

Wyoming Rules of Professional Conduct for Attorneys at Law

Rule 1.15. Safekeeping property.*

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. All client or third person funds shall be deposited in either an "IOLTA Program Account" or "Non-IOLTA Program Account." A lawyer may elect not to maintain an IOLTA Program Account by following the procedure set forth in Rule 1.15A subsection (f). Other property shall be identified as belonging to the appropriate entity and appropriately safeguarded.

(1) "IOLTA Program Account" refers to an account, at an "IOLTA-Eligible Institution" from which funds may be withdrawn upon request as soon as permitted by law. An IOLTA Program Account shall include only client or third person funds that cannot earn income for the client or third person in excess of the costs incurred to secure such income while the funds are held. All other client or third person funds shall be deposited into a Non-IOLTA Program Account. A member may place an IOLTA Program Account only in an IOLTA-Eligible Institution. An IOLTA-Eligible Institution is a bank, savings and loan association or credit union deemed by the Wyoming State Bar Foundation to meet the requirements of Rules 1.15 and 1.15A of the Wyoming Rules of Professional Conduct. The Wyoming State Bar Foundation will maintain and regularly publish a list of IOLTA-Eligible Institutions and shall provide the list upon request.

(2) "Non-IOLTA Program Account" refers to a trust account, from which funds may be withdrawn upon request as soon as permitted by law in banks, savings and loan associations, and credit unions authorized by federal or state law to do business in Wyoming, the deposits of which are insured by an agency of the federal government. Any net interest or dividend earned on such an account shall be paid to the client or third person. Such an account shall be established as:

- (I) A separate client trust account for the particular client or matter; or
- (ii) A pooled client trust account with subaccounting by the depository institution or by the lawyer. Such subaccounting shall provide for computation of net interest or dividend earned by each client or third person's funds and the payment thereof to the client or third person.

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

- (I) the amount of interest or dividends the funds would earn during the period that they are expected to be deposited in light of the amount of the funds to be deposited; the expected duration of the deposit, including the likelihood of delay in the matter for which the funds are held; and the rates of interest or yield at financial institutions where the funds are to be deposited;
- (ii) the cost of establishing and administering Non-IOLTA Program Accounts for the client or third person's benefit, including service charges or fees, the lawyer's services, preparation of tax reports, or other associated costs;
- (iii) the capability of financial institutions or lawyers to calculate and pay income to individual clients or third persons; and

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

(4) A lawyer's good-faith decision regarding the deposit or holding of all client or third person funds in an IOLTA Program Account is not reviewable by a disciplinary body. A lawyer shall review the IOLTA Program Account at reasonable intervals to determine whether changed circumstances require the funds to be deposited prospectively in a Non-IOLTA Account.

(b) Any such account shall comply with the following provisions:

(1) The account shall include all client or third party funds except those funds deposited pursuant to the written instructions of the client or third party in a special interest bearing account with the interest being paid pursuant to the written instructions of the client or third party.

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

(3) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person, provided however, notification to interested parties whose funds are nominal in amount or to be held for a short period of time is not required. The determination of whether the funds are nominal in amount or to be held for a short period of time rests in the sound judgment of each lawyer or law firm.

(4) The account must be in the name of the lawyer or the law firm and be clearly labeled or designated as a "trust account."

(5) The depository institution holding such accounts must be a depository bank or savings and loan association or credit union authorized by federal or state law to do business in Wyoming, whose deposits are insured by an agency of the federal government, or any open-end investment company registered with the Securities and Exchange Commission and authorized by federal or state law to do business in Wyoming. In addition, a depository institution must either (i) maintain a physical office in the state of Wyoming or (ii) be owned by a bank holding company regulated by the Federal Reserve System, of which a subsidiary federally-insured depository bank or savings and loan association or credit union maintains a physical office in the state of Wyoming.

(6) The account shall be an "Interest- or Dividend-Bearing Account" unless the lawyer elects not to maintain an IOLTA Program Account by following the procedure set forth in Rule 1.15A subsection (f) and such funds are either nominal in amount or to be held for a short period of time such that the funds cannot earn income in excess of the costs to secure that income. "Interest- or Dividend-Bearing Account" means: (i) an interest-bearing checking account; (ii) a checking account paying preferred interest rates, such as money market or indexed rates; (iii) a government interest-bearing checking account such as accounts used for municipal deposits; (iv) a business checking account with an automated investment sweep feature which is a daily (overnight) financial repurchase agreement or an open-end money market fund; or (v) any other suitable interest-bearing deposit account offered by the institution to its non-IOLTA customers. A daily financial institution repurchase agreement must be fully collateralized by securities, of which at least 80% shall be U.S. Government Securities, and may be established only with an eligible institution that is "well-capitalized" or "adequately capitalized" as those terms are

defined by applicable federal statutes and regulations. An open-end money-market fund must be comprised of at least 80% U.S. Government Securities, (or repurchase agreements fully collateralized by securities, of which at least 80% shall be U.S. Government Securities), must hold itself out as a "money-market fund" as that term is defined by federal statutes and regulations under the Investment Company Act of 1940, and, at the time of the investment, must have total assets of at least \$250,000,000. United States Government Securities are defined to include debt securities of Government Sponsored Enterprises, such as, but not limited to, securities of, or backed by, the Federal National Mortgage Association, the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation.

Rule 1.15A. Interest on lawyers trust accounts program.*

(a) The depository institution holding an IOLTA Program Account shall:

(1) remit, each month, interest or dividends, net of any service charges or fees, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice for other depositors, to the Wyoming State Bar Foundation;

(2) transmit with each remittance to the Wyoming State Bar Foundation in an electronic format to be specified by the Wyoming State Bar Foundation, a statement identifying each lawyer or law firm for whose IOLTA Program Account the remittance is sent, the amount of the remittance attributable to each IOLTA Program Account, the rate and type of interest or dividends applied, the amount of interest or dividends remitted, the amount and type of charges or fees deducted, if any, and the average account balance for the period in which the report is made; 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 canceled except upon 30 days' notice in writing to the Wyoming State Bar Foundation; and

(3) transmit to the depositing lawyer or law firm at the same time a report showing the amount paid to the Wyoming State Bar Foundation, the rate of interest applied, and the average account balance of the period for which the report is made.

(b) The Wyoming State Bar Foundation shall maintain records of each remittance and statement received from depository institutions for a period of at least three years and shall, upon request, promptly make available to a lawyer or law firm the records and statements pertaining to that lawyer's or law firm's account.

(c) All interest transmitted to the Wyoming State Bar Foundation shall be distributed by the entity for the purposes of:

(1) providing legal services to the poor of Wyoming, who would otherwise be unable to obtain legal assistance;

(2) providing public education projects which promote a knowledge and awareness of the law;

(3) providing projects which improve the administration of justice; or

(4) providing for the reasonable costs of administration of interest earned on accounts

under this rule. Subject to the fulfillment of fund purposes, the Wyoming State Bar Foundation shall have the sole discretion of allocation, division, and distribution.

(d) Lawyers, by maintaining either an IOLTA Program Account or Non-IOLTA Program Account, are deemed to consent to the reporting requirements required by these rules.

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

(f) A lawyer or law firm that elects to decline to maintain the required account as an IOLTA Program Account shall submit a Notice of Declination in writing to the Executive Director of the Wyoming State Bar by October 1 of the year preceding that to which the Notice of Declination will apply.

(1) Notwithstanding the foregoing, any lawyer or law firm may petition the Wyoming State Bar at any time and for good cause shown for leave to file a Notice of Declination at a time other than those specified above. An election to decline participation may be revoked at any time by filing a request for enrollment in the program.

(2) A lawyer or law firm that does not file with the Executive Director of the Wyoming State Bar a Notice of Declination in accordance with the provisions of this rule shall be required to maintain the required account as an IOLTA Program Account in accordance with this Rule.

***The amendments to this rule shall take effect January 1, 2009, by Order of the Wyoming Supreme Court.**

Comment. - [1] A lawyer should hold property of others with the care required of a professional fiduciary. Securities should be kept in a safe deposit box, except when some other form of safekeeping is warranted by special circumstances. All property which is the property of clients or third persons should be kept separate from the lawyer's business and personal property and, if monies, in one or more trust accounts. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[2] Lawyers often receive funds from third parties from which the lawyer's fee will be paid. If there is risk that the client may divert the funds without paying the fee, the lawyer is not required to remit the portion from which the fee is to be paid. However, a lawyer may not hold funds to coerce a client into accepting the lawyer's contention. The disputed portion of the funds should be kept in trust and the lawyer should suggest means for prompt resolution of the dispute, such as arbitration. The undisputed portion of the funds shall be promptly distributed.

[3] Third parties, such as a client's creditors, may have just claims against funds or other property in a lawyer's custody. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client, and accordingly may refuse to surrender the property to the client. However, a lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party.

[4] The obligations of a lawyer under this Rule are independent of those arising from activity other than rendering legal services. For example, a lawyer who serves as an escrow agent is governed by the applicable law relating to fiduciaries even though the lawyer does not render legal services in the transaction.

[5] A "client's security fund" provides a means through the collective efforts of the bar to reimburse persons who have lost money or property as a result of dishonest conduct of a lawyer. Where such a fund has been established, a lawyer should participate.