and is not governed by this Rule. Separate trust accounts may
113 be warranted when administering estate funds or acting in similar fiduciary capacities.

114 **Fiduciary Obligation.** A lawyer must hold property of others with the care required of a
115 professional fiduciary. All property belonging to a client or a third person must be kept separate
116 from the lawyer's business and personal property and, if funds, must be kept in one or more trust
117 accounts. See MRPC 1.15A(a).

118 **Reasonable Time for Disbursing Earned Fees.** Depending on the circumstances, disbursement
119 of earned fees from the trust account within a period of thirty days is presumed to be reasonable
120 under paragraph (c).

121 **Recordkeeping.** A lawyer must maintain, on a regular basis, books, and records in accordance with
122 MRPC 1.15B.

123 **Minimum Balance.** A lawyer may maintain funds in the account to maintain a minimum balance
124 or pay financial institution service charges on that account. Accurate records must be kept regarding
125 which part of the funds are the lawyer's funds.

126 **Disputed Funds.** A third person, such as a client's creditors, may have a just claim against funds or
127 other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such
128 a third-party claim against wrongful interference by the client, and accordingly may refuse to
129 surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a
130 dispute between the client and the third person. The disputed portion of the funds must be held in
131 the trust account and the lawyer should suggest means for prompt resolution of the dispute, such as
132 arbitration. The undisputed portion of the funds or other property must be promptly distributed.

133 **Disputed Other Property.** The lawyer should keep separate all other property held in safekeeping
134 for which the ownership is in dispute and suggest means for prompt resolution of the dispute.

135 **Fees Paid in Advance.** Whether titled a flat fee, fixed fee, retainer, or other title, if the funds are
136 not yet earned, the funds must be deposited into an IOLTA or non-IOLTA. If a lawyer-client
137 relationship is terminated before all services are rendered but after payment of a fixed fee, the lawyer
138 shall refund any portion of the fee which has not been earned. *Plunkett v Capitol Bancorp*, 212 Mich
139 App 325 (1995). An agreement for delivery of legal services for a fixed fee may provide that certain
140 portions of the fee are earned by the lawyer based upon the passage of time, the completion of
141 certain tasks, or any other basis mutually agreed upon by the lawyer and client.

142 **Inability to Locate Rightful Owner.** If the lawyer is unable to locate the rightful owner of funds
143 held in the lawyer's trust account after making reasonable efforts to locate the owner, the lawyer
144 must comply with the Michigan Uniform Unclaimed Property Act, MCL 567.221, et seq.

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163 **Rule 1.15A. Lawyer Trust Accounts ~~Overdraft Notification.~~**

164 (a) Type of Account. All client or third person funds in connection with a representation must be
165 deposited in a client trust account, which is either an Interest on Lawyer Trust Account (IOLTA) or
166 non-IOLTA.

167 (1) “IOLTA” refers to an interest- or dividend-bearing account, as defined by the Michigan
168 State Bar Foundation, held at an eligible and approved financial institution, from which
169 funds may be withdrawn upon request as soon as permitted by law, and interest is paid to
170 the Michigan State Bar Foundation. An IOLTA may only hold client or third person funds
171 that cannot earn income for the client or third person in excess of the costs incurred to
172 secure such income while the funds are held.

173 (2) “Non-IOLTA” refers to an interest- or dividend-bearing account held at an approved
174 financial institution, from which funds may be withdrawn upon request as soon as permitted
175 by law. A non-IOLTA must be:

176 (A) a separate client trust account for the particular client or matter on which the net
177 interest or dividend will be paid to the client or third person, or

178 (B) a pooled client trust account with subaccounting by the financial institution or by
179 the lawyer, which provides for computation of net interest or dividend earned by
180 each client or third person’s funds and the payment of interest or dividend to the
181 client or third person.

182 ~~Scope. Lawyers who practice law in this jurisdiction shall deposit all funds held in trust in~~
183 ~~accordance with Rule 1.15. Funds held in trust include funds held in any fiduciary capacity in~~
184 ~~connection with a representation, whether as trustee, agent, guardian, executor or otherwise.~~

185 (1) ~~“Lawyer” includes a law firm or other organization with which a lawyer is professionally~~
186 ~~associated.~~

187 ~~(2) For any trust account which is an IOLTA account pursuant to Rule 1.15, the “Notice to~~
188 ~~Eligible Financial Institution” shall constitute notice to the depository institution that such~~
189 ~~account is subject to this rule. Lawyers shall clearly identify any other accounts in which~~
190 ~~funds are held in trust as “trust” or “escrow” accounts, and lawyers must inform the~~
191 ~~depository institution in writing that such other accounts are trust accounts for the purposes~~
192 ~~of this rule.~~

193 (b) In determining whether client or third person funds should be deposited in an IOLTA or a non-
194 IOLTA, a lawyer must consider the following factors:

195 (1) the amount of interest or dividends the funds would earn during the period that they are
196 expected to be deposited in light of

197 (A) the amount of the funds to be deposited;

198 (B) the expected duration of the deposit, including the likelihood of delay in the
199 matter for which the funds are held; and

200 (C) the rates of interest or yield at financial institutions where the funds are to be
201 deposited;

202 (2) the cost of establishing and administering non-IOLTAs for the client or third person’s
203 benefit, including service charges or fees, the lawyer’s services, preparation of tax reports, or
204 other associated costs;

205 (3) the capability of the financial institution or lawyer to calculate and pay income to
206 individual clients or third persons; and

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

209 (c) A lawyer's good-faith decision, after considering the factors set forth in paragraph (b), regarding
210 the deposit or holding of such funds in an IOLTA or non-IOLTA is not reviewable by a disciplinary
211 body.

212 (d) Interest or dividends from any client trust account cannot be available to the lawyer.

213 ~~Overdraft Notification Agreement Required. In addition to meeting the requirements of Rule 1.15,~~
214 ~~each bank, credit union, savings and loan association, savings bank, or open-end investment~~
215 ~~company registered with the Securities and Exchange Commission (hereinafter "financial~~
216 ~~institution") referred to in Rule 1.15 must be approved by the State Bar of Michigan in order to~~
217 ~~serve as a depository for lawyer trust accounts. To apply for approval, financial institutions must file~~
218 ~~with the State Bar of Michigan a signed agreement, in a form provided by the State Bar of Michigan,~~
219 ~~that it will submit the reports required in paragraph (d) of this rule to the Grievance Administrator~~
220 ~~and the trust account holder when any properly payable instrument is presented against a lawyer~~
221 ~~trust account containing insufficient funds or when any other debit to such account would create a~~
222 ~~negative balance in the account, whether or not the instrument or other debit is honored and~~
223 ~~irrespective of any overdraft protection or other similar privileges that may attach to such account.~~
224 ~~The agreement shall apply to the financial institution for all of its locations in Michigan and cannot~~
225 ~~be canceled except on 120 days notice in writing to the State Bar of Michigan. Upon notice of~~
226 ~~cancellation or termination of the agreement, the financial institution must notify all holders of trust~~
227 ~~accounts subject to the provisions of this rule at least 90 days before termination of approved status~~
228 ~~that the financial institution will no longer be approved to hold such trust accounts.~~

229 ~~The State Bar of Michigan shall establish guidelines regarding the process of approving and~~
230 ~~terminating "approved status" for financial institutions, and for other operational procedures to~~
231 ~~effectuate this rule in consultation with the Grievance Administrator. The State Bar of Michigan~~
232 ~~shall periodically publish a list of approved financial institutions. No trust account shall be~~

233 ~~maintained in any financial institution that has not been so approved. Approved status under this~~
234 ~~rule does not substitute for “eligible financial institution” status under Rule 1.15.~~

235 ~~(d) Overdraft Reports. The overdraft notification agreement must provide that all reports made by~~
236 ~~the financial institution contain the following information in a form acceptable to the State Bar of~~
237 ~~Michigan:~~

238 ~~(1) The identity of the financial institution~~

239 ~~(2) The identity of the account holder~~

240 ~~(3) The account number~~

241 ~~(4) Information identifying the transaction item~~

242 ~~(5) The amount and date of the overdraft and either the amount of the returned instrument~~
243 ~~or other dishonored debit to the account and the date returned or dishonored, or the date of~~
244 ~~presentation for payment and the date paid.~~

245 ~~The financial institution must provide the information required by the notification agreement within~~
246 ~~five banking days after the date the item was paid or returned unpaid.~~

247 ~~(e) Costs. The overdraft notification agreement must provide that a financial institution is not~~
248 ~~prohibited from charging the lawyer for the reasonable cost of providing the reports and records~~
249 ~~required by this rule, but those costs may not be charged against principal, nor against interest or~~
250 ~~dividends earned on trust accounts, including earnings on IOLTA accounts payable to the Michigan~~
251 ~~State Bar Foundation under Rule 1.15. Such costs, if charged, shall not be borne by clients.~~

252 ~~(f) Notification by Lawyers. Every lawyer who receives notification that any instrument presented~~
253 ~~against the trust account was presented against insufficient funds or that any other debit to such~~
254 ~~account would create a negative balance in the account, whether or not the instrument or other~~
255 ~~debit was honored, shall, upon receipt of a request for investigation from the Grievance~~

256 ~~Administrator, provide the Grievance Administrator, in writing, within 21 days after issuance of~~
257 ~~such request, a full and fair explanation of the cause of the overdraft and how it was corrected.~~

258 ~~(g) Every lawyer practicing or admitted to practice in this jurisdiction shall, as a condition thereof, be~~
259 ~~conclusively deemed to have consented to the requirements mandated by this rule and shall be~~
260 ~~deemed to have consented under applicable privacy laws, including but not limited to those of the~~
261 ~~Gramm-Leach-Bliley Act, 15 USC 6801, to the reporting of information required by this rule.~~

262 **Comments:**

263 **Review of Accounts.** A lawyer must review the IOLTA at reasonable intervals to determine
264 whether changed circumstances require the funds to be deposited prospectively in a non-IOLTA.

265 **Electronic Transfers.** A lawyer may accept the electronic transfer of money for services if
266 appropriate safeguards to protect confidentiality and client property are employed.

267 **Approved Financial Institution.** A bank, credit union, or savings and loan association authorized
268 by federal or state law to do business in Michigan, the deposits of which are insured by an agency of
269 the federal government; or an open-end investment company registered with the Securities and
270 Exchange Commission authorized by federal or state law to do business in Michigan. The State Bar
271 of Michigan is authorized to approve financial institutions that have agreed to the Overdraft
272 Notification Agreement and requirements required in MRPC 1.15D. The State Bar of Michigan has
273 established guidelines regarding the process of approving and terminating “approved status” for
274 financial institutions, and for other operational procedures to effectuate this rule in consultation with
275 the Grievance Administrator. The State Bar of Michigan must periodically publish a list of approved
276 financial institutions. A lawyer may not maintain a trust account at a financial institution that has not
277 been approved.

278 **Eligible Institution.** An approved financial institution that is deemed eligible to hold IOLTAs by
279 the Michigan State Bar Foundation. Eligibility is determined based upon factors, including reporting

280 requirements, remittance requirements, and comparable rate requirements, set forth in the Michigan
281 State Bar Foundation IOLTA Handbook, as adopted by the Michigan Supreme Court. The financial
282 institution may charge reasonable fees on IOLTA, including per transaction charges, per deposit
283 charges, a fee in lieu of a minimum balance, federal deposit insurance fees, sweep fees, and a
284 reasonable IOLTA administrative or maintenance fee. All other fees are the responsibility of the
285 lawyer maintaining the IOLTA and cannot be charged to the client. Fees or charges in excess of the
286 interest or dividends earned on the account for any month or quarter must not be taken from
287 interest or dividends earned on other IOLTA or from the principal of the account.
288 The Michigan State Bar Foundation must periodically publish a list of eligible institutions. A lawyer
289 may not maintain an IOLTA at a financial institution that is not eligible.

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302 **MRPC 1.15B. Lawyer Trust Account Records**

303 (a) A lawyer has a duty to maintain ongoing and complete records of client trust accounts, for a
304 period of five years after termination of representation, including

305 (1) a record of deposits and withdrawals from client trust accounts specifically identifying the
306 date, source, and description of each item deposited, as well as the date, the payee, and
307 purpose of each disbursement.

308 (2) for each separate trust client or third party,

309 (A) the source of all funds deposited;

310 (B) the date of each deposit;

311 (C) the names of all persons for whom the funds are or were held;

312 (D) the amount of such funds;

313 (E) the dates, descriptions, and amounts of charges or withdrawals; and

314 (F) the names of all persons or entities to whom funds were disbursed.

315 (3) copies of all accountings provided to clients or third persons showing the disbursement
316 of funds to them or on their behalf, along with copies of those portions of client files that
317 are reasonably necessary for a complete understanding of the financial transactions
318 pertaining to them.

319 (4) where applicable, all client trust account checkbook registers, check stubs, account
320 statements, records of deposit, electronic transfer documents, and checks or other records of
321 debits.

322 (5) all retainer and compensation agreements with clients.

323 (6) all bills rendered to clients for legal fees and expenses.

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

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

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347 **MRPC 1.15C. Trust Account Overdraft Notification**

348 (a) Scope. Lawyers who practice law in this jurisdiction must deposit all funds held in connection
349 with a representation in trust, IOLTA or non-IOLTA, in accordance with Rule 1.15 and 1.15A.

350 (b) Requirements. Lawyers must only hold trust accounts, IOLTA or non-IOLTA, in an approved
351 financial institution and comply with the following:

352 (1) For any trust account, the lawyer must complete and submit the applicable notice to
353 financial institution form drafted and published by the Michigan State Bar Foundation or
354 State Bar of Michigan, which constitutes notice to the depository institution that the account
355 is subject to this rule.

356 (2) Lawyers must clearly identify any accounts in which funds are held in trust as “trust
357 account,” “escrow account,” or “IOLTA”.

358 (c) Overdraft Reports. The overdraft notification agreement must provide that all reports made by
359 the financial institution contain the following information in a form acceptable to the Attorney
360 Grievance Commission:

361 (1) The identity of the financial institution;

362 (2) The identity of the account holder;

363 (3) The account number;

364 (4) Information identifying the transaction item; and

365 (5) The amount and date of the overdraft and either the amount of the returned

366 instrument or other dishonored debit to the account and the date returned or

367 dishonored, or the date of presentation for payment and the date paid. The financial

368 institution must provide the information required by the notification agreement

369 within five business days after the date the item was paid or returned unpaid.

370 (d) Costs. The overdraft notification agreement must provide that a financial institution may charge
371 the lawyer for the reasonable cost of providing the reports and records required by this rule, but
372 those costs may not be charged against principal, nor against interest or dividends earned on trust
373 accounts, including earnings on IOLTAs payable to the Michigan State Bar Foundation under Rule
374 1.15A. Such costs, if charged, shall not be borne by clients.

375 (e) Notification by Lawyers. Every lawyer who receives notification that any instrument presented
376 against the trust account was presented against insufficient funds or that any other debit to such
377 account would create a negative balance in the account (overdraft notification), whether or not the
378 instrument or other debit was honored, must, upon receipt of a request for information or
379 investigation from the Grievance Administrator, provide the Grievance Administrator, in writing,
380 within 21 days after issuance of such request, a full and fair explanation of the cause of the overdraft
381 and how it was corrected.

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