

Rule 1.15—Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. Funds of clients or third persons that are in the lawyer's possession (trust funds) shall be kept in one or more trust accounts maintained in accordance with paragraph (b). 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) All trust funds shall be deposited with an "approved depository" as that term is defined in Rule XI of the Rules Governing the District of Columbia Bar. Trust funds that are nominal in amount or expected to be held for a short period of time, and as such would not be expected to earn income for a client or third-party in excess of the costs incurred to secure such income, shall be held at an approved depository and in compliance with the District of Columbia's Interest on Lawyers Trust Account (DC IOLTA) program. The title on each DC IOLTA account shall include the name of the lawyer or law firm that controls the account, as well as "DC IOLTA Account" or "IOLTA Account." The title on all other trust accounts shall include the name of the lawyer or law firm that controls the account, as well as "Trust Account" or "Escrow Account." The requirements of this paragraph (b) shall not apply when a lawyer is otherwise compliant with the contrary mandates of a tribunal or the jurisdiction in which the lawyer principally practices. A lawyer shall, in the form and manner prescribed by the District of Columbia Bar Foundation (Foundation), (1) advise the Foundation of the establishment and closing of a DC IOLTA Account; and (2) certify periodically to the Foundation compliance with the IOLTA requirements of this rule or exemption from those requirements.

(c) 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, subject to Rule 1.6.

(d) When in the course of representation a lawyer is in possession of property in which interests are claimed by the lawyer and another person, or by two or more persons to each of whom the lawyer may have an obligation, the property shall be kept separate by the lawyer until there is an accounting and severance of interests in the property. If a dispute arises concerning the respective interests among persons claiming an interest in such property, the undisputed portion shall be distributed and the portion in dispute shall be kept separate by the lawyer until the dispute is resolved. Any funds in dispute shall be deposited in a separate account meeting the requirements of paragraphs (a) and (b).

(e) Advances of unearned fees and unincurred costs shall be treated as property of the client pursuant to paragraph (a) until earned or incurred unless the client gives

informed consent to a different arrangement. Regardless of whether such consent is provided, Rule 1.16(d) applies to require the return to the client of any unearned portion of advanced legal fees and unincurred costs at the termination of the lawyer's services in accordance with Rule 1.16(d).

(f) Nothing in this rule shall prohibit a lawyer from placing a small amount of the lawyer's funds into a trust account for the sole purpose of defraying bank charges that may be made against that account.

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 that 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 maintained with financial institutions meeting the requirements of this rule. This rule, among other things, sets forth the longstanding prohibitions of the misappropriation of entrusted funds and the commingling of entrusted funds with the lawyer's property. This rule also requires that a lawyer safeguard "other property" of clients, which may include client files. For guidance concerning the disposition of closed client files, *see* D.C. Bar Legal Ethics Committee Opinion No. 283.

[2] Paragraph (a) concerns trust funds arising from "a representation." 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. Separate trust accounts may be warranted when administering estate monies or acting in similar fiduciary capacities.

[3] Paragraph (b) mandates where trust deposits shall be held and further mandates participation in the District of Columbia's IOLTA program. This paragraph is intended to reach every lawyer who is admitted in this jurisdiction regardless of where the lawyer principally practices, except when the lawyer is required by a tribunal, or by a foreign jurisdiction where the lawyer principally practices, to follow a contrary rule regarding particular trust deposits. This rule anticipates that a law firm with lawyers admitted to practice in the District of Columbia may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions where firm lawyers principally practice. An IOLTA program (however named) in the foreign jurisdiction where a lawyer principally practices will be deemed mandatory even though a lawyer has the right to opt out of, or not to opt into, that program; provided, however, that a lawyer who exercises a right to opt out of, or not to opt into, a foreign jurisdiction's IOLTA program (however named) shall not be excused from participating in the District of Columbia's IOLTA program. To the extent paragraph (b) does not resolve a multi-jurisdictional conflict, *see* Rule 8.5. Nothing in this rule is intended to limit the power of any tribunal to direct *pro hac*

vice, to hold trust funds as may be directed by that tribunal. This rule contemplates that a law firm may, in the form and manner prescribed by the Foundation, act in behalf of lawyers associated with the firm to advise the Foundation of the establishment and closing of DC IOLTA Accounts and to certify periodically to the Foundation compliance by such lawyers with the IOLTA requirements of this rule or exemption from those requirements. With regard to monitoring by the Foundation of compliance with the IOLTA reporting requirements of this rule, see Rule XI § 20(h) of the Rules Governing the DC Bar. For a list of approved depositories and additional information regarding DC IOLTA program compliance, see Rule XI and the Foundation's web site www.dcbfoundation.org.

[4] The determination, under paragraph (b), whether trust funds are not expected to earn income in excess of costs, rests in the sound judgment of the lawyer. The lawyer should review trust practices at reasonable intervals to determine whether circumstances require further action with respect to the funds of any client or third party. Because paragraph (b) is a lawyer-specific obligation, this rule anticipates that a law firm may be obligated to maintain accounts compliant with the IOLTA rules of other jurisdictions, to the extent the lawyers in that firm do not all principally practice in the District of Columbia.

[5] Paragraphs (c) and (d) recognize that lawyers often receive funds from third parties from which the lawyer's fee will be paid. The lawyer is not required to remit to the client funds that the lawyer reasonably believes represent fees owed. 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 should be promptly distributed.

[6] 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. *See* D.C. Bar Legal Ethics Committee Opinion 293.

[7] Paragraph (e) permits advances against unearned fees and unincurred costs to be treated as either the property of the client or the property of the lawyer, but absent informed consent by the client to a different arrangement, the rule's default position is that such advances be treated as the property of the client, subject to the restrictions provided in paragraph (a). In any case, at the termination of an engagement, advances against fees that have not been incurred must be returned to the client as provided in Rule 1.16(d). For the definition of "informed consent," *see* Rule 1.0(e).

[8] With respect to property that constitutes evidence, such as the instruments or proceeds of crime, *see* Rule 3.4(a).