

Tennessee Supreme Court Rule 8, RPC 1.15

SAFEKEEPING PROPERTY

Rule 1.15. Safekeeping Property and Funds. - (a) A lawyer shall hold property and funds of clients or third persons that are in a lawyer's possession in connection with a representation separate from the lawyer's own property and funds.

(b) Funds belonging to clients or third persons shall be deposited in a separate account maintained in an FDIC member depository institution having a deposit-accepting office located in the state where the lawyer's office is situated (or elsewhere with the consent of the client or third person) and which participates in the overdraft notification program as required by Supreme Court Rule 9, Section 29.1. A lawyer may deposit the lawyer's own funds in such an account for the sole purpose of paying financial institution service charges or fees on that account, but only in an amount reasonably necessary for that purpose.

(1) Except as provided by subparagraph (b)(2), interest earned on accounts in which the funds of clients or third persons are deposited, less any deduction for financial institution service charges or fees (other than overdraft charges) and intangible taxes collected with respect to the deposited funds, shall belong to the clients or third persons whose funds are deposited, and the lawyer shall have no right or claim to such interest. Overdraft charges shall not be deducted from accrued interest and shall be the responsibility of the lawyer.

(2) A lawyer shall deposit all funds of clients and third persons that are nominal in amount or expected to be held for a short period of time such that the funds cannot earn income for the benefit of the client or third persons in excess of the costs incurred to secure such income in one or more pooled accounts known as an "Interest On Lawyers' Trust Account" ("IOLTA"), in accordance with the requirements of Supreme Court Rule 43. A lawyer shall not deposit funds in any account for the purpose of complying with this sub-section unless the account participates in the IOLTA program under Rule 43.

(3) The determination of whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) rests in the sound discretion of the lawyer. No charge of ethical impropriety or other breach of professional conduct shall attend a lawyer's exercise of good faith judgment in making such a determination.

(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 funds or other property. If a dispute arises between the client and a third person

with respect to their respective interests in the funds or property held by the lawyer, the portion in dispute shall be kept separate and safeguarded by the lawyer until the dispute is resolved.

(d) When in the course of representation a lawyer is in possession of property in which both the lawyer and another person claim interests, the property shall be kept separate by the lawyer until there is an accounting and severance of their interests.

Commentary. - [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 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] Paragraph (b) of this Rule contains the fundamental requirement that a lawyer maintain funds of clients and third parties in a separate trust account. All such accounts, including IOLTA accounts, must be part of the overdraft notification program established under Supreme Court Rule 9, Section 29.1.

[3] Under Supreme Court Rule 43, Tennessee lawyers are obligated to report their compliance with their obligations concerning their IOLTA accounts and the handling of client funds. Tennessee lawyers are required to comply with certain requirements imposed by Rule 43. This Rule requires Tennessee lawyers to establish IOLTA accounts only at eligible financial institutions. Tennessee lawyers may rely upon the list of eligible financial institutions maintained pursuant to Rule 43 in establishing an IOLTA account to comply with subparagraph (b)(2).

[4] A lawyer is also responsible for assuring the payment of any financial institution service charges or fees on such trust accounts. Subparagraph (b)(1) of this Rule makes clear that any interest earned on non-IOLTA trust accounts belongs to the client or third party whose funds generate the interest, and that the interest earned on them may be used by a lawyer to pay bank charges or fees. A detailed accounting of such interest and fees may be necessary to avoid the payment of any client-or matter-specific bank charges or fees (for example, charges for a certified check obtained solely for the benefit of one client) by a client other than the one on whose behalf the charge or fee was incurred.

[5] In determining whether client or third-person funds should be deposited in an IOLTA account or non-IOLTA trust account, a lawyer should take into consideration a number of factors, including the amount of funds to be deposited; the expected duration of the deposit; the rate of interest or yield available from the financial institution where the funds are to be deposited; the service charges, fees, and other costs that are reasonably expected to be associated with the deposit of funds; the cost of establishing and administering a non-IOLTA trust account for the benefit of the client or third person, including the cost of the lawyer's services and the cost of preparing any tax reports required for interest accruing to the benefit of a client or third person; the capability of financial institutions or lawyers or law firms to calculate and pay interest to individual clients or third persons; and any other circumstances that are reasonably

likely to affect the ability of the client or third person to earn income, in excess of any service charges, fees, or other costs incurred to secure such income from the funds.

[6] Subparagraph (b)(3) expressly recognizes that a lawyer's decision concerning whether funds are required to be deposited in an IOLTA account pursuant to subparagraph (b)(2) is a discretionary one, and provides that a lawyer who makes such a determination in good faith shall not be subject to any disciplinary sanction for this decision. A lawyer or law firm should review the account at reasonable intervals to determine if the amount of the funds or expected duration change the type of account in which funds should be deposited.

[7] In no event may overdraft charges imposed upon a trust account be paid from interest on a trust account.

[8] In order to allow a lawyer to pay appropriate financial institution service charges or fees on a trust account, paragraph (b) of the Rule expressly relaxes the prohibition on commingling lawyer and client funds in a trust account to permit a lawyer to deposit the lawyer's own funds in the trust account for the sole purpose of paying financial institution service charges or fees, but only in an amount reasonably necessary for that very limited purpose. Lawyers should exercise great care in using this limited permission to deposit funds in a trust account, given the cardinal importance of the principle otherwise banning commingling of funds.

[9] 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 in a dispute with the client. 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.

[10] 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. If not inconsistent with the interests of the client, the lawyer may file an interpleader action concerning funds in dispute between the client and a third party.

[11] 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.

[12] In certain circumstances, Tennessee law governing abandoned property may apply to monies in lawyer trust accounts or other property left in the hands of lawyers and may govern its disposition. See Tenn. Code Ann. § 66-29-101 to 66-29-204 (Uniform Disposition of Unclaimed Property Act).

Compiler's Note. - By order filed on July, 2009, the Supreme Court of Tennessee amended Tenn. Sup. Ct. R. 8, RPC 1.15 and Tenn. Sup. Ct. R. 43. The Court's order contained the following transition provision, governing the effective dates of the amended rules:

For the purposes of implementing amended Rule 8, RPC 1.15 and amended Rule 43, including without limitation the promulgation of regulations, forms and procedures, and the determination of eligible financial institutions, the amended rules shall take effect upon the Supreme Court's filing of this order. However, in order to permit a reasonable period for the implementation of the amended rules, lawyers maintaining pooled accounts pursuant to Rule 8, RPC 1.15 and Rule 43 shall have until January 1, 2010 within which to comply with the provisions of the amended rules. All lawyers shall comply with amended Rule 8, RPC 1.15 and amended Rule 43 on or before January 1, 2010. Prior to that date, lawyers shall comply either with the applicable rules in effect immediately prior to the adoption of the amended rules or with the amended rules.