

In the Indiana Supreme Court

Cause No. 24S-MS-1



Order Amending Rules of Professional Conduct

Under the authority vested in this Court to provide for the procedures employed in all courts of this state and this Court's inherent authority to supervise the administration of all courts in this state, Rule 1.15 of the Indiana Rules of Professional Conduct is amended as follows (deletions shown by ~~strikethrough~~ and new text shown by underlining):

Rules of Professional Conduct

...

Rule 1.15. Safekeeping Property

...

(f) Except as provided in paragraph (g) of this rule, a lawyer or law firm shall create and maintain an interest-bearing trust account for clients' funds which are nominal in amount or to be held for a short period of time so that they could not earn income for the client in excess of the costs incurred to secure such income (hereinafter sometimes referred to as an "IOLTA account") in compliance with the following provisions:

...

(6) Lawyers or law firms depositing client funds in an IOLTA account established pursuant to this rule shall, on forms approved by the Foundation, direct the depository institution:

(Aa) to remit all interest or dividends, net of reasonable service charges or fees, if any, on the average monthly balance in the account, or as otherwise computed in accordance with the institution's standard accounting practice, at least quarterly, solely to the Foundation. The depository institution may remit the interest or dividends on all of its IOLTA accounts in a lump sum; however, the depository institution must provide, for each individual IOLTA account, the information to the lawyer or law firm and to the Foundation required by subparagraphs (f)(6)(B) and (f)(6)(C) of this rule;

(Bb) to transmit with each remittance to the Foundation a statement showing the name of the lawyer or law firm for whom the remittance is sent, the rate of interest applied, and such other information as is reasonably required by the Foundation;

(Ce) to transmit to the depositing lawyer or law firm a periodic account statement for the IOLTA account reflecting the amount of interest paid to the Foundation, the rate of interest applied, the average account balance for the period for which the interest was earned, and such other information as is reasonably required by the Foundation; and

~~(Dd)~~ to waive any reasonable service charge that exceeds the interest earned on any IOLTA account during a reporting period (“excess charge”), or bill the excess charge to the Foundation.

...

(9) All funds transmitted to the Foundation pursuant to this Rule shall be held, invested and distributed periodically in accordance with a plan of distribution which shall be prepared by the Foundation and approved at least biennially by the Supreme Court of Indiana, for the following purposes:

~~(Aa)~~ to pay or provide for all costs, expenses and fees associated with the administration of the funds under this Rule;

~~(Bb)~~ to establish appropriate reserves;

~~(Ce)~~ to support civil legal assistance and pro bono programs in Indiana;

~~(Dd)~~ for such other programs for the benefit of the public as are specifically approved by the Supreme Court from time to time.

...

(g) Every lawyer admitted to practice in this State shall annually certify to this Court, pursuant to Ind.Admis.Disc.R. 2(f), that all client funds which are nominal in amount or to be held for a short period of time by the lawyer or the lawyer's law firm so that they could not earn income for the client in excess of the costs incurred to secure such income are held in an IOLTA account, or that the lawyer is exempt because:

(1) the lawyer or law firm's client trust account has been exempted and removed from the IOLTA program by the Foundation pursuant to subparagraph (f)(7) of this rule; or

(2) the lawyer:

~~(Aa)~~ is not engaged in the private practice of law;

~~(Bb)~~ is not engaged in the private practice of law in Indiana that involves holding client or third party funds in trust;

~~(Ce)~~ does not have an office within the State of Indiana;

~~(Dd)~~ is a judge, attorney general, public defender, U.S. attorney, district attorney, on duty with the armed services or employed by a local, state or federal government, and is not otherwise engaged in the private practice of law;

~~(Ee)~~ is a corporate counsel or teacher of law and is not otherwise engaged in the private practice of law;

~~(Ff)~~ has been exempted by an order of general or special application of this Court which is cited in the certification; or

~~(Gg)~~ compliance with paragraph (f) would work an undue hardship on the lawyer or would be extremely impractical, based either on the geographic distance between the lawyer's principal office and the closest depository institution which is participating in the IOLTA program, or on other compelling and necessitous factors.

(h) In the exercise of a lawyer's good faith judgment in determining whether funds of a client can earn income in excess of costs, a lawyer shall take into consideration the following factors:

- (1) the amount of interest which the funds would earn during the period they are expected to be deposited;
- (2) the cost of establishing and administering the account, including the cost of the lawyer's services, accounting fees, and tax reporting costs and procedures;
- (3) the capability of a financial institution, a lawyer or a law firm to calculate and pay income to individual clients;
- (4) any other circumstances that affect the ability of the client's funds to earn a net return for the client; and
- (5) the nature of the transaction(s) involved. The determination of whether a client's funds are nominal or short-term so that they could not earn income in excess of costs shall rest in the sound judgment of the lawyer or law firm. No lawyer shall be charged with an ethical impropriety or other breach of professional conduct based on the good faith exercise of such judgment.

(i) The Foundation is hereby designated as the entity to organize and administer the IOLTA program established by paragraph (f) of this rule in accordance with the following provisions:

- (1) The Board of Directors of the Foundation (the "Board") shall have general supervisory authority over the administration of the IOLTA program, subject to the continuing jurisdiction of the Supreme Court.
- (2) The Board shall receive the net earnings from IOLTA accounts established in accordance with paragraph (f) of this rule and shall make appropriate temporary investments of IOLTA program funds pending disbursement of such funds.
- (3) The Board shall, by grants, appropriations and other appropriate measures, make disbursements from the IOLTA program funds, including current and accumulated net earnings, in accordance with the plan of distribution approved by the Supreme Court from time to time referenced in subparagraph (f)(9) of this rule.
- (4) The Board shall maintain proper records of all IOLTA program receipts and disbursements, which records shall be audited or reviewed annually by a certified public accountant selected by the Board. The Board shall annually cause to be presented to the Supreme Court a reviewed or audited financial statement of its IOLTA program receipts and expenditures for the prior year. The report shall not identify any clients of lawyers or law firms or reveal confidential information. The statement shall be filed with the Clerk of the Supreme Court and a summary thereof shall be published in the next available issue of one or more state-wide publications for attorneys, such as *Res Gestae* and *The Indiana Lawyer*.
- (5) The president and other members of the Board shall administer the IOLTA program without compensation, but may be reimbursed for their reasonable and necessary expenses incurred in the performance of their duties, and shall be indemnified by the Foundation against any liability or expense arising directly or indirectly out of the good faith performance of their duties.
- (6) The Board shall monitor attorney compliance with the provisions of this rule and periodically report to the Supreme Court those attorneys not in compliance with the provisions of Rule 1.15.

(7) In the event the IOLTA program or its administration by the Foundation is terminated, all assets of the IOLTA program, including any program funds then on hand, shall be transferred in accordance with the Order of the Supreme Court terminating the IOLTA program or its administration by the Foundation; provided, such transfer shall be to an entity which will not violate the requirements the Foundation must observe regarding transfer of its assets in order to retain its tax-exempt status under the Internal Revenue Code of 1986, as amended, or similar future provisions of law.

~~(h)~~ A lawyer, law firm, or estate of a deceased lawyer with unclaimed or unidentified funds in a client trust account shall take reasonable efforts to locate and to distribute the funds to the owner. Unclaimed funds are monies which a lawyer or firm is holding in a client trust account that should be distributed to a client or third party. Unidentified funds are monies for which the lawyer or firm cannot identify an owner.

(1) If a lawyer, law firm, or estate of a deceased lawyer cannot identify or locate the owner of funds in its IOLTA or non-IOLTA trust account, it shall pay the funds to the Indiana Bar Foundation for use in accordance with this Rule. Once the lawyer or law firm has an obligation to pay or distribute these funds, the lawyer or law firm has a period of five (5) years to identify or locate the owner of funds.

(2) A lawyer's or law firm's reasonable efforts to identify the owner of funds include a review of transaction records, client ledgers, case files, and any other relevant fee records. Reasonable efforts to locate the owner of funds include periodic correspondence of the type contemplated by the lawyer's or law firm's relationship with the client, former client, or third party. Should such correspondence prove unsuccessful, a lawyer's or law firm's reasonable efforts include efforts similar to those that would be undertaken when attempting to locate a person for service of process, such as examinations of local telephone directories, courthouse records, voter registration records, local tax records, motor vehicle records, or the use of consolidated online search services that access such records.

(3) A lawyer, law firm or lawyer's estate shall certify those reasonable efforts to locate or identify the owner before remitting such funds to the Indiana Bar Foundation. At the time such funds are remitted, the lawyer shall submit to the Indiana Bar Foundation the name and last known address of each person appearing from the lawyer's or law firm's records to be entitled to the funds, if known, along with the amount of any unclaimed or unidentified funds.

(4) If, within five (5) years of remitting unclaimed or unidentified funds to the Indiana Bar Foundation, the lawyer, law firm, or deceased lawyer's estate identifies and locates the owner of funds paid, the Indiana Bar Foundation shall refund the sum to the lawyer, law firm, or deceased lawyer's estate. The lawyer, law firm, or deceased lawyer's estate shall submit to the Foundation a verification attesting that the funds have been returned to the owner. The Indiana Bar Foundation shall maintain sufficient reserves to pay all claims for such funds.

(5) A lawyer's or law firm's remittance to the Indiana Bar Foundation under this paragraph ~~(h)~~ shall not constitute misconduct or grounds for discipline if the lawyer or law firm exercised reasonable efforts to locate the owner and distribute the funds, and remitted the funds to the

Indiana Bar Foundation in good faith. A lawyer's or law firm's duty to locate the owner of unclaimed funds shall terminate once they have made reasonable efforts to locate the owner of those funds for a period of five (5) years, and they have remitted the funds to the Indiana Bar Foundation. A lawyer or law firm shall include a provision in its engagement letter or fee agreement describing this Rule 1.15 process for unclaimed and unidentified funds. It is professional misconduct under Rule 8.4 of Indiana's Rules of Professional Conduct for a lawyer or law firm to remit unidentified or unclaimed funds to the Foundation prior to making reasonable efforts to locate the owner and distribute the funds.

Comment


...

[7] For purposes of paragraph (j~~h~~), unidentified funds refer to funds accumulated in an IOLTA account that cannot be reasonably documented as belonging to a client, former client, third party, or the lawyer or law firm. Unclaimed funds refer to funds for which a client, former client, or third party appears to have an interest, but has not responded to the lawyer's or law firm's reasonable efforts to encourage the client, former client, or third party to claim their rightful funds.

...

These amendments are effective October 1, 2024.

Done at Indianapolis, Indiana, on 9/20/2024 .



Loretta H. Rush
Chief Justice of Indiana

All Justices concur.